

Case Note: Case concerning diversion of stream by riparian landowner. The court ruled that such a diversion is permitted provided it does not cause material damage to lower riparians.

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(1906)8BOMLR87

IN THE HIGH COURT OF BOMBAY

Decided On: 12.10.1904

Waman Bapuji

v.

Changu Has Patil

Hon'ble Judges:

Lawrence Jenkins, K.C.I.E., C.J. and Batchelor, J.

JUDGMENT

Lawrence Jenkins, K.C.I.E., C.J.

1. In our opinion the Joint First Class Subordinate Judge A. P. was not entitled on the materials before him to vary the decree of the first Court in the manner he did; because it is impossible for a Judge without proper materials to form any opinion as to what will be the effect of a diversion in the natural flow of a stream. No doubt the riparian owner may put water that flows through his land to certain uses connected with his land and for that purpose he may be entitled to divert its course. But it must be done in such, a manner as not to inflict any material injury on the lower riparian owners.

2. We think therefore that the appellant is entitled to have determined an issue in these terms:-Whether after the removal of the sluice and the permanent closing of the opening in which it stood, there will be material injury to the plaintiff by reason of the diversion of the stream.

3. Parties will be at liberty to adduce evidence on this point.

4. Return will be in three months.

5. Upon the issue sent down the finding of the lower Court was in the affirmative.

6. The case came up for final disposal before Jenkins C. J and Batty J. on the 18th September 1905, when their Lordships passed the following

Decree.--The Court varies the decree of the lower appellate Court by substituting therefor the following declaration and injunction:

Declared that the plaintiff is entitled to the free and uninterrupted enjoyment of the flow of water with the mali therein in the stream passing through his land as the same had been accustomed to flow before the defendants' interference subject to the ordinary and reasonable use thereof by the defendant as the upper riparian owner and let the defendant, his agents and servants be restrained by injunction from diverting the said stream and waters thereof with the mali therein so as to interfere materially with the flow thereof through the land of the plaintiff.

7. The plaintiff must get his costs throughout.

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