

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Cowin v. Moore, from the Isle of Man; delivered 2nd August, 1861.*

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Present :

LORD KINGSDOWN.

LORD JUSTICE KNIGHT BRUCE.

SIR EDWARD RYAN.

LORD JUSTICE TURNER.

IN 1854, at the time of the commencement of the action in the Common Law Court of the Isle of Man upon which this Appeal arises, an action by the Appellants against the Respondent, they stood towards each other with respect to the subject of dispute thus : The Appellants were the tenants and occupiers of a water corn-mill, called Ballaughton Mill, situate in the Isle of Man, on a river called the Black River, and worked by means of the water of that river, assisted by such water as flowed into it through an ancient but artificial channel or millrace which communicated at its lower end (a little above the mill) with the Black River, and at its upper end with another river, called the White or Bright River, so that water from the White or Bright River ran occasionally, or frequently, or constantly, into the Black River above, but near to, Ballaughton Mill. The Respondent was tenant and occupier of a water-mill called Tromode Mill, situate on the Bright or White River above, though near to, the point at which the artificial channel or millrace begins, and must be taken, for every present purpose, to have had lawful power over the water of the Bright or White River so far as power over it could be exercised consistently with the Appellants' rights.

Some years before the year 1854, a pond, called a Dam, had been made near Tromode, which com-

communicating with the Bright or White River, and supplied by it, was held with the Tromode Mill, and used for its purposes. The water of the Bright or White River was thus habitually or often penned back and impounded, and frequent delays of the water flowing towards the artificial channel or mill-race were, during various hours and periods, a consequence; as were also occasionally extraordinary transmissions of water down the mill-race and so into the Black River. This course of proceeding the Appellants alleged to be injurious to them, and they therefore brought the action already mentioned, in which the declaration was in these terms:—

“ James Cowin and George Goldsmith, of the parish of Braddan, millers, complain against William Fine Moore, of the said parish of Braddan, sail-cloth manufacturer, and show that the Plaintiffs, before and at the time of the committing of the grievances by the Defendant hereinafter mentioned, were, and from thence hitherto have been, and still are, tenants in possession of a certain corn-mill and premises, with the appurtenances, in the said parish of Braddan called Ballaughton Mill (and which said mill is an ancient corn-mill); and by reason thereof, before and at the time of the committing of the grievances hereinafter mentioned, of right ought to have had and enjoyed, and still of right ought to have and enjoy, the benefit and advantage of the water of a certain stream or river, in the said parish of Braddan, called the Bright river, which during all that time ought to have run and flowed, and until the obstruction thereof hereinafter mentioned of right had been used and accustomed to run and flow, and still of right ought to run and flow, in great plenty and abundance from the said stream or river, through certain lands in the said parish, part of the estate of Port-e-Chee, and thence unto the said corn-mill and premises of the Plaintiffs, for the supplying the said mill with water for the working thereof; yet the Defendant, well knowing the premises, but contriving and wrongfully and unjustly intending to injure and prejudice the Plaintiffs in this respect, and to deprive them of the use, benefit, and advantage of the water of the said stream or river, and to hinder and prevent the Plaintiffs from working their said mill in so ample and beneficial a manner as they had theretofore done, and of right ought to have done, and to injure them in their trade and business of millers, which they during all the time aforesaid exercised and carried on, and still do exercise and carry on, at the said corn-mill and premises, and to put them to great expense and inconvenience, whilst the Plaintiffs were so possessed of their said mill and premises, with the appurtenances as aforesaid, and so exercised and carried on their said trade and business therein,—to wit, on the first day of November, one thousand eight hundred and fifty-one, and on divers other days and times between that time and the day of commencing this suit, in the parish of Conchan, wrongfully and injuriously, by means of a certain dam by him, the Defendant, cut and constructed by the side of the said stream or river, diverted and turned divers large quantities of the water of the said stream or river into the said

dam, and therein and thereby from thence, hitherto, and during all the time aforesaid, impounded, penned back, and obstructed the said water of the said stream out of and away from the said mill and premises of the Plaintiffs, and stopped, prevented, and hindered the water of the said stream or river from running or flowing along its usual course to the said mill and premises of the Plaintiffs in its usual and accustomed manner, and from supplying the same with water for the necessary working thereof, as the same of right ought to have done, and otherwise would have done; and by reason thereof the water of the said stream or river, sufficient for the supplying of the said mill of the Plaintiffs during all or any part of that time, could not nor did run or flow to the same, as the same of right ought to have done, and otherwise would have done; and the Plaintiffs thereby, for want of such sufficient water, could not during that time use their said mill and premises, or exercise their said trade or business therein, in so large, extensive, and beneficial a manner as they might and otherwise would have done; but were thereby, during all that time, deprived of so beneficial a use and enjoyment of their said mill and premises as they ought of right to have and enjoy, and of the benefits, profits, gains, and advantages which they otherwise might and would have made by carrying on their said trade and business therein. By means of all which the illegal actings and doings of the Defendant, the Plaintiffs charge that they are damaged in the sum of one thousand pounds, for recovery whereof they bring this suit, and pray judgment therein according to the due course of the common law."

The whole of the Appellants' case was denied by the Respondent. The entire contents of the Declaration were accordingly put in issue, and the cause was tried by a special jury (after a view) before the then Lieutenant-Governor of the Island. Numerous witnesses were examined on each side.

The trial occupied several days, and ultimately, in January 1857, the jury found a verdict for the Defendant (the Respondent), and the action was "dismissed with costs." The Plaintiffs appealed to the House of Keys, where the hearing of the Appeal occupied also several days, and, in the end, after various adjournments, the House adhered to the decision of the jury, except as to costs, and dismissed the action accordingly without costs. This took place in the month of June 1859, and led to the present Appeal, which was fully and ably argued here.

The controversy is and has been as to matter of fact only. The disputed questions were substantially these alone: First. Had the Appellants sustained damage by means of any act or conduct on the part of the Respondent? Second. If they had, was that act or conduct wrongful, as between him and the Appellants? which second question

introduced or involved another, namely, this : Whether the dam had been constructed before, and in use from a time preceding, October 1833, the action having been commenced in October 1854, and twenty-one years being the period of limitation or prescription for such purposes as those under consideration, fixed by the law of the Isle of Man ? To each of these questions of course the Respondent insists, and the Appellants deny, that the answer ought to be in the Respondent's favour.

And the evidence appears to their Lordships so conflicting, and of such a kind, that different juries might well answer each in a different way without any imputation necessarily thence arising on the integrity, the intelligence, or the attentiveness of either jury, or any member of either. If the jury by whom this case was tried had found a verdict for the Appellants, and the House of Keys had affirmed it, their Lordships might very possibly not have been willing to advise the Sovereign to reverse that decision. But the jury and the House of Keys having both been of opinion against the Appellants (for their Lordships think the difference as to the costs not for any present purpose important), the evidence having been such as it was, and there being substantially no controversy except as to matter of fact, their Lordships are satisfied that they ought not to advise Her Majesty to vary what has been done. What advice they might have tendered to the Crown had anything material been admitted as evidence which was not legally evidence, had anything material been tendered as evidence and rejected which ought to have been received, or had there been misconduct on the part of the jury or any member of it—their Lordships deem it unnecessary to say, for nothing of the kind appears. The Lieutenant-Governor seems to have done his duty sufficiently and well; and the jury who saw and heard the witnesses must be assumed to have been composed of honest men, sufficiently intelligent and attentive to their duty. In such a state of things we must humbly recommend Her Majesty to leave matters as they are, and to dismiss the Appeal, without costs.

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