

*Privy Council Appeal No. 99 of 1917.*

Arthur John Fry Gibbons - - - - *Appellant,*  
v.  
Walter Vincent Lenfestey and Another - *Respondents.*

FROM

THE ROYAL COURT OF THE ISLAND OF GUERNSEY.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL DELIVERED THE 8TH MARCH, 1918.

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*Present at the Hearing :*

EARL LOREBURN.  
LORD DUNEDIN.  
LORD SUMNER.  
LORD PARMOOR.

[*Delivered by* LORD DUNEDIN.]

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The present appeal is a consolidated appeal against judgments in two actions arising out of the same state of facts. According to the allegations of the plaintiff, the defendants, who are the proprietors of ground conterminous to and at lower level than the ground which belonged to the plaintiff, stopped up a hole in a wall on the plaintiff's property through which water had been in use to descend from the ground of the plaintiff to the ground of the defendants, with the result that regurgitation ensued and damage was caused. The plaintiff thereupon raised two actions: one craving a mandatory injunction to compel the defendants to restore the hole and refrain from stopping it up, the other for damages. The Courts in Guernsey dismissed both actions, on the ground that there was no registered instrument of servitude. On appeal to His Majesty in Council, this Board advised the recall of the judgments, pointing out that the plaintiff's rights upon the facts alleged did not depend on any grant, but were based upon the law of neighbourhood, which constituted a natural servitude in favour of the superior tenement to discharge the natural water on to the inferior; but recognising that there might be a defence that the damage caused was not

due to interference on the part of the defendants, but was caused by some act of the plaintiff himself; and remitted the causes to the Guernsey Court to receive such pleadings as the defendants might put forward, and then, after enquiry into the facts, to proceed to judgment.

The causes having gone back to the Guernsey Court, and being still pending, the plaintiff parted with the property by conveying the same to a limited company, of which he himself was managing director. The plaintiff avers that while conveying the property he reserved to himself the tenancy for a period of years. This is not admitted by the defendants, but, as will be presently seen, it is immaterial whether this is so or not. After he had executed the conveyance the plaintiff, at his own hand, altered his designation as plaintiff in both actions. As originally served the actions ran at the instance of "A. J. F. Gibbons, propriétaire de . . .," and then followed a description of the property. The alteration made consisted in making it run "tant comme ci-devant propriétaire que comme Directeur-Gérant de la Compagnie dite Arthur Gibbons & Sons, Limited, dont le siège social est à Suffolk House en la cité de Londres en Angleterre, présentement propriétaire de . . ."

Upon this change being brought to the notice of the Court, they, in both actions, by judgment of the 4th November, 1916, decided that such a change made the action a new action, so that if the plaintiff wished to continue the old actions he must revert to the former designation. He accordingly did so revert by striking out the alterations he had made. The fate of the two actions must now be followed separately.

In the injunction action the defendants put in a "prétention" to the following effect:—

"Que le dit acteur a perdu ses droits d'action à l'effet que dessus ayant depuis l'action commencée baillé-à-rente les dites prémisses le vingt-quatre février mil neuf cent douze et conséquemment ne peut continuer la dite cause en vertu des prémisses qui ne lui appartiennent plus."

This "prétention" was rejected by the ordinary Court. Appeal being taken the Full Court on the 20th February, 1917, recalled the judgment and allowed proof of the "prétention."

It is admitted by the appellant that allowing proof of the "prétention," *i.e.*, of the fact of the transference is tantamount to upholding it. For there is no dispute as to the fact of the transference, and the appellant further admits that by the law of Guernsey an injunction will not be granted to anyone other than the proprietor of the subjects. It is accordingly against this judgment that this appeal is taken. Their Lordships cannot say that the judgment was wrong. Injunction is an equitable remedy which, quite apart from the right on which it is founded, will not be granted unless that right is either being actually infringed or there is good ground for supposing it will soon be infringed. In other words, an injunction must



In the Privy Council

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DELIVERED BY LORD DUNEDIN.