

**(1894) 03 MAD CK 0012**  
**In the Madras High Court**

Gopal Reddi

APPELLANT

Vs

Chinna Reddi, Arunachella Pillai

RESPONDENT

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**Date of Decision :** 07-03-1894

**Acts Referred:**

**Citation :** (1894) 4 MLJ 244

**Hon'ble Judges :** Shephard, J;Davies, J

**Bench :** Full Bench

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## **Judgement**

Shephard, J.—The plaintiff and the defendants are riparian proprietors, the former occupying lands lower down the stream than those

occupied by the defendants. The stream is a jungle stream, not used for irrigation purposes and apt at times to rise suddenly and flood the lands

through which it flows. In order to protect their lands against flooding and to keep the water to its improper channel the defendants raised the bund

along the (sic) the stream and fortified it with stone. This is the act complained of by the plaintiff as wrongful, it being charged that the plaintiff's

lands were in consequence inundated and sustained damage. The complaint is that the bunds have been raised above the height at which they

stood before, for it is found or admitted that it has been long the practice to have some sort of bunds. It is not suggested that the act complained of

was done otherwise than with the object of protecting the defendants' lands. On the contrary the District Judge finds as I understand, that in the

absence of a bund the defendants' lands will become uncultivable; and it is for that reason, coupled with the fact that the plaintiff can by also raising

a bund and clearing out the channel protect his own lands, that the District judge refused the injunction which the District Munsif has granted.

2. The question is whether, under these circumstances, any actionable wrong has been committed by the defendants.

3. The only case cited in argument was *Neild v. London and Northwestern Railway Company*, L. R. 10 Ex. 4 In that case the facts of which are

certainly distinguishable, from the present, Bramwell, B., observes that in the case of a natural watercourse, it may be that the riparian owner is

entitled to protect himself against extraordinary floods by keeping off extraordinary water.

4. In a later case *Whatby v. Lancashire and Yorkshire Railway Company*, L. R. 13 Q. B. D. 131 Brett M. R., citing the above case and *R. v.*

*Pagham Commissioners* 8 B & C, 355 says. "There are two cases which have been decided; an extraordinary danger threatens you; you have a

right to defend yourself against it, before it has occurred to you. To protect yourself, and only for the purpose of protecting yourself, you. prevent

the dangers from happening to you, but the danger is so far common that the necessary consequence of its being prevented from happening to you

is that it will happen to your neighbour. In so acting in defence of yourself or of your property, you have done nothing by any act intended to injure

your neighbour and you are not answerable, because the danger which has been diverted from you has done mischief to somebody else.

5. The extraordinary danger in *R. V. Pagham* was the inroad of the sea brought about, one may presume, by peculiar conditions of tide, wind, and

the like. I fail to understand why the (sic) rising of a stream, consequent on the fall of rain, should (sic) the less be considered an extraordinary

danger. The case seems to me precisely that stated in the Digest XXXIX.

6. There is a great distinction between protecting oneself from an apprehended danger and getting rid of the consequences of an injury which has

actually occurred. The distinction was clearly marked in *Whatby's* case where it was held that the defendants were liable because a misfortune

having happened, they had transferred it from their own lands to that of the plaintiff.

7. It is quite another matter to hold that landowners are not at liberty to improve their land by keeping a stream within bounds Where an act of mere

prevention is complained of, I think it must be shown that the defendant has in fact diverted the stream from its natural course. Here, as I

understand the facts, the stream when in flood, took no definite course but simply spread itself over the defendants' lands and so did not come in

its full volume to the plaintiff's lands. What the defendants have endeavoured to do is to confine the flood water to the ordinary channel, and it is

open to the plaintiff to adopt the same measures of defence. Instead of so doing the plaintiff in effect demands that the defendants' lands shall for

ever continue to remain subject to periodical inundation and therefore less fit for cultivation than they might otherwise be. At present it is true that

the plaintiff has only succeeded in getting damages, but if the judgment is right and the defendants, notwithstanding it, persist in maintaining their

bunds, there can be no reason why the demand for an injunction should not on some other occasion be granted.

8. In the view which I take of the facts as found, the plaintiff has not succeeded in proving any actionable wrong to have been committed by the

defendants, but if Davies, J., thinks otherwise, I have no objection to asking the Judge to find "Whether the stream when flood was previously to

the raising of the bunds complained of, used to take its Course as such, over the defendants lands, or to spread itself over and inundate the said

lands.

Davies, J.

9. I think the Judge's finding on the alternative question last put by Mr. Justice Shephard is clear, namely, that the flood water spread itself over

and inundated the defendants' lands, not that they diverted the natural course of the stream. I would not propose to send that issue down.

10. The issue that I would propose is "could the defendants have protected their property by any other means than those they adopted by which

other means no damage would have been done to the plaintiffs' land." In the case of a sudden and extraordinary casualty such as the flood in

Nield v. London and Northwestern Railway Company, the principle "seems to me one of *saue qui peut*." In cases where the casualty is of

common recurrence and expected, as in this case it is found to have been, I think defendants, if it was reasonably possible, should have adopted

protection works that would not have hurt their neighbour. If no other measures than they did adopt were reasonably practicable, then they were

justified on the ground that the damage caused was inevitable. Hence the issue I

propose.

Shephard, J.

11. Again:--As I read the judgment of the District Judge, the only way in which the defendants could protect their lands was by raising the bund

and it seems obvious that the other mode which may be suggested, viz., that of clearing out the channel, cannot therefore serve as more than a

temporary expedient. However as there may be doubt, I have no objection to the suggested issue, only I must add this, that I am not convinced

that the defendants would be liable, even if some other equally efficacious expedient might have been adopted by them without any evil co

consequences to the plaintiff. The exact issue should be ""whether it was reasonably practicable for the defendants to defend their lands from

inundation by any means other than those adopted Which would not have caused damage to the plaintiff.