Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Great Laxey Mining Company, Limited, v. *James Clague, and on the Cross-Appeal of James Clague* v. *The Great Laxey Mining Company, Limited, from the Court of Chancery, Isle of Man; delivered 26th November* 1878.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

IN this case the Plaintiff Mr. Clague was the owner in fee simple of a farm in the Isle of Man. The Defendants are a Mining Company who, under a grant from the Crown, were authorised to enter his lands in order to conduct their mining operations, paying him compensation for damage done. He brought a suit in the Chancery Court of the Isle of Man, claiming compensation in respect of the damage which he had suffered from their works, which he laid at 150*l*. There were various heads of damage; but that with which we have principally to deal arose from their construction in his land of a reservoir. The Defendants admitted many of the allegations of the bill, and, among other things, they state in their answer that they commenced to dig and excavate a portion of the Plaintiff's estate and to deposit rubbish on the surface, "and also formed and constructed a reservoir or "dam for water on the said lands of the com- "plainant, and damaged and injured and appro- "priated to their own use certain timber trees," and so on,—and that they erected fences on com-

plainant's said lands; that by the continuance of their said works and operations they have continued to permanently damage and injure the said lands, and complainant's estate and interest therein; and that they are ready to pay him compensation for all the loss and injury sustained by him in the premises.

By the terms of an order made by the consent of both parties, it was decreed that a jury shall enquire into, ascertain, and assess the amount of damage and injury done to the lands of the complainant by means of the Defendants' works in the bill mentioned, and report thereon for the information of the Court.

The jury came to a finding in these terms: "Allowed, to enable Respondent to erect 540 "yards of permanent stone fencing around the "reservoir, 114*l.* 15*s.*;" then follow other sums in respect of "land permanently injured," "severance of road," and other injuries, amounting to 100*l.*, making the total award of damages 214*l.* 15*s.* Upon this finding of the jury a judgment was given by the Court in these terms: "It is there-"fore hereby ordered and decreed that the "Defendants do forthwith pay unto or for the "use of the complainant the said sum of 214*l.* 15*s.*, "the amount of the said verdict, subject to be "reduced to 100*l.* in case the Defendants forth-"with erect such permanent and sufficient stone "wall round the said reservoir." It appears that the Plaintiff thought that such a judgment could not stand, inasmuch as he had only claimed 150*l.*; and he accordingly prayed that the judgment which had been entered in accordance with this finding of the jury should be modified. His petition states that "On the hearing of the "said cause, complainant's counsel claimed a "judgment of this honourable Court for the "sum of 150*l.*, only explaining that, although "the said verdict was for a higher sum, in-

" asmuch as complainant had only claimed 150*l.*
" by his bill, and as Defendants might claim
" credit for a temporary fence, which had been
" made by them, as proved by the evidence taken
" on the said issue, complainant would only move
" for judgment for the said sum of 150*l.*, with
" costs;" and he accordingly prayed that the judgment be amended. The Court reconsidered the case, and finally gave this judgment: " The
" Court is of opinion that the said judgment
" of the 2nd June last should be rectified,
" and that the said Defendants should only
" pay to the complainant the said sum of
" 150*l.*, and costs to be taxed; and that in
" case the Defendants do within two months
" erect a permanent and sufficient stone wall
" round the excavation for a reservoir in the
" proceedings mentioned, that then they should
" only pay to complainant the sum of 35*l.* 5*s.*,
" being the balance of the said sum of 150*l.* after
" deducting 114*l.* 15*s.*, which the jury have esti-
" mated as the cost of building a permanent wall
" round the reservoir, with costs to be taxed;
" and the same is so ordered and adjudged
" accordingly."

The Mining Company appealed against this judgment, and also against the former judgment, on the ground that the Plaintiff is only entitled to 100*l.*, and that he is entitled to no damages in respect of the reservoir in consequence of the alleged necessity of building a permanent stone fence round it. The Plaintiff filed a cross Appeal relating to the form of the decree, which will be referred to presently. The main question is that raised by the Defendants.

It appeared that the Defendants had made a fence consisting of wooden posts, with some iron-work, which was, and probably would be for some years, sufficient to prevent the

Plaintiff's cattle from falling into the reservoir. The Defendants' contention is that the Plaintiff was not entitled to damages in respect of the reservoir, inasmuch as he had suffered none; that if his cattle had fallen into it, or should fall hereafter into it, that would be a subject of damage; that it might even be a subject of damage if he were unable to place his cattle upon the land adjoining the reservoir, owing to the danger of their falling into it; but that until he was actually injured in one of these ways he had no claim to compensation. On the other hand, it was contended on the part of the Plaintiff that the compensation he had obtained was awarded him once for all for the purpose of indemnifying him in money for the injury which his estate had permanently suffered in consequence of the construction of the reservoir, which must be regarded as a permanent work requiring a permanent fence. Indeed one of the witnesses for the Defendant appears to put the Plaintiff's case in very much the way in which the Plaintiff himself puts it. This witness, a Mr. Lace, says, in his cross-examination, "A stone wall "would be the proper permanent fence; and if "the Plaintiff is to take it with the present fence "on it, he ought to have a permanent stone fence. "Suppose the damages now to be got are to "be taken in full for all future damage in respect "of the works now done, and the Company not "bound to keep up the fence, he ought to be "allowed in addition the cost of a stone fence." This appears to have been the view of the jury. According to their Lordships' understanding of the case, the jury measured the pecuniary injury to the Plaintiff by the sum which he would have to expend in order to put himself in the same position as if no reservoir had been made on his land; and that this sum was 114*l.* 15*s.*, the cost of erecting a permanent stone

fence. This view was adopted by the Chancery Court of the Isle of Man, and their Lordships concur in it. Indeed they regard the finding of the jury as a finding on a question of fact, within their competence. They have assessed the damage the Plaintiff has sustained, and their assessment is not the worse because they have communicated the principle on which they proceeded and the measure which they adopted.

The case appears to stand very much on the footing of the Defendants having bought of the Plaintiff the right to maintain a reservoir in his land without fencing it for the future, and without being liable to any further compensation.

Their Lordships, regarding the main question as substantially one of fact, do not think it necessary to go at any length into the examination of the authorities which have been quoted, decided upon very different facts. The case most nearly bearing upon the present is the case of *Williams* v. *Groucott* (4 Best and Smith), the effect of which may be shortly thus stated: A. was in occupation of the land, B. was in occupation of the minerals, and had a right of access to them without paying compensation. He dug a shaft in pursuance of that right, but fenced it so carelessly and inefficiently that a horse of the Plaintiff fell into that shaft and was killed. It was held that the Plaintiff was entitled to compensation, chiefly upon the strength of the maxim "*Sic utere tuo ut* "*alienum non lædas.*" The Defendant there had a right to dig his shaft; but he had not a right to dig it, or to maintain it, in such a manner as to be dangerous to his neighbour who occupied the surface of the adjoining land. The present is not an action against a wrongdoer for a trespass, or against a person negligently and improperly exercising a right so as to injure the rights of

another. It is a claim against persons who are exercising their undoubted rights,—not negligently or improperly, but subject to a condition which did not exist in the case which has been quoted, namely, that they should pay compensation for damage done. That compensation has been assessed by a competent tribunal once for all, which puts the Plaintiff in as good a position as if the damage of which he complains had never been done. After receiving that compensation he will have no right of action for any subsequent damage he may suffer from the same cause. These observations, in their Lordships' view, entirely distinguish the two cases.

It only remains to refer to the cross-appeal preferred by the Plaintiff. The Plaintiff maintains that the first part of the decree awarding him 150*l.* and his costs is right; but that it is wrong in going on to give the Defendants an option within two months to erect a permanent and sufficient stone wall round the excavation for a reservoir, and in further ordering that if they do so they shall only pay to the complainant a sum of 35*l.* 5*s.*, being the balance of 150*l.*, inasmuch as it is not the duty of the Defendants to erect a wall, but simply to pay to the Plaintiff the money value of the injury which he has suffered; and further, that to reduce the claim of the Plaintiff to 35*l.* 5*s.*, in the event of the Defendants erecting the stone wall, is at variance with the finding of the jury that he is entitled to 100*l.*, irrespective of such cost.

It appears to their Lordships that these objections to the form of the judgment are valid, and they are disposed to give them effect. The judgment will therefore be modified by striking out so much of it as follows the words "costs to be taxed."

Their Lordships will therefore humbly advise

Her Majesty that the Appeal of the Defendants be dismissed, that the Appeal of the Plaintiff be allowed, and that the judgment be modified as herein-before described, and that the Plaintiff have the cost of both Appeals.