Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Remfry v. *The Surveyor General of Natal, from the Supreme Court of the Colony of Natal, delivered* 16*th June* 1896.

Present:

LORD WATSON.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

IN this case the Respondent, the Surveyor-General of Natal, on behalf of the Government, sued for, and obtained, an interdict to prevent the Appellant from cutting off the water flowing in a certain artificial watercourse on the Appellant's land. The Appellant thereupon moved to dissolve the interdict. The real question was whether the watercourse in question was rightfully made, and maintained, in the Appellant's land, and this depends on the true construction of the grant under which the Appellant holds. That grant contains the following reservations: first that "all authorised "roads, watercourses, and thoroughfares, now "made, or running over, or through the said "land, shall remain free and uninterrupted, as "in their present or past use"; and, secondly, that "the said land shall be liable without com-"pensation to any proprietor, or to any sub-"grantee or lessee thereof, to have any road or "roads and watercourses made over any part of "it, for the public use and benefit, by order of "the Colonial Government; except those parts "on which any building may actually be erected "at the time when any such road or watercourse

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" is required to be made, and in respect of which " building, if required to be removed for any " such purpose, reasonable compensation shall be " made by the said Government."

It was apparently at first believed by the Government officials that the watercourse in question, which is described as No. 3, was in existence at the time of the grant. From the evidence given in this case that appears to be a mistake. It was, in fact, made in or about the year 1881, and according to the view of the evidence taken by the Court below, it was laid out and constructed, and has been maintained at the expense of the Government, for the purpose of supplying the township, or projected township of Stuartstown, including the Government buildings therein, with water. Their Lordships see no reason to dissent from this statement of the facts of the case.

It has been argued that an authority to make a watercourse does not authorise the abstraction of water from the natural stream flowing in the Appellant's land; and also that it is not proved that the watercourse No. 3 was made by order of the Colonial Government. It is to be observed that the first point is not referred to in the judgment delivered by the Chief Justice, and apparently was not taken in the Court below. Their Lordships are of opinion that it cannot be maintained. It cannot be denied that a " watercourse " may mean, and, perhaps, the more natural meaning of it is, a channel in which water flows, and that the grant of a right to make a watercourse may include the right to fill it with water, and use the water flowing in it when made.

Looking at the terms of the reservation, and the purposes for which it was made, and the lack of any suggestion that water would be required to be conveyed from anyother source, their Lordships

think that the right to make the watercourse in the present case included the right to divert the water from the streams in the Appellant's land into it, and to use the water so diverted.

On the other point they agree with the Chief Justice, that, if it be held that the watercourse was made by the Government, it was not necessary for the Respondent to show that it was made under an order of the Government.

Their Lordships will therefore humbly advise Her Majesty to dismiss the Appeal. The Appellant must pay the costs of the Appeal.