

Privy Council Appeal No. 15 of 1915.

James Rossiter Gibbons - - - Appellant,

v.

His Majesty's Receiver-General and others - Respondents.

FROM

THE ROYAL COURT OF THE ISLAND OF GUERNSEY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 18TH NOVEMBER 1915.

Present at the Hearing :

EARL LOREBURN.

LORD PARMOOR.

VISCOUNT HALDANE.

LORD WRENBURY.

[*Delivered by* EARL LOREBURN.]

This complaint by the plaintiff has been negatived by the Court of First Instance in a decision which was affirmed by the appellate tribunal. The complaint is that the Crown constructed and permitted to be used a roadway resting on the wall of the plaintiff as a retaining wall and thus placed the wall in danger of giving way; and it is said that this danger was aggravated by the circumstance that the Crown allowed heavy carting along this road. Their Lordships are of opinion that there is not enough to show that this road was so constructed, or that the materials there piled up were such as to make the wall dangerous. It must be observed that the wall on the southern part has not given way. There is not enough to show that it is in danger of giving way, and therefore, there can be no ground of interposition on the footing of *quâ timet*.

Accordingly the decision of the two tribunals in Guernsey must be affirmed so far as the southern part of the wall is concerned.

It is then said that the Crown caused, by the tipping of rubbish, and the consequent drifting of an accumulation of sand, the breaking down of the plaintiff's wall upon the northern part. There is very slender evidence to show that the effect of these structures, or of any artificial structures, did produce this accumulation of sand, and it is quite impossible for their Lordships to interfere with the judgment passed by a competent Court of authority upon such a question of fact. Their Lordships also think that the proof that heavy carting has caused, or contributed to the giving way of the wall at this point is not such as they could act upon.

The Court below, or at least one of the Jurats, saw this place—which their Lordships have not had the advantage of seeing—and they came to certain conclusions summarised at page 40 of the record which deserve some notice. One of their conclusions was, that the accumulation of the sand was the act of God; another of their conclusions was that the Crown was not responsible for the heavy loads; and the third conclusion, or rather what their Lordships infer to be their conclusion, was, that the rubbish was not placed quite near to the wall, but at some little distance from it. Their Lordships are also disposed to accept the view that the operations of the Crown had, in fact, saved the land of the plaintiff from being ruined by the invasion of the sea.

Under these circumstances it seems impossible to disturb the decision of the Courts below, and their Lordships will humbly advise His Majesty that this appeal should be dismissed.

The appellant must pay one set of the respondents' costs.

In the Privy Council.

JAMES ROSSITER GIBBONS

v.

HIS MAJESTY'S RECEIVER-GENERAL
AND OTHERS.

DELIVERED BY EARL LOREBURN.

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