McFARLAIN v. JENNINGS-HEYWOOD OIL SYNDICATE et al.

No. 16,291

Supreme Court of Louisiana

118 La. 537; 43 So. 155; 1907 La. LEXIS 760

January 21, 1907

SUBSEQUENT HISTORY: **[***1]** Rehearing Denied February 18, 1907.

PRIOR HISTORY: Appeal from Eighteenth Judicial District Court, Parish of Acadia; Philip Sidney Pugh, Judge.

Action by William L. McFarlain against the Jennings-Heywood Oil Syndicate and others. From a judgment in favor of defendants, plaintiff and defendant named appeal. Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff farmer brought an action against defendants, syndicate and businesses, to recover damages in the sum of $ 30,050. The Eighteenth Judicial District Court, Parish of Acadia (Louisiana) entered judgment against the syndicate for $ 1,000 and in favor of the businesses. The syndicate and the farmer appealed.

OVERVIEW: The farmer owned land south of an oil field in which the businesses were operators. A natural drain, after running through the oil field, traversed the farmer's land. The farmer charged that the syndicate, with the consent of the businesses, constructed a system of ditches for the purpose of saving the waste oil and in the course of its operations negligently allowed oil and salt water to escape, and to flow through the drain upon his land to his injury. The court found meritless the syndicate's contention that the injurious result was damnum absque injuria because oil and water extracted from the earth did not come within the purview of La. Civ. Code Ann. art. 660, which confined a servitude of drain to waters that ran naturally from the estate above. The court ruled that by claiming the waste oil as owner, the syndicate assumed the burden of taking care of the extractions to prevent injury to adjoining proprietors and absolved the businesses from responsibility. Affirming, the court held that although the evidence was conflicting as to the quantum of damages sustained, the injury was substantial and the allowance was reasonable.

OUTCOME: The court affirmed the judgment.

CORE TERMS: oil, coulee, salt water, dam, syndicate, oil field, servitude, acres, drain, proprietor, quantity, quantum, timber, swamp, mixed, ditches, tanks, damnum absque injuria, per acre, civil engineer, prescription, negligently, constructed, naturally, extracted, allowance, pollution, complains, escaping, estoppel

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Energy & Utilities Law > Oil Industry > General Overview

Real Property Law > Restrictive Covenants > Creation

Real Property Law > Water Rights > General Overview

HN1 The servitude of drain arises from the natural situation of places, and its extent is thus defined: it is a servitude due by the estate situated below to receive the waters which run naturally from the estate situated above, provided the industry of man has not been used to create that servitude. The proprietor below is not at liberty to raise any dam or to make any other work, to prevent this running of the water. The proprietor above can do nothing whereby the natural servitude due by the estate below may be rendered more burdensome. La. Civ. Code Ann. art. 660. More Like This Headnote | *Shepardize:* Restrict By Headnote

Civil Procedure > Remedies > Damages > Punitive Damages

Civil Procedure > Appeals > Standards of Review > General Overview

HN2 When the evidence is contradictory, the assessment of damages will not be disturbed, unless manifestly erroneous. More Like This Headnote | *Shepardize:* Restrict By Headnote

COUNSEL: Chappuis & Holt, for appellant Jennings-Heywood Oil Syndicate and appellees **Jennings Oil** Co. and Heywood Bros.

Ogden & Robira, for appellant McFarlain.

Carlton & Proctor and Pujo, Moss & Sugar, for appellees Heywood Oil Co. and Bass & Benckenstein.

Medlenka & Taylor and J. H. Heinen, for appellees Northern Oil Co. and Southern Oil Co.

JUDGES: LAND, J.

OPINION BY: LAND

OPINION

[156]** **[*538]** This is a suit against nine corporations and three partnerships, all operators in the **Jennings Oil** Field, to recover of them in solido damages in the sum of $ 30,050. There was judgment against the Jennings-Heywood Oil Syndicate for $ 1,000 with interest and costs, from which it appealed, and judgment in favor of the other defendants rejecting plaintiff's demand as against them. The plaintiff also has appealed from the judgment as an entirety. So the whole case is before **[***2]** us.

Plaintiff for a number of years has owned a farm of 167 acres, consisting of arable and swamp land, contiguous to and south of the **Jennings Oil** Field. A large coulee or natural drain, after running through the said oil field, traverses the land of the plaintiff, who complains that between August 31, 1904, and

August 31, 1905, the defendants negligently permitted oil and salt water to escape from their wells, tanks, and pipe lines in great **[*539]** quantities, and to flow through said coulee upon his lands to his great damage and injury. Plaintiff charges that the said syndicate, with the consent of the other defendants, constructed a system of canals, drains, and dams for the purpose of catching and saving waste oil, and in the course of its operations negligently allowed oil to escape, especially during and after rains, and permitted salt water also to escape through sluices in the dam, with the result that such oil and water flowed over the lands of the plaintiff, killing his trees, destroying his crops and pasturage, and polluting the fresh water running down the coulee. Plaintiff further complains that in May, 1905, the oil thus escaping, and finding lodgment on his **[***3]** lands, caught fire and caused the destruction of many thousands of trees, standing and fallen, many cords of wood, many logs, and much fencing and other property. Plaintiff claims $ 20,050 damages to property, and $ 10,000 punitory damages.

Defendants pleaded the general issue and the prescription of one year and estoppel. Their counsel also contend that the damage, if any, is "damnum absque injuria." They further argue that plaintiff neither alleged nor proved concert of action. Hence it is not entitled to a judgment in solido, and that there can be no judgment against the parties individually, because there is nothing to measure the liability of each.

The **Jennings Oil** Field was discovered in 1901, but during the year the production was small. Oil mixed with salt water was first produced in 1902, and the production of both rapidly increased from year to year. The greater production was during the year ending September 1, 1905. In September, 1904, the syndicate constructed the ditches and dam referred to in the petition for the purpose of draining the entire field and saving the waste oil. The syndicate claimed ownership of all the waste oil escaping from the wells, ditches, **[***4]** and tanks of the other operators, **[*540]** on the ground that it was the proprietor of "the surface rights" of the territory. This waste oil was mixed with a large quantity of salt water, the flow of which carried the oil through the lateral ditches into and down the coulee to the dam, at or near which most of the oil was separated and saved. The salt water thus impounded was released through the sluices of the dam, and all of it, mixed with such oil as could not be saved, went down the coulee through and upon lands of the plaintiff. When the rains were heavy, the overflow of the waters carried nearly all the waste oil then on the field over the dam and into the coulee.

That the plaintiff has suffered actual damages to his rights of property by the flow of oil and water, as stated above, is not denied, but the first defense is that the injurious result is "damnum absque injuria." This contention is predicated necessarily on the assumption that there exists a servitude of drain for oil and salt water on the lower estate in favor of the oil field above. *HN1* The servitude of drain arises from the natural situation of places, and its extent is thus defined:

"It is a servitude due **[***5]** by the estate situated below to receive the waters which run naturally from the estate situated above, provided the industry of man has not been used to create that servitude.

[157]** "The proprietor below is not at liberty to raise any dam or to make any other work, to prevent this running of the water.

"The proprietor above can do nothing whereby the natural servitude due by the estate below may be rendered more burdensome."

Civ. Code, art. 660.

This servitude is confined to waters that run naturally from the estate above. The text of the law excludes a service of drain created by the industry of man. That oil and salt water extracted by the labors of man from the bowels of the earth, and whose natural flow, if any, is a thousand or more feet beneath the surface, do not come within the purview of the article of the Code cited is too plain for argument; and no

useful purpose **[*541]** can be subserved by consulting the judge-made laws of other jurisdictions on the same subject-matter.

Having extracted oil and water from the earth, the operators assumed the burden of confining or taking care of it in such a manner as to prevent injury to the adjoining proprietors. By **[***6]** claiming the waste oil as owner, the syndicate assumed this burden, and absolved the other operators from responsibility in the premises. Hence there is no difficulty in fixing the liability, if any, on the syndicate.

The plea of estoppel is bottomed on the facts that the plaintiff leased eight acres of land for oil tankage purposes, that two tanks were erected thereon by the lessee, and that some oil escaped and flowed into the coulee below the dam. The plaintiff testified that the lease was made on the express condition that no oil should be permitted to escape on his land. On this state of facts the most that can be said is that some damage may have resulted, and that some deduction should be made on this ground.

The only really difficult question in the case is as to the quantum of damages which should be assessed against the syndicate.

The total amount of damages claimed is beyond all reason. The whole farm was worth probably not more than $ 5,000 or $ 6,000. The estimate of the witnesses run from $ 25 to $ 40 per acre for agricultural purposes, and there is no evidence to show that it is oil or mineral land. A solitary "duster" well driven in 1901 or 1902 indicates the **[***7]** contrary. The origin of the fire of May, 1905, is not disclosed. The most that can be said is that the oil in and around the coulee may have added fuel to the flames. There is nothing to show that the oil was the proximate cause of the alleged damage from fire. Some independent agency must have intervened to start the fire, which was some distance from the oil field.

[*542] The evidence shows that the plaintiff suffered damage to his property by the flow of oil and salt water in 1903 and 1904 prior to August 31st. This damage must be excluded as ultra petitum and as barred by the prescription of one year. The evidence, however, shows that the outflow from August 31, 1904, to August 31, 1905, was heavier than it was during any previous year. The damage was continuous and cumulative, and it is difficult to estimate the quantum for any particular period. The plaintiff testified that he was not damaged much prior to August 31, 1904, not as much as he was in the year immediately following. The civil engineer employed by defendants testified that 14.07 acres on one tract and 46.05 acres on another were badly damaged by fire, oil, and salt water, including 44 acres of timber **[***8]** which was killed. The 37 acres of woods in the swamp, covered most of the time with water, could hardly have been burned. The plaintiff testified that it was not, and the civil engineer said that most of the timber in this swamp was dead before the fire in May, 1905. The testimony is very conflicting as to quantity and value of the timber which was killed. The district judge, who heard the witnesses, awarded the sum of $ 1,000 as damages, without specifying the items. This allowance is equivalent to about $ 20 per acre for the area injuriously affected. Plaintiff proved no definite amount of damages arising from the alleged pollution of the water of the coulee. After a perusal of the voluminous transcript, we are not prepared to say that the award for damages is excessive or insufficient. The evidence is conflicting and unsatisfactory as to the quantum of damages sustained; but the injury was substantial, and the allowance is reasonable and conservative in amount. *HN2*+When the evidence is contradictory, the assessment of damages will not be disturbed, unless manifestly erroneous. It is hardly necessary to **[*543]** add that the claim of $ 10,000 for damages for the alleged **[***9]** pollution of the waters of the coulee is so grossly exaggerated as to be fictitious in character, and that the demand for $ 10,000, as exemplary or punitive damages, is without any foundation whatever.

Judgment affirmed; costs of appeal to be equally divided between the two appellants.