

right to the temporary use of the water as it passes his land for the ordinary purposes of life, it cannot be suggested that he has any right, apart from prescription, as against other riparian owners, to pollute it in the smallest degree. It follows that, if a riparian owner or other person, not having acquired a prescriptive right to do so as against other riparian owners, prejudicially affects the condition of the water so as sensibly to injure the riparian owner lower down, the latter has his remedy by action."

In this case the defendants sought to shew that the amount of sewage discharged into this water at its normal flow would not create a nuisance, in the sense that it would not cause a noxious smell to arise or would not be apt to produce disease. I do not think there is at the present time any serious danger of the stream being so defiled as to become an offence to the eye or the nose, but there is nevertheless a danger, quite real and measurable, that in the hot summer months the stream may become, because of this defilement, a source both of annoyance and danger, and, in the event of disease in the houses draining into the stream, this danger might become very acute. I do not think the action is in any sense premature or unjustified, quite apart from the danger of prescriptive rights being acquired or the right to complain being lost by laches or acquiescence.

But, I think, the law places the plaintiff's rights upon a higher plane, and that the statement quoted from Garrett is justified by the cases. The defendants have "no right to pollute this stream in the smallest degree." I do not think they can call upon the plaintiff to enter into a discussion as to the degree of dilution up to which sewage is to be regarded as innocuous and beyond which it is dangerous.

It is said that, so long as no real harm is done the plaintiff, it would be a hardship to restrain the municipality from using this natural stream to convey the sewage to the lake; but this ignores the fact that the plaintiff's right to this stream is a property right, and the municipality have no right to take or destroy the property of an individual without compensation. Many an individual has had to suffer from a failure to recognise this elementary ethical principle, and the only difference in the case of a municipality is, that it is given the power to expropriate.

*Young v. Bankier*, [1893] A.C. 691, is a good illustration. According to the head-note, taken from the judgment of Lord Macnaghten: "Every riparian proprietor is entitled to have the natural water of the stream transmitted to him without sensible alteration in its character or quality. Any invasion of this