

by the defendants' action any more than they would have been had the defendants done as they had a prescriptive right to do, viz., drawn the water from the Dighty and returned it in a polluted state to that stream, inasmuch as it would ultimately reach the Fithie in a polluted state; but the courts below having found as a fact that the defendants' withdrawing of the water from the Fithie weakened the purifying influence of that stream on the waters of the Dighty, their lordships held that they could not interfere with this finding of fact, unless it could be demonstrated either that some cardinal fact had been overlooked, or that some altogether erroneous view had been taken of the bearing of the evidence upon the case, and this, they held, did not appear. The judgment of the court below, restraining the defendants, was therefore affirmed, save as to a riparian proprietor on the Dighty, who was joined as a plaintiff, but who was held not to be entitled to any relief. The case establishes that a prescriptive right to take water in a particular way and at a particular place from a stream will not justify the person having the right taking the water in any other way or place, nor even enable him to use his common law right of taking water in such a way as to add to the pollution of the stream.

BANKER AND CUSTOMER — STOCKBROKER PAYING CLIENT'S MONEY INTO HIS OWN ACCOUNT.

In *Thomson v. Clydesdale Bank*, (1893) A.C. 282, the facts were simple. Trustees employed a stockbroker to sell shares belonging to the trust, and directed him to pay the proceeds into certain banks to the credit of the trustees. The stockbroker sold the shares, but, in violation of his duty, paid the proceeds into the credit of his own bank account, which was overdrawn. The day afterwards he absconded, and it was then found that he was insolvent. The trustees claimed the money thus paid into the credit of the broker's account, and the bank claimed to hold it against the amount overdrawn, they having received the money without notice of the fraud. The Court of Session held that the bank was entitled to retain the money, and the House of Lords (Lords Herschell, L.C., Watson, Morris, and Shand) affirmed the decision.