

not be allowed to dispose of the case in hand and still less to condemn, as defective in design and faulty in construction, boilers in general use all over the world; and that such judgment should not be allowed to stand notwithstanding the concurrent findings of the two courts on a matter to be decided by evidence.

Appeal allowed with costs.

Aylesworth, Q. U., and *Dumble*, for the appellants.

Robinson, Q. C., for the respondents.

MALICIOUS EXERCISE OF A LEGAL RIGHT.

The judgment of the House of Lords in *Corporation of Bradford v. Pickles*, settles that the malicious exercise of a legal right constitutes in English law no cause of action. The notion that it might be actionable is founded on a passage in the Digest, 39, 3, *De Aqua et Aquæ Pluviæ Arcendæ*, 1 Ulp. 12, where Marcellus is quoted as saying that to dig in one's own land, and so cut off the supply of water from a neighbour's well, is not actionable unless done "*animo vicini nocendi*." In *Chasemore v. Richards*, 7 H. L. Cas. 249, Lord Wensleydale stated, on the authority of a passage in Bell's Principles (s. 966) that the same rule applies in the law of Scotland, though this was questioned by Lord Watson in *Corporation of Bradford v. Pickles*. In principle there is much to recommend the notion (*cf.* Pollock on Torts, 4th ed., p. 144). In the present case the plaintiffs were the owners of the Bradford Waterworks. The defendant was the owner of land adjacent to the Many Wells Springs, one of the sources from which the town was served. The water supplying the springs percolated through his land in undefined channels, and consequently, on the principle of *Chasemore v. Richards*, he was entitled to divert it. He announced to the corporation his intention of executing drainage works on the land which would have the effect of diverting the water, alleging that he was desirous of working the stone under the land. North, J., found as a fact (42 W. R. 697) that his actual motive was to carry off the plaintiffs' water supply, with the ultimate purpose of compelling them to buy him off. But if this was so, it would bring his conduct within the legal meaning of malice. In the language of Lord Esher in *Bowen v. Hall*, 6 Q. B. D., at page 338, he would have threatened to use his land for the indirect purpose of