

There was suggested to counsel the desirability of an independent expert being appointed who should inspect the works with the view of ascertaining whether they could be conducted in a manner which would not be a menace to the safety of others or so as to amount to a nuisance. This was assented to and I nominated Mr. W. H. Grant, a gentleman who has had much experience in dealing with explosives, and he has now sent in a report of his investigations (dated 27th October, 1913).

This report makes it quite plain that the quarry can be operated without any danger or any appreciable inconvenience to others.

I think the proper disposition of the case is to award an injunction restraining the operation of the quarry in any way so as to cause a nuisance or endanger the life or safety of those travelling upon the streets in question, or residing or being upon the land adjacent to the quarry property; and to further declare that so long as the quarry is operated in the manner pointed out by Mr. Grant in his report this shall not be deemed a nuisance; reserving liberty to the plaintiff to apply if in actual experience it should develop that in so operating the quarry there is in fact a nuisance, and reserving liberty to the defendants to apply if it appears that the quarry cannot be satisfactorily operated in the manner and under the restrictions set forth in the report.

I think it is better to embody these provisions in the judgment rather than simply to restrain the nuisance leaving the parties to work out their rights upon the motion to commit. The liberty to apply which is reserved is intended to secure on the one hand that the plaintiff's rights shall be respected and on the other hand to prevent the destruction for practical purposes of a valuable property.

Inasmuch as the action was rendered necessary by the conduct of the defendants' servants, I think the defendants must pay the costs.