

Actual damage, in the sense of diminution of value for the uses to which the land is actually put, is not essential to the infringement of a natural right. Thus by the uniform current of decisions both in England\* and America,† it has been held that an action may be maintained for a violation of the right of support or of rights in running water, although the land is occupied for no beneficial purpose whatever.‡

It has also been held that it is no justification for further pollutions that the water or air is already unfit for use.§

When the term "injury" or "actual injury" is used in the cases, it must be understood in its legal sense of "violation of a right"—the right being the absolute right of property already described.

The true test of the infringement of this absolute right would seem to be, not whether there is damage, but whether there is such a disturbance of air, water or soil as is perceptible to the ordinary man under the circumstances—"such as can be shown by a plain witness to a plain common juryman."¶ "If, in the course of nature, the thing itself is so imperceptible, so slow, and so gradual, as to require a great lapse of time before the results are made palpable to the ordinary senses of mankind, the law disregards that kind of imperceptible operation."\* What would be a sensible disturbance to property situated in one place would be none to property situated in another, and a disturbance hitherto imperceptible may become perceptible when the land is used for a different purpose.†

\* "In *Orr Ewing v. Colquhoun* (2 App.Cas., 839, at p. 854), Lord Blackburn points out that the case of *Mason v. Hill* (3 B. & Ad., 304) settled the law that the proprietor of land on the bank of a natural stream above the flow of the tide has, as incident to his property in the land, a proprietary right to have the stream flow in its natural state, neither increased nor diminished, and this quite independently of whether he has as yet made use of it, or, as it used to be called, appropriated the waters." Per Cave, J., *Ormerod v. Todmorden, etc., Co.*, 11 Q.B.D., 155, at p. 160.

† "Actual, perceptible damage is not indispensable as the foundation of an action. The law tolerates no further inquiry than, whether there has been the violation of a right. If so, the party injured is entitled to maintain his action for nominal damages in vindication of his right, if no other damages are fit and proper to remunerate him." Per Story, J., *Webb v. Portland Manf. Co.*, 3 Sumn., 189, at p. 192.

‡ *Parker v. Griswold*, 17 Conn., 288; *Miller v. Miller*, 9 Pa. St., 74; *Wheatley v. Chrisman*, 24 Pa. St., 298; *Newhall v. Ireson*, 8 Cush., 595; *Franklin v. Pollard*, 6 So. Rep. (Ala.), 685. The same has been held in regard to pollution of the air, in *Dana v. Valentine*, 5 Met., 8; but see expressions contra in *Sturges v. Bridgman*, 11 Chy.D., 852.

§ *Crossley v. Lightowler*, L.R., 2 Chy., 478.

¶ "The pollution of a clear stream is to a riparian owner below both injury and damage, whilst the pollution of a stream already made foul and useless by other pollutions is an injury without damage." Per Fry, J., in *Pennington v. Brinsop Hall Coal Co.*, L.R., 5 Chy.D., 769, at p. 772.

¶ Per James, L.J., in *Salvin v. North Brancepeth Coal Co.*, L.R., 9 Chy., 705, at p. 709.

\* *Ibid.*

† *Sturges v. Bridgman*, 11 Chy.D., 852.