

HIGH COURT OF JUSTICE.

BRITTON, J.

APRIL 18TH, 1910.

POWER v. MAGANN.

Contract—Work and Labour—Independent Contractor—Liability of Employer for Wrong Done in Course of Executing Contract—Taking Soil from Neighbouring Land—Liability as between Contractor and Servant—Acts done in Ignorance—Innocent Trespass—Damages.

Action for the value of a quantity of black loam taken from the plaintiff's land by workmen of the defendants Stone & Wellington, under the direction of the defendant Chambers, a professional landscape gardener, and used in landscape improvements to land upon which the defendant Magann resided, of which the title was in the defendants the Toronto General Trusts Corporation under the defendant Magann's marriage settlement.

The improvements were made under a contract between the defendant Magann and the defendants Stone & Wellington.

W. J. Elliott, for the plaintiff.

Glyn Osler, for the defendants Magann and the Toronto General Trusts Corporation.

W. W. Vickers, for the defendant Chambers.

C. C. Robinson, for the defendants Stone and Wellington.

BRITTON, J.:— . . . There was no personal interference by Magann or the Toronto General Trusts Corporation with this work. What was done was by the defendant Chambers and other workmen of Stone & Wellington. Stone & Wellington were contractors employed to do a lawful work, and they and these employed by them are alone responsible. There was no power reserved by the owner of the Magann land to interfere with or dismiss the workmen of Stone & Wellington. For damages to the plaintiff's property he must look to the wrong-doer or the first person in the ascending line who is employed and has control over the work: see *Murray v. Cronan*, L. R. 6 C. P. 24, 27.

What is complained of by the plaintiff did not naturally result from what was contracted to be done. The plaintiff alleges that what was done was for Magann's use and benefit. If Magann, after knowledge of what had been done, assented to it and claimed the benefit of it, he would be liable. Magann was not called upon to be on the watch to see where the soil came from. He trusted