Incidental Injuries from Exercise of Lawful Rights

Thomas M. Cooley
University of Michigan Law School

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that if he would labor for him, he would give him one hundred acres of land, it was held that no recovery could be had, for there was nothing which the courts could enforce, or by which they could ascertain the measure of compensation. But if the contract had been to give a hundred acres of land in a certain locality, or worth five hundred dollars, so that a certain measure of the rights of the parties could have been attained, the rule would have been different. (39) So where the promise was to give the person "as much as he would to any relation on earth," the contract was held void for uncertainty, for there was no intimation or means of ascertaining how much he would give to any relative he had on earth. (40) In all cases, express promises or contracts ought to be certain and explicit to a common intent, or at least so that they may be rendered certain, by reference to something certain. (41) Absolute certainty is not required, but reasonable, approximate certainty. Thus, where a person promises another that he will render certain services for him, he "will provide and give him plenty, so that he will not need to work;" no definite or certain sum is fixed as the measure of compensation, yet it is susceptible of being rendered certain to a common intent, for by reference to the annuity tables, it can be ascertained what sum will yield to the person an annuity that will produce the result promised. (42) Thus, in all cases where there is a promise to pay any thing, the promise can be made certain by applying the measure of reasonable value; (43) but, if the promise is to pay in a specific kind of property, without designating the quantity, quality or value, certainty cannot be arrived at, and the contract is void, for indeterminacy.

INCIDENTAL INJURIES FROM THE EXERCISE OF LAWFUL RIGHTS

A TORT consists in some act or omission by one party whereby the lawful rights of another are invaded, obstructed or abridged. The elements of a tort are a wrong and a resulting damage; there is no tort where there is no wrong; and there is also no tort where there is no damage. The wrong, however, need not be one of intent, for the most innocent invasion of one's rights is a tort, as well as the most malicious; the malice being in many cases only an aggravation. Neither is it essential that the damage should always be tangible and susceptible of proof, for if a legal right is trampled upon, the law will imply damage, and the implication is conclusive. In the present paper those cases will be considered in which one person suffers an injury in consequence of the exercise by another person of his legal rights. Many such cases occur in which, although the injury may be severe, the law will award no compensation.

(40) Graham v. Graham, 10 Casey (Penn.) 473.
(41) Sylvester's Case, 2 Rolle, 104.
(42) Thompson v. Stevens, ante.
(43) Sherman v. Kitsmiller, ante.
his own ground in its natural condition by the land of his neighbor; and to that extent the adjoining lands are subject to a servitude. But he has no right to support for the land weighted with buildings; and if an excavation is made with due care and due notice, into which his buildings fall, though without the buildings the natural surface would not have given way, he has no claim to compensation. The injury is incidental to the exercise by his neighbor of a legal right; and a party liable to such an injury must protect himself as best he may. The rule is thus stated in an old case: "If A be seized in fee of copyhold land closely adjoining the land of B, and A erect a new house on his copyhold land, and any part of his house is created on the confines of his land adjoining the land of B, if D afterward dig his land so near to the foundation of the house of A that by it the foundation of the messuage and the messuage itself fall into the pit, still no action lies by A against B—inasmuch as it was the fault of A himself that he built his house so near the land of B; for he cannot by his own act prevent B from making the best use of his land that he can. But it seems that a man who has land closely adjoining his land cannot dig his land so near mine that mine would fall into his pit; and an action brought for such an act would lie." (5)

Injuries by Animals.—A man may rightfully keep domestic animals, and use and employ them as is customary. Others may be injured by them, but they are not entitled to redress unless the owner or keeper is personally guilty of negligence or bad conduct. If he keeps an animal he knows to be vicious, without proper restraint, he is liable for the consequences; if he drives a horse furiously, he may be held responsible to one who is run over by him; but he is not liable if he was in the observance of due care, and the injury was accidental. "If one does an injury by unavoidable accident, an action does not lie; alter if any blame attacheth to him, though he be innocent of any intention to injure." (6)

Injuries from Fires.—No man can lawfully insist, because of the possibility of a fire spreading to his estate, that his neighbor shall not burn over his fallow or destroy his stubble by fire. A fire for any such purpose, or even for amusement, is perfectly lawful, and if the party setting it is guilty of no negligence, its accidental spreading to his neighbor cannot charge him with an action. (7) The old rule was probably more strict, but even that did not hold the party liable where the fire spread from sudden storm, or other cases which could not have been foreseen or controlled by human agency. (8)

Injuries Invited to Self-Defense.—A man assaulted has a right to defend himself, and with force and violence proportioned to the real or apparent danger. If, in making such defense, an injury is unintentionally

(5) Wild v. Minstalay, 7 Rob. Abr. 555. The cases on this subject are fully collected in Biglow's Leading Cases on Torts, 537, et seq., and in Washburn on Easements, 542-544.


(8) Tuberville v. Stamp, 1 B. & Ald. 12; L. Raym. 261; Webb v. Railroad Co., 49 N. Y. 529, and without negligence done to a third person, this is no tort, for no man does wrong or contracts guilt in defending himself against an aggressor. (9) The same rule applies to a proper defense of property; an illustration being the case of building a wall to prevent the inroads of the sea, whereby a greater force of water is expended on the lands adjoining. (10) As was said by Lord Tenterden, in such a case, the only safe rule to lay down is this: that each land-owner for himself must erect such defenses for his lands as the necessity of the case requires, leaving it to others in like manner to protect themselves against the common enemy." (11)

Protecting against the sea, however, and protecting against a flowing stream, or against the ordinary floods of streams, are very different in nature, and may give rise to different liabilities. Proprietors upon the banks of natural streams are entitled to have them flow on in their natural courses; and whatever embankment or structure tends to prevent this, or to increase the flow or force at times or in particular places, to the prejudice of a proprietor, is as much a wrong to him as would be the diversion of the water into a new channel. (12)

Among the most troublesome cases are those which relate to the right of parties in waters which flow or pass from the lands of one proprietor to those of another, either above or below the surface, and to their rights respectively to be protected against such flow or passage when it would be injurious, or to insist upon it when it would be beneficial. A few of these cases will be mentioned:


(10) In England proprietors of ground have in some cases been held liable to trespassers who were injured by spring guns concealed on the premises, and of which the trespasser had no notice or knowledge. The case is an exception to the general rule, and appears to be put upon the ground that one makes use of those dangerous instruments, humanity requires that the fullest possible notice should be given, and the law of England will not sanction what is inconsistent with humanity; in other words, that without such notice, the setting of spring guns is an unauthorized act. Bost v. Wilks, 3 B. & C. 399; per Best, J.; See Dean v. Clayton, 7 Taunt. 492; Bird v. Holbrook, 4 Bing. 228, and Jay v. Whittall, referred to therein. The keeping of ferocious dogs, or the setting secretly of dangerous traps, is governed by the same rule. Brock v. Cooperland, 1 Exp. 503; Townsend v. Water, 9 East, 371; Sarch v. Blackburn, 4 C. & F. 297. It is a little uncertain how far this principle can be carried, but doubtless it would be applied in some other cases where that is done by one on his own grounds without sufficient reason, which might result in loss of life or serious injury to those inadvertently, or even intentionally, committing trespass thereon. It has been often held that if one fall into an excavation upon the land of another where he is not expressly or by invitation invited, he has no claim to compensation from the owner. Biltie v. Totham, Cro. Jan.; Stone v. Jackson, 16 C. B. 199; Howland v. Vincent, 50 Metc. 373; Hargreaves v. Deacon, 25 Mich. 1. But if one dig a pit-fall with the purpose to injure trespassers, "humanity" may require that he be held responsible; and perhaps he should be held responsible in any case of an unguarded excavation so near the public way, that one lawfully using the way might, without gross negligence, fall into it.


1. Drawing off subterranean waters to the prejudice of another. — Lord Eldon, in the opinion in one case that a party who had for twenty years enjoyed the use of a spring on his own premises was entitled to be protected in it against the action of an adjoining proprietor, whose cutting for the purposes of a drain on his own premises drew away the water from it. (13) But it is now the settled law of England that excavations by a proprietor on his own grounds, for his own purposes, will not render him liable for the accidental injuries which his neighbor may suffer in consequence of the drawing off of the water which percolates through the soil. In the leading case the complaint was that the defendant, by sinking pits, shafts, etc., for mining purposes, had drawn off the water of certain underground springs, streams and watercourses on the land of the plaintiff, which he had theretofore used for manufacturing and other purposes. Tindall, C. J., in delivering the judgment of the Court of Exchequer Chamber in favor of the defendant, declared that the case "is not to be governed by the law which applies to rivers and flowing streams, but that it rather falls within that principle which gives to the owner of the soil all that lies beneath the surface; that the hard immediately below is his property, whether it is solid rock, or porous ground, or venous earth, or part soil, part water; that the person who owns the surface may dig therein, and apply all that is there found to his own purposes, at his free will and pleasure; and that if, in the exercise of such right, he intercepts or drains off the water collected from underground springs in his neighbor's well, this inconvenience to his neighbor falls within the description of damnum absque injuria, which cannot become the ground of action." (14)

It is not necessary to meet it, and it was met with a distinct denial that any such rights could be claimed in a subsequent ease in the House of Lords it being expressly waived in the opinion of the court, but the decision is understood to have settled the law for England, and it has found general acceptance and concurrence in this country. (15) In Dickinson v. Grand Junction Canal Co., it was remarked by the learned Chief Baron, that "if the course of a subterranean stream were well known, as is the case with many which sink underground, pursue for a short space a subterranean course, and then emerge again, it never could be contended that the owner of the soil under which the stream flowed could not maintain an action for the diversion of it, if it took place under such circumstances as would have enabled him to recover had the stream been wholly above ground." (17) Confining this remark to the case of an underground stream in a well-defined and understood channel, there has been a general disposition to accept it as sound law. (18) But one claiming rights in such a stream will be under the necessity of showing its existence. It will not be presumed.

(13) Balston v. Bensted, 1 Campb. 403.
(16) Greenleaf v. Francis, 18 Pick. 221; Wheatley v. Baugh, 25 Penn. St. 529; Frazier & Brown, 12 Ohio St. 291; Hoath v. Driscoll, 20 Conn. 358; Illis v. Grecy, 65 N. Y. 671; N. A. & R. R. Co. v. Peterson, 14 Ind. 112; Chatfield v. Wilson, 29 Vt. 49; Clark v. Conrow, 38 Id. 407; Chase v. Silverstone, 62 Me. 175. In two New Hampshire cases the doctrine of Acton v. Bundell is questioned; but it would hardly seem to have been necessary to a decision of the actual controversies that the point should have been passed upon in either case. Bassett v. Salisbury Manuf Co., 42 N. H. 509; Swett v. Cutts, 50 Id. 439. In Parker v. B. & M. R. R., 3 Cush. 107, it was decided that if in consequence of an excavation made for a railroad track the water of a well on an estate adjoining is drawn off and the well thereby rendered dry and useless, the owner of such estate will be entitled to recover damages therefor, in the same manner as for land taken for the railroad; "because the respondents did not own the land; they only acquired a special right and usufruct in it, upon condition of paying all damages which might thereby be occasioned to others." But see Commonwealth v. Richter, 1 Penn. St. 467; N. A. & S. R. R. Co. v. Peterson, 14 Ind. 112.
(17) 7 Exch. 582, 300, per Pollock, C. B. In Duddon v. Guardians, etc., 1 H. & N. 627, the same learned judge said: "It is absurd to say that a man may take the water of such a stream, even though it be four feet from the surface." (18) See, particularly, Chasemore v. Richards, 7 H. L. Cas. 346, 373; Smith v. Adams, 6 Palge, 435; Wheatley v. Baugh, 25 Penn. St. 529; Whetstone v. Brower, 29 Id. 58.
that a spring comes from such a stream, but rather that it was formed by the ordinary percolations of water in the soil. (19) But when a clearly defined and well known stream is found to run under the lands belonging to those in streams above ground may be recognized and protected. (20)

2. Protection against Falling Waters and Snows.—A man has a clear legal right to protect his premises against falling waters and snows, though prejudice to others may result. In the case of urban property he may, in erecting buildings and making improvements, do this to the extent of completely preventing the fall of rains and snows upon his grounds, and the only restriction upon the right appears to be this: that adjoining proprietors owe such duties to each other as the requirements of good neighborhood naturally impose; that each must so use his own as not unreasonably to injure his neighbor, but that this only obliges him to use all due care and prudence to protect his neighbor, and does not require that he shall at all events and under all circumstances protect him; and any injury that may result notwithstanding the observance of proper caution, must be deemed incident to the ownership of town property, and can give no right of action. If one constructs his building so as to cast the water therefrom upon the land of another, he is liable therefor, not only to the occupant, but to the reciever; (21) but if he puts proper eavetroughs or gutters upon his building for leading off the water upon his own grounds, and keeps them in proper order, and is guilty of no negligence in this regard, an adjoining proprietor can have no legal complaint against him for injuries resulting from extraordinary or accidental circumstances for which no one is in fault, but such injuries must be left to be borne by those on whom they fall. (22)

3 Drawing off Surface Water.—The drawing off of surface water may affect adjoining estates either as it deprives them of the benefit of the ordinary flow in natural watercourse, or as it increases the ordinary flow in such watercourses, or as it entails water through ditches upon adjoining lands, or as it deprives the water percolating through the soil, the adjoining lands to be wet and unsuited to cultivation, or unproductive. In the first case, that is, where a lower proprietor is deprived of the benefit of the natural flow of the water, or of some portion thereof, it is settled that he can have no remedy. As has been forcibly said, one party cannot insist upon another maintaining his field as a mere water-table for the other's benefit. (23) On the other hand, it is equally well settled that one may lawfully drain his lands into a natural watercourse, even though a lower proprietor is injured by the increased flow. (24) "For the sake of agriculture—agri colendi causa—a man may drain his ground which is too moist, and discharging it a water according to its natural channel, may cover up and conceal the drains through his lands; may use running streams to irrigate his fields, though he thereby diminishes, not unreasonably, the supply of his neighbor below; and may clear out impediments in the natural channel of his streams, though the flow of water upon his neighbor be thereby increased. * * * It is not more agreeable to the laws of nature that water should descend than it is that lands should be farmed and mined; but in many cases they cannot be, if an increased volume of water may not be discharged through natural channels and outlets. The principle, therefore, should be maintained, but it should be practically applied," (25) and it will not preclude the lower proprietor erecting any such protections as may be needful to guard his lands against the additional flow, provided they do not intercept the passage of water which would naturally pass on to his land. (26) In Massachusetts it has been decided that one may erect barriers to prevent surface water which has accumulated elsewhere from coming upon his land, even though it is thereby made to flow upon the land of another to his loss. "The right of an owner of land to occupy and improve it is such manner and for such purposes, as he may see fit, either by changing the surface or the erection of buildings or other structures thereon, is not restricted or modified by the fact that his own land is so situated with reference to that of adjoining owners that an alteration in the mode of its improvement or occupation, in any portion of it, will cause water, which may accumulate thereon by rains and snows, falling upon its surface, or flowing on it over the surface of adjacent lands, to pass into and over the same in greater quantities or in other directions than they were accustomed to flow." (27) The point of these decisions is, that there is no watercourse by grant or prescription, and no stipulation exists between contiguous proprietors of land concerning the mode in which their respective parcels shall be occupied and improved, no right to regulate or control the surface drainage of water can be asserted by the owner of one lot over that of his neighbor. Cujus est solurn, ejus est usque ad caupon is a general rule applicable to the use and enjoyment of real property, and the right of a party to the free and unfettered control of his own land, above, upon and beneath the surface, cannot be interfered with or restrained by any considerations of injury to others which may be occasioned by the flow of mere surface water in consequence of the lawful appropriation of land by its owner to a particular use or mode of enjoyment. Nor is it at all material in the application of this principle of law, whether a party obstructs or changes the direction and flow of surface water by preventing it from coming within the limits of his land, or by erecting barriers or changing the

(19) Hansson v. McCue, 4 Cal. 362. See Mosler v. Caldwell, 9 Nov. 362. In Angell on Watercourses, § 157, the result of the authorities is stated to be that "in order to bring subterranean streams within the rules which govern surface streams, their existence and their course must be to some extent known and notorious.")

(20) Cole Silver Mining Co. v. Virginia, etc., Water Co., 1 Sawyer, 470.


(24) "For the sake of agriculture—agri colendi causa—a man may drain his ground which is too moist, and discharging it a water according to its natural channel, may cover up and conceal the drains through his lands; may use running streams to irrigate his fields, though he thereby diminishes, not unreasonably, the supply of his neighbor below; and may clear out impediments in the natural channel of his streams, though the flow of water upon his neighbor be thereby increased. * * * It is not more agreeable to the laws of nature that water should descend than it is that lands should be farmed and mined; but in many cases they cannot be, if an increased volume of water may not be discharged through natural channels and outlets. The principle, therefore, should be maintained, but it should be practically applied," (25) and it will not preclude the lower proprietor erecting any such protections as may be needful to guard his lands against the additional flow, provided they do not intercept the passage of water which would naturally pass on to his land. (26) In Massachusetts it has been decided that one may erect barriers to prevent surface water which has accumulated elsewhere from coming upon his land, even though it is thereby made to flow upon the land of another to his loss. "The right of an owner of land to occupy and improve it is such manner and for such purposes, as he may see fit, either by changing the surface or the erection of buildings or other structures thereon, is not restricted or modified by the fact that his own land is so situated with reference to that of adjoining owners that an alteration in the mode of its improvement or occupation, in any portion of it, will cause water, which may accumulate thereon by rains and snows, falling upon its surface, or flowing on it over the surface of adjacent lands, to pass into and over the same in greater quantities or in other directions than they were accustomed to flow." (27) The point of these decisions is, that there is no watercourse by grant or prescription, and no stipulation exists between contiguous proprietors of land concerning the mode in which their respective parcels shall be occupied and improved, no right to regulate or control the surface drainage of water can be asserted by the owner of one lot over that of his neighbor. Cujus est solurn, ejus est usque ad caupon is a general rule applicable to the use and enjoyment of real property, and the right of a party to the free and unfettered control of his own land, above, upon and beneath the surface, cannot be interfered with or restrained by any considerations of injury to others which may be occasioned by the flow of mere surface water in consequence of the lawful appropriation of land by its owner to a particular use or mode of enjoyment. Nor is it at all material in the application of this principle of law, whether a party obstructs or changes the direction and flow of surface water by preventing it from coming within the limits of his land, or by erecting barriers or changing the


level of the soil, so as to turn it off in a new course after it has come within his boundaries. The obstruction of surface water, or an alternation in the flow of it, affords no cause of action in behalf of a person who may suffer from the same. (28) A case in which the defendant discharged upon the land of the plaintiff would naturally have found its way there had the drain not been cut. (35) These cases seem to confine the obligation of the owner of the lower estate to receive the waters flowing from the upper estate, to "waters which flow naturally without the art of man; those which come from springs, or from rain falling directly on the heritage, or even by the natural dispositions of the place." (36)

4. Collecting Water in Reservoirs.—A man may lawfully collect water in reservoirs on his premises. What the corresponding rights of his neighbors are is not very satisfactorily determined. Beyond question they have a right to be protected against any injurious consequences that might result from a negligent construction of the reservoirs, or from any want of care on the part of the person constructing or maintaining them, in consequence of which the water might escape to their injury, by percolation or otherwise. (37) Whether parties maintaining such reservoirs are not bound to a still stricter responsibility, is a question we do not care to enter upon in this place. (38) Neither do we deem it of importance to refer to more familiar questions relating to water rights. Our purposes has been only to present some classes of cases which may supply proper illustrations of the general principle which is stated at the beginning of the present paper.

Malice as an Ingredient in Torts.—An injury alone does not give a right of action, neither, as a general rule, do injury and malice combined. There must be a combination of wrong and injury to constitute a tort, and malice is of itself a legal wrong. If one is only exercising his lawful rights, others can have no concern with his motives. A man may establish a business with the malicious purpose to destroy the business of his neighbor. This is no tort, whether he accomplishes his purpose or not, for he had a clear legal right to establish a new business, and his motives in doing so are not to be inquired into. (39)

"An act which does not amount to a legal injury cannot be actionable because it is done with a bad intent." (40) This remark was made in a case where a landlord was charged with having maliciously dissembled for more rent than was due to him, but it was only the statement of a principle that is as old as the

common law. It has been applied in a case in which a prosecution was alleged to have been instituted maliciously, but where there was not an absence of probable cause, and to cases of alleged malicious arrest of persons, privileged from arrest by being in attendance on court on subpoena, or by other causes.

In Mahan v. Brown, the plaintiff declared against the defendant for wanton and maliciously erecting on his own premises a high fence near to and in front of the plaintiff’s windows, without benefit or advantage to himself, and for the sole purpose of annoying the plaintiff, thereby obstructing the air and light from entering her windows, and rendering her house uninhabitable. The court held that the act of presenting the plaintiff’s bill for payment has no natural connection to the present case. Here the act of presenting the bill was not done with malice. It may be true that sometimes the consequences attending an act may serve to give character to that act, and the act may serve to give character to that act, and the plaintiff in this case has only been refused the right of patronage, which he is entitled to by virtue of his office, puts a subordinate on trial for alleged negligence. The exercise of such a discretion by a public officer who has discretionary power pertaining to his office, puts a subordinate on trial for alleged negligence.

In Mahan v. Brown, it has been made a question whether the principle is applicable to cases in which a surveyor of highways was charged with maliciously working the highway in a manner detrimental to the plaintiff. The true inquiry was, whether the defendant had legal authority to do what he did in the highway. If he had such authority and acted within the scope of it, he is not a trespasser, because his motives or purposes with respect to the plaintiff were unkind or malicious. (43)

Within this principle, also falls the case of one in authority, who, under a discretionary power pertaining to his office, puts a subordinate on trial for alleged violation of the laws. The exercise of such a discretion cannot be a tort, even though bad motives or want of probable cause be charged. Neither can the malice of a witness in giving injurious testimony, nor the malice of a party in making injurious allegations in affidavits which he files in the course of legal proceedings render him liable to an action at the suit of the party aggrieved. (51) These cases are referred to as illustrations merely; there are many others in which the same principle is applied. It has been made a question whether the principle is

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(41) Anonymous, 6 Mod. 73; Williams v. Taylor, 6 Bing. 159; Foy v. Furguson, 2 Deno, 317, 320; Ammerman v. Crosby, 26 Ind. 431; Barton v. Kavanaugh, 12 La. Ann. 323.

(42) Vanderveele v. Lucas, 1 Lesb. 298; Magnay v. Burt, 5 Q. B. 381.

(43) Huffer v. Allen, 11 R. 2 Exch. 15; See Gerard v. Lewis, 2 C. P. 336, in which Wills, J., says that the words “wrongfully and unlawfully are mere words of vituperation, and amount to nothing unless they show a cause of action.”


(46) Smith, in which the plaintiff declared against insurance officers for maliciously conspiring to refuse insurance on his property to his injury. As he had no legal right to demand to be insured by them, it was clear that they had a lawful right to refuse; and whether they did this from good motives or from bad motives was of no legal importance.

(47) "The case of public officers who have discretionary or judicial duties to perform is familiar. "The law will not allow malice and corruption to be charged in a civil suit against such an officer for what he does in the performance of a judicial duty." (47) If a jury will find a special verdict; if a judge will take time to consider; if a bishop will delay a patron and impanel a jury to inquire of the right of patronage, you cannot bring an action for these delays, though you suppose it to be done maliciously and on purpose to put you to charges; though you suppose it to be done selerent knowing the law to be clear; for they take but the liberty the law has provided, and there can be no demonstration that they have not real doubts, for these are within their own breasts; and it would be very mischievous that a man might not have leave to doubt without so great a peril." (48) As was remarked in a case in which a surveyor of highways was charged with maliciously working the highway in a manner detrimental to the plaintiff: "The true inquiry was, whether the defendant had legal authority to do what he did in the highway. If he had such authority and acted within the scope of it, he is not a trespasser, because his motives or purposes with respect to the plaintiff were unkind or malicious." (49)

Within this principle, also falls the case of one in authority, who, under a discretionary power pertaining to his office, puts a subordinate on trial for alleged violation of the laws. The exercise of such a discretion cannot be a tort, even though bad motives or want of probable cause be charged. Neither can the malice of a witness in giving injurious testimony, nor the malice of a party in making injurious allegations in affidavits which he files in the course of judicial proceedings render him liable to an action at the suit of the party aggrieved. (51) These cases are referred to as illustrations merely; there are many others in which the same principle is applied. It has been made a question whether the principle is
applicable in cases where one is dealing with surface water, or water percolating through the soil of his premises, to the injury of his neighbor. In Chatfield v. Wilson it was applied without hesitation. The case was one of gathering water on the defendant's premises which otherwise would have percolated through the soil of the plaintiff, supplying a reservoir and aqueduct which had been constructed by him, and malice was charged. "There are," it is said by the court, "many cases in the books relating to the relative use of surface streams, where the case has turned upon the question whether the use was reasonable, and for the party's own convenience or benefit, or wanting and malicious, and done to prejudice the rights of another. In such cases there are correlative rights to the use of the water, and the boundary of the right is a reasonable use of it. But such cases have no analogy to the case at bar, and it may be laid down as a position not to be controverted, that an act legal in itself, violating the water, and the boundary of the right is reasonable, and done to prejudice the rights of another.

But though neither proprietor has such a right in or control over the water as will enable him to complain of his neighbor's appropriation, does not each owe to the other certain duties of good neighborhood, among which is the duty to abstain from purposely withdrawing the water that may be useful to both, when a use of it is not intended? Concealing that he may collect it for use, does this entitle him to do so not for use but of malice? If he sinks a well to supply his house or water his stock, it must be admitted that no question can be raised whether this is or is not a reasonable appropriation of the water; but if he digs a hole to injure his neighbor, it is not perceived that the two cases are necessarily to be governed by the same rule. What is a man's right in respect to the water percolating through the soil? The just answer seems to be this: It is a right to gather and appropriate it to his lawful uses. When he does this, he is exercising his right, and his motive is not open to inquiry. But when he collects it, not for use but to injure his neighbor, he exceeds his right, and there is that conjunction of wrong and injury which constitute a tort and will support an action. — Hon. Thomas M. Cooley, in the Southern Law Review.

THE SUCCESSFUL LAWYER.

The following imaginary sketch of the career of a successful lawyer, taken from the London Law Journal, is worthy of the perusal and careful thought of those young men who are entering upon their professional life. It is taken from an address delivered before the Leicester (England) Law Students Society by the presiding officer, W. N. Reeve, Esq.

"Placing before the members the imaginary career of a successful man called 'Christian,' and supposing him to have passed his preliminary examination, and to have commenced his study in earnest, the intermediate and final examinations lie before him as two lions, both of which can be overcome with a single weapon, 'Industry.' After mentioning the danger of trusting to the memory rather than the reason, the advisability of going to the foundations of English law, and even to the Roman law, upon which so much of our own civil law is founded, and of tracing the growth of the law with the growth and history of the nation, and thus being ready to argue from first principles, however much these may have subsequently been modified by modern statutory enactments, was strongly urged. The advantages of continuing classical studies in after life, and of valuing learning, not merely as a passport to the profession, or even as an accomplishment, but as a mental rest when wearied with the conflicts of life, and as a solace and delight of old age, were forcibly pointed out. After his admission as a solicitor 'Christian' commences practice on his own account, and is beset by his first temptation. A rich client offers him business of a questionable kind, and on his answer depends all his future welfare. The story of his profession (that of an attorney) is his responsibility; and although, according to the etiquette of the bar, a barrister may touch pitch and yet be undefiled, it is not so with the attorney. Having once