

1953

William A. Hubble and Isaac Frank Creger v. Cache County Drainage District Number Three : Brief of Respondent

Utah Supreme Court

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Appeal No. 7932

FILED

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IN THE SUPREME COURT
of the
STATE OF UTAH

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WILLIAM A. HUBBLE and
ISAAC FRANK CREGER,

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Plaintiffs and Appellants,

—VS—

CACHE COUNTY DRAINAGE DISTRICT
NUMBER THREE, a corporation,

Defendant and Respondent

BRIEF OF RESPONDENT

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IN THE SUPREME COURT

of the

STATE OF UTAH

WILLIAM A. HUBBLE and
ISAAC FRANK CREGER,
Plaintiffs and Appellants,

—vs—

CACHE COUNTY DRAINAGE DISTRICT
NUMBER THREE, a corporation,
Defendant and Respondent

STATEMENT OF FACTS

Respondent feels that a further enlarged statement of facts is necessary to understand more fully the matter in issue. Plaintiffs filed suit against defendant Drainage District and its Board of Directors seeking damages and injunctive relief. Plaintiffs admitted defendant had an easement across their lands to convey runoff drainage and seepage waters collected within the area known as the northern division of said drainage district through Outfall No. 1 into Bear River (see map), but they contended that defendant had

increased the burden on their lands by increasing the flow brought about by the enlargement of previously existing open drains and by the construction of alleged new drains. Defendant by its answer denied that the work done had in any manner increased the total flow or in any manner increased the burden cast upon plaintiffs. The case was tried to the court and a jury. The trial court submitted special interrogatories and the jury by their answer found all the issues against the plaintiffs. The trial court then made elaborate findings of fact. Some sustained the answers of the jury but in other respects the court made findings inconsistent with the answers of the jury. The court then entered its decree. By its terms the court decreed that defendant had an easement to convey all drainage, seepage and runoff waters which were collected by defendant within the area in question and which flowed through Outfall No. 1 as the same existed on April 8, 1947 (the date of the filing of the action), but that defendant had no right to enlarge its drainage system. The decree among other things provided as follows:

“That the defendant Cache County Drainage District Number Three, Northern Division, is hereby adjudged and decreed to have a perpetual easement over and across the lands of the plaintiffs through and along the natural channel as enlarged and deepened by the defendant leading from the western boundry of said district (northern division) over and across plaintiffs’ lands to Bear River and parts designated on the map as Out Fall No. 1 for the purpose of discharging therein and conveying across the premises of plaintiffs through said channel from

its artificial ditches and drains all of the waters as created, conducted and conveyed by said ditches and drains from its system in the manner of operation as the same existed on April 8, 1947."

Then the court entered the following exception:

"Except that the defendant does not have a perpetual or any easement to run any waters through plaintiffs' premises which were created or brought about or conducted through the so-called red drain which commences north and outside of the drainage district or as to any new or additional drains which have been commenced within drainage district since the 8th day of April, 1947, but the defendant has no perpetual easement to enlarge or extend any existing drains or to construct any new drains either within or without the District which were not completed on April 8, 1947, *should the waters from said new development be coursed through plaintiffs' premises.*

"2. That the plaintiffs are entitled to and are hereby issued an injunction against the defendant corporation forever enjoining said defendant, its officers, agents or employees from causing any waters which may be created, developed or increased by the construction of any new drains either within or without said district, or *the enlargement of any old drains where the water from said new or enlarged drain is to be coursed through plaintiffs' premises or knowingly permitting or aiding others either within or without the district to drain water into the present existing system and across plaintiffs' premises by artificial means.*"

As defendant construed the foregoing injunctive provisions it was enjoined from doing anything with-

in the portion of the area affected by the waters coursed through Outfall No. 1 irrespective of whether such work increased the flow or not and irrespective of whether such work resulted in increasing the burden cast upon the servient estate. In other words it was believed that the mere doing of any work within the district on the drains would violate the terms of the injunction. Defendant therefore appealed to this court and relied principally upon the proposition that defendant should be entitled to do work within the district by way of cleaning, deepening, improving or enlarging its drains unless by so doing they thereby increase the flow across plaintiffs' lands. See plaintiffs' brief and particularly pages 32 to 38 of the original appeal. The cause was argued to this court and taken under advisement.

Thereafter Mr. Justice Latimer resigned and Mr. Justice Henroid was appointed as his successor.

From subsequent developments it would appear that this case was assigned to Justice Henroid to write the opinion (subsequent events are known to Justice Henroid and we can only give the substance of our recollection that transpired). As we recall it, Justice Henroid wrote counsel on both sides suggesting that inasmuch as he had not heard the arguments and the record was voluminous a conference with counsel appeared desirable. Counsel on both sides agreed and a meeting was arranged to convene in Mr. Preston's office in Logan. At the meeting Justice Henroid and counsel engaged in considerable discussion relative to just what matters were really in dispute between the

parties and, as the writer recalls it, it boiled down principally to the one question, whether the terms of the injunction as entered by Judge Jones were or were not too broad in that they enjoined defendant, irrespective of whether plaintiffs were damaged, from improving its drainage system. Justice Henroid then suggested that he thought the matter could be settled by stipulation. The writer recalls quite definitely that Justice Henroid asked counsel for defendant if they contended that they could increase the burden by increasing the flow and counsel readily admitted that they made no such contention. Then, as we recall it, he asked Mr. Preston if he contended that defendant could improve its drainage system if by so doing no additional burden was imposed upon plaintiffs and we understood he likewise agreed to this proposition. Counsel and Justice Henroid then attempted collectively to work out a stipulation which would rectify the situation without the necessity of preparing new findings and conclusions of law and after considerable discussion the parties tentatively agreed on the wording to be used and the changes to be made in the decree as follows; to be inserted after the injunction the following:

“PROVIDED, HOWEVER, that nothing contained in this injunction shall be construed to prevent or enjoin the defendant, its officers, agents and employees from making improvements to or maintenance of its drainage system as it existed on April 8, 1947, so long as such improvements to or maintenance of the same does not materially increase the flow of water over or increase the burden to the lands of plaintiffs or their successors in interest.”

Following the conference a stipulation was prepared and filed with this court and on November 23, 1951, this court entered its order and decree which stated the problem as follows:

“May a drainage district created under our statutes increase its system or/and facilities so as to create additional burdens on the land of those outside the district without responding in damages, resorting to eminent domain or being subject to injunctive relief?”

We answer this question in the negative and reaffirm the decision of

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which also answered the question in the following language:

“This court is of the opinion that under our constitution and laws a drainage district organized and doing business as such is liable to the owner of property for any damage which it may do in the scope of its powers as a drainage district.

The court then ordered that the cause be returned to the District Court to modify the decree in accordance with the stipulation. Upon filing the remittitur the district court on December 10, 1951, entered its amended decree (see page 846 of record). The stipulation provided that the findings of fact and the conclusions of law as previously entered by the District Court shall be deemed to be amended in so far as said findings and conclusions are inconsistent in the terms and provisions of the amended decree.

After the entry of the amended decree the defendants obtained the necessary consent of the land owners affected to extend one of its principal open drains southward thereby diverting a large portion of its drainage waters which previously entered Outfall No. 1 into Outfall No. 2. This reduced the area drained across plaintiffs' land from approximately 750 to 137 acres and reduced the stream previously flowing through Outfall No. 1 by approximately 70% .

One Cyril Pitcher was the owner of a farm consisting of 40 acres which was situate immediately to the west of the canal whose flow had thus been diverted. This farm was situate immediately to the east of and adjacent to a large open drain extending in a southerly direction and paralleling the country road and which formed a part of the water flowing through Outfall No. 1. His farm had previously been drained by two open drains which condition had existed for many years prior to the entry of said decree and was situate wholly within the district. By reason of the natural slope and these open drain ditches all early spring runoff, seepage and waste waters from the irrigation of his farm emptied into this ditch and the ditch formed a natural drainage for his farm. In the late Fall of 1951 he constructed two underground tile drains which supplemented the two open drains previously existing. These two drains emptied into the main open lateral and the waters flowing therein flowed to Outfall No. 1. The total flow from these two tile drains was very small. In fact it was hardly sufficient to run down a row of beets at the time of the trial. See testimony commencing on Page

940 and see also photograph marked Defendant's Exhibit B. It was by reason of the construction of the underground drains that plaintiffs initiated the present contempt proceedings. Defendant by its answer contended that it had not violated the terms of the decree as amended because by reason of the new construction approximately 70% of the waters which formerly flowed into Outfall No. 1 had since the entry of this decree been diverted into Outfall No. 2 and that the construction of the two drains constituted merely an improvement to the drainage system as it had previously existed and any water flowing through the drain as constructed did not increase the burden upon plaintiffs' lands, but on the contrary the total flow, notwithstanding the construction of these drains was greatly lessened.

Judge John L. Sevy was requested to hear the matter on April 30, 1951. He first viewed the premises with counsel for the respective parties, then heard the evidence (all of which is transcribed and made a part of this record) and the matter was submitted and briefs filed. Thereafter on September 25, 1952, he entered his decision in writing, pages 865 to 867. Pursuant thereto findings of fact, conclusions of law and a decree in favor of defendants were signed on October 30, 1952.

ARGUMENT

Counsel for appellants in his brief contends but does not argue the point to any extent that these findings as made by the court are not supported by the evidence. We are inclined to believe that counsel has now waived this proposition, but in any event we contend

that each and every finding of fact is sustained not only by the great weight of the testimony but without any evidence to the contrary and it seems to us that the only question to be presented on this appeal is whether or not the court correctly construed the amended decree and particularly paragraph 2 of the decree as follows:

“That the amended decree on file herein dated the 10th day of December, 1951, is construed to mean that the defendants are not enjoined by said amended decree from improving, enlarging or extending their drains or constructing any drains within the limits of the drainage district *so long as said improvements, enlargements, extensions or new drains do not increase the burden on plaintiffs' lands.*”

As we see the situation, this merely calls for a construction of the meaning of the amended decree. It seems to us that the amended decree is so clear on its face that it needs no further construction, but if it can be said that the terms of the decree are somewhat uncertain, then in light of the circumstances which are outlined in our statement of facts it seems to us that there can be no question concerning the meaning of this decree. The decree as originally entered by Judge Jones enjoined the defendants from any further construction in its drainage system where the waters therefrom flow into Outfall No. 1 *irrespective of whether or not such improvement or enlargement increased the burden upon plaintiffs' land* and it was by reason of the harshness of this injunction that the cause was appealed to this court. Pursuant to the stipulation there was inserted in this decree the following language:

“PROVIDED, HOWEVER, that nothing contained in this injunction shall be construed to prevent or enjoin the defendant, its officers, agents or employees from making any improvements to or maintenance of its drainage system as it existed on April 8, 1947, so long as such improvement to or maintenance of the same (drainage system) does not materially increase the flow of water *over or increase the burden to the lands of the plaintiffs.*”

What then does this language mean? This proviso was certainly inserted in the decree to meet the objection urged by appellants against enjoining them from improving its system so long as such improvement did not increase the burden cast upon plaintiffs' land.

Under the act creating drainage districts the term drainage system is repeatedly used and means a system constructed within the district designed to benefit and improve all of the lands within the district and it seems to us too clear for argument that the amended decree means exactly what it says and that is that the defendant may improve and enlarge its drainage system thereby further benefiting the lands within the district so long as defendant does not increase the burden cast upon the plaintiffs' land and this burden means one thing only and that is so long as the defendant does not cast more water through Outfall No. 1 than its easement grants to it.

Appellants do not contend and indeed under the evidence they cannot content that there is as much water

flowing through Outfall No. 1, including the water flowing from these two drains, as flowed prior to the diversion above referred to. Consequently plaintiffs have suffered no damage or injury of any kind whatsoever by reason of the replacing of the open drains by the two underground drains in question and so long as plaintiffs have sustained no damage it is difficult for us to see how there has been any violation of the terms of this amended decree.

Respectfully submitted,

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