THE POLLUTION OF RIVERS BY THE SLUDGING OF MILL-DAMS.

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THIS question is one which is practically outside the question of pollution of rivers by sewage or manufacturers' waste, and arises from the obstruction to the flow of water by the interposition of a weir or mill dam.

The law on this subject is at present very unsatisfactory and conflicting; for, while on the one hand it has been decided, by the well known case of the Glory Mill, that an "inferior" riparian owner can recover damages for the destruction of his fish through the sludging of a mill dam by a "superior" riparian owner, on the other hand the courts have held that the mere sludging of a mill dam is not an offence within the meaning of either the Rivers Pollution Prevention Acts or the West Riding Rivers Board Act, 1894. Under section 2 of the Rivers Pollution Prevention Act, 1876, which deals with pollution of rivers by the throwing into them solid matter other than sewage, it is an offence "to put or to permit to be put, or to fall or to be carried into any stream . . . so as to interfere with its due flow, or to pollute its waters . . . any putrid solid matter."

"Solid matter" is further defined by this Act to be other than "particles of matter in suspension in water." Sec. 17 of this Act also provides that the Act shall not apply to or affect the lawful exercise of any rights of impounding or diverting water. In the case of the River Ribble Joint Committee *v.* Helliwell, the Court of Appeal held that solid matter in suspension did not change its character by precipitation, and that the throwing of such precipitated matter in the form of sludge into a stream was not an offence within the meaning of sec. 2 of the 1876 Act.

In the case of the West Riding Rivers Board *v.* Messrs. Goldthorpe & Hinchliffe, Bull House Mill, Thurlstone, decided 28th October, 1897, and

in that of the same Board *v. Messrs. Rawson, Thorpe Mill, Ripponden*, decided 10th July, 1903, the evidence was very similar.

It was proved in both cases that the defendants raised their hatches and employed men with rakes, shovels, and barrows to remove the sludge deposited in their dams, and that they then threw this sludge into the stream, by which it was carried by the water down the river. The water of the river was made thick and turbid, causing injury to the riparian owners below, and for some miles down the water of the river was discoloured.

In both cases it was argued for the defence that, inasmuch as the defendants had put nothing from their mills into the dams—this was admitted by the prosecution—but had merely sent down matter brought into their dams by the flow of the river, such matter came within the exception laid down by sec. 6 of the West Riding Boards Act, 1894. Under sec. 5 of that Act it is an offence to cause or to permit to be put into any river or stream, within the district covered by the Act, “any solid refuse or any rubbish, or any *deposit* in a reservoir, mill dam, or water lodge.”

Sec. 6 excepts from the provisions of sec. 5 any “sand, gravel, or *natural deposit*.”

In both cases the Court of Appeal upheld the defendants’ contention that this sludge was a “natural deposit,” and therefore came within the exception provided by sec. 6: the prosecutions consequently failed.

It seems to follow from these three decisions, that one of the rights connected with the impounding of water is the right to remove from the pound or mill dam by sludging any matter which has been brought down into the dam by the natural flow of the stream. It would also appear that the right to sludge is subjected to no restrictions. The deposit may be allowed to accumulate over a period of several years, and may then in the course of a few days be thrown into the stream, or this sludging process may be carried on intermittently at the discretion of the owner of the dam.

It may perhaps be argued that, though no action can be taken under the Rivers Pollution Prevention Act, or the West Riding Rivers Board Act 1894, for sludging, there still remains the common law right to sue for damages. But, even if this be so, it is often extremely difficult to prove and estimate the special damage caused by sludging, however real it may be.

That it is a cause of real damage I can testify from personal experience, having suffered much from sludging of mill dams in recent years, and this year especially, when, for nearly three months, an otherwise fairly

clean stream was turned into a foul stinking sewer, by the sludging of a large mill dam, where the sludge had been accumulating for some years.

In rural districts, such as the one I live in, dairy farmers suffer much loss from sludging, by injury to their cattle and the deterioration of their milk, butter and cheese, while the villagers have their water supply, upon which they have to depend for all purposes, except drinking and cooking, rendered totally unfit for use.

A few years ago sludging was rarely, if ever, resorted to in this district, the general custom being to dig out the sludge and to remove it by hauling it away to be spread over the land.

It is merely to save expense, to decrease working expenses, and thereby to increase profits that mill owners have now changed their method of cleansing their dams, and have resorted to this intolerable nuisance of sludging, quite regardless, of course, of the injury they are causing riparian owners below them, or of the possibility that sickness and death may be the result of their selfish action.

It is, moreover, a very serious question whether or not these recent decisions of the Court of Appeal have not only rendered the Rivers Pollution Prevention Acts a dead letter with respect to a most serious form of pollution, but have also laid down a principle which may affect future proceedings under the common law for damages.

With all due deference to their lordships, it appears to me that they have entirely missed the point that a weir or mill dam, while it gives certain advantages to, ought in equity to impose certain liabilities on, the owner of the dam. The obstruction to the flow of water which the interposition of a dam or weir creates, is a cause of injury to riparian owners below and to the public generally, in that, as Mr. A. G. Leigh pointed out in his paper on "The control of weirs and dams on streams in relation to river pollution," the self-purification of streams, where there is a succession of dams, is impossible; "oxygenation and bacterial action cannot appreciably improve a stream the water of which is being constantly contaminated by contact with a succession of partially-stagnant filth pits;" and he then laid down the principle that "those, who get the advantage by impounding their water, should also bear the disadvantage of cleansing their dams in a proper manner."

It is not true, moreover, as was contended by the respondent's counsel in the Goldthorpe case, that deposited mud does not change its character by deposition. The Court of Appeal, however, accepted the theory that no change can take place, in spite of the evidence of Mr. Thos. Fairly, of Leeds, who proved that the sludge in question contained a large amount

of putrid organic matter—"the most polluting substance to put into any stream."

Another point, which one would have thought would have carried weight with the court is, that to allow matter to accumulate for, it may be, years, and to then send it down a stream in almost a solid mass, must render the water of that stream unfit for use, while to allow the same matter to gradually flow down in suspension would hardly change the character of the water or affect its use.

The general principle, which has been laid down by law from time immemorial, that in the user of water the "superior" riparian owner has no right to either diminish the volume or to change the character of the water to the damage of the "inferior" riparian owners, seems to be now entirely swept away by these decisions.

It is a question of the highest importance to a large number of the public as well as to riparian owners, and I should like to suggest that the special attention of the Royal Commission, which is now dealing with the prevention of pollution of rivers, be directed to it, and that they be asked to introduce further legislation with a view to the removal of a grave injustice to private individuals, an injury to the public, and a possible danger to water supplies.