COMPARATIVE ANALYSIS BETWEEN *INJURIA SINE DAMNO* & *DAMNUM SINE INJURIA* WITH CASE LAWS[1]

Charles Samuel Tozer v. Robert Child and Thomas Howard

2 February 1857

(1857) 7 Ellis and Blackburn 377

119 E.R. 1286

Facts of the case:

In this case, the defendants, returning officers, mistakenly refused to register a duly tendered vote of the plaintiff, a legally qualified voter, at an election and the candidate for whom the vote was tendered was elected, and no loss was suffered by the rejection of the vote. They were sued for refusing to take plaintiff's vote at an election.

Principle involved:

The principle of injuria sine damno which provides that actual damage is actionable, if there is legal injury.

Decision and reasoning of court:

In this case, the court held that the defendants are not liable and there lays no action. They had not acted maliciously. Here, the officers, without any malice or any improper motive, in exercising their judgement, honestly refused to receive the vote of a person entitled to vote at an election.

Lord Campbell, Chief Justice, stated that the defendants were not liable, although the plaintiff was qualified and entitled to vote on the grounds of extenuating factors, being exercise of public duty and commission of bonafide mistake rather than malicious intention.

However, Shee Serjt, speaks for the plaintiff, not the defendant. He opinionated that the plaintiff had a legal right – the right to vote and the defendant's did not allow him to exercise that legal right. Thus, this is a legal injury caused to the plaintiff by the defendants.

In a similar case, *Ashby* v. *White*[2], a returning officer was held liable in damages for wrongfully refusing to take the plaintiff's vote at an election. Though, at that point of time,

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malice was not taken into consideration. Therefore, *Tozer v Child* is a clear exception to the principle of injuria sine damno, and marks the beginning of consideration of intention in torts. At the end, it can be clearly justified that, though the plaintiff suffered a legal injury, was not provided by damages as the action by the defendants was a bonafide error and malicious intention was not proven. This is the sole reason of *Tozer* v. *Child* being a landmark case to the principle of injuria sine damno.

The Mayor, Aldermen and Burgesses of the Borough of Bradford v. Edward Pickles

House of Lords

29 July 1895

[1895] A.C. 587

Lord Halsbury L.C., Lord Watson, Lord Ashbourne and Lord Macnaghten

Facts of the case:

In this case, back in 1892, when the Bradford Corporation (the appellant) refused to buy Edward Pickles's land, the respondent got annoyed and sank a shaft in his own land adjoining the lane, and to the west of the Many Wells Spring, which was owned by the appellant, with a view to the working of his minerals. This diminished and discoloured the underground water flowing into appellant's land, who then brought the present suit and sued the respondent on the ground that his conduct was unlawful and dictated by malice, in order to compel others to purchase his land. In the suit, they crave an injunction to restrain the respondent from continuing to sink the shaft or drive the level, and from doing anything whereby the waters of the spring and stream might be drawn off or diminished in quantity, or polluted, or injuriously affected.

Principle involved:

The principle of damnum sine injuria which provides that actual damage is not actionable, if there is no legal injury.

Decision and reasoning of court:

[2] (1703) 92 ER 126 (United Kingdom).

The court held that the respondent's action falls within the principle of damnum sine injuria, which cannot be ground for action and dismissed the appellant's claim.

The court stated that the respondent was within his legal rights and the act though malicious, done in his own land was not actionable. Here, the respondent intended to divert underground water from a spring that supplied the appellant corporation's works, not for the benefit of his own land, but in order to drive the corporation to buy him off. The respondent's conduct was unneighbourly but not wrongful and therefore no action was laid.

Respondent has the legal right to use his property for his own purpose at his will and pleasure. If in exercise of this legal right, the respondent diverted away the underground water from a spring, the inconvenience caused to the appellant is not actionable.

As regards to the first point, the position of the appellant is one which it is not very easy to understand. They do not suggest that the underground water with which respondent proposes to deal flows in any defined channel. But they say that respondent's action in the matter is malicious, and that because his motive is a bad one, he is not at liberty to do a thing which every landowner in the country may do with impunity if his motives are good.

Respondent was alarmed at this view of the case and he tried to persuade the Court that all he wanted was to unwater some beds of stone which he thought he could work at a profit. He prefers his own interests to the public good. He may be churlish, selfish, and grasping. His conduct may seem shocking to a moral philosopher. But where is the malice? Respondent has no legal duty against the people of Bradford. He bears no ill-will to the corporation. They are welcome to the water, and to his land too, if they will pay the price for it. And that becomes a strong defence to the respondent's action.

Thus, there is no legal injury as the appellant does not have absolute and personal legal right to water from underground springs underneath the respondent's land. Although the appellant suffers from actual harm, it is not actionable without any legal injury. The act, apart from motive, gives rise merely to damage without legal injury, the motive, however reprehensible it may be, will not be actionable in accordance to *damnum sine injuria*.