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Navigable Waters: United States may enjoin withdrawal of water from Lake Michigan in excess of that authorized by Secretary of War

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While this doctrine may be legally sound yet those jurisdictions which reject it[13] do so, apparently, refusing to apply any advanced or hypothetical reasoning to the fundamental principles of agency, or to extend those rules applicable to master and servant. The courts of New York, Wisconsin and other jurisdictions hold that it is within the province of the legislature to distinguish the liability of the automobile owner from that of the owner of any other instrumentality not inherently dangerous,[14] and, such being the case, it is not within the purview of the courts to fix the liability of the owner by distorting the fundamental principles of master and servant.

E. E. J.

Navigable Waters: United States may enjoin withdrawal of water from Lake Michigan in excess of that authorized by Secretary of War.—*Sanitary District of Chicago v. United States,* 45 Supreme Court Reporter 177.—It has long been a boast of Chicago that it has reversed the current of the Chicago River and has made it flow out of the lake instead of into it. As a mere engineering feat, this cannot, however, be considered as a notable achievement. Not only is the watershed between Lake Michigan and the tributaries of the Mississippi River very close to the lake but it is also very low and, hence, presents no outstanding physical difficulties. It was, therefore, a comparatively simple matter to reverse the river.

The object of Chicago, or technically speaking the Sanitary District, in reversing the river, of course, was an extremely practical one. Chicago naturally produces an enormous amount of sewage which must be disposed of. Since throwing this refuse into the lake would tend to poison the water supply of the city, and since erecting modern sewage disposal plants is quite expensive, what could be simpler than to make the lake run through the city via the Chicago River and connect the Chicago River through the Des Plaines River with the Illinois River and thus empty the sewage of the city into the Mississippi River some distance above St. Louis? That the smaller cities of Illinois situated along the Illinois River would be unpleasantly affected was true, but such a small consideration could not be taken into account when thrown into the balance against the much greater convenience which Chicago thereby achieved for itself. That the sanitary condition of large cities on the Mississippi River, such as St. Louis, would not be improved by emptying such an enormous open sewer into the Father of Waters was hardly even to be regretted from a Chicago viewpoint and certainly was no reason whatsoever for changing the situation. Besides, the canal

[13] *Watkins v. Clark,* (1918) 103 Kan. 629, 176 Pac. 131, L. R. A. 1917 F. 363.
Van Blaricom v. Dodgson, 220 N. Y. 111, 115 N. E. 443.
Pratt v. Ceautier, 110 Atl. 353 (Me.) 1920.
Bright v. Thacher, (1919) 202 Mo. App. 301, 215 S. W. 788.
Elms v. Flick, (1919) 126 N. E. 66 (Ohio).

[14] *Cunningham v. Castle,* 127 N. Y. App. Div. 580.
Van Blaricom v. Dodgson, supra.
Crossett v. Goelzer, 177 Wis. 455, 188 N. W. 627.

furnished good water power which Chicago could well capitalize and use to pay salaries to its army politicians.

However, the inconvenience or loss inflicted on the cities bordering the Illinois River down to Alton, and the similar damage done to the cities bordering the Mississippi below Alton were not the only objections which Chicago temporarily overcame in putting through its sewage disposal plan. In order effectually to dispose of the sewage a large amount of water had to be drawn through the Chicago River. The fact that the Secretary of War had limited this amount to 250,000 cubic feet a minute, of course, was no reason why Chicago should not help herself to more; since it was to her advantage and in her power to do so. The fact that by so doing she lowered the level not only of Lake Michigan but of all the other great lakes as well and thus vitally affected navigation was unfortunate, indeed, since it directly affected other Chicago interests, but was unavoidable. Even the fact that the amount of water going over the Niagara Falls into Canada was diminished and that the difficulties of navigating the St. Lawrence River were increased, thus resulting in a breach of a treaty between the United States and Great Britain, was of no consequence when held up against the imperious need of a large city in a position to pursue her own advantages.

We, therefore, had the spectacle of Chicago insolently defying every dictate of courtesy, morality, common sense and the law itself, both national and international, in putting through at the expense of millions of other people in and out of Illinois, including a foreign nation, a thoroughly selfish scheme in utter disregard of the consequences which might ensue.

Of course there are mitigating circumstances. The connection which Chicago has established between Lake Michigan and the Mississippi lends itself readily to navigation—the channel being at least twenty-five feet deep and 162 feet wide—and thus becomes of vital interest now that railroads, perhaps, have seen their best days and water transportation is again increasing in importance. There are other considerations which affect the ordinary man on the street even more vitally. Chicago is the greatest railroad center in the country. One of its greatest charms is that it has provided so many ways for the weary traveler to get out of it. It is, indeed, a great overgrown city.

Like the fat woman in the circus side show, it simply cannot help being so big. Like Topsy, it has just "growed," and with its growth have come enormous sanitary problems. Its size and geographical situation are such that the disposition of its sewage presents, indeed, an intricate cross-word puzzle. Not only is Chicago interested in its own health but all the surrounding country has a vital interest in the matter. If Chicago is converted into a plague spot the inhabitants, not only of Illinois but of all the lake states and states which do not border on the lakes, will suffer. The condition of the Chicago River before its reversal was not only a disgrace but a menace. Today the river, comparatively speaking, is as clear as a crystal. No one wishes to bring the old conditions back. No one, least of all the cities which draw their water supply from the great lakes, advocates that the river be reversed again. Sufficient time should therefore, in the interest of the surround-

ing territory, be granted to the city to put its house in order before the amount of water diverted is cut down to such an amount as to maintain the present level of the lakes. Negotiations looking toward this end are in progress as this note is being written and will probably be completed by the time it appears in printed form.

That the essentially selfish attitude taken by Chicago in its "lake steal" would meet with opposition was, of course, to be expected. Accordingly, a suit was commenced in 1913 to enjoin the diversion of water in excess of the permit granted by the Secretary of War. It was submitted to Judge Landis in 1914. Landis, being a resident of Chicago and a man of sufficient legal acumen to foresee that the result of the action in the Supreme Court of the United States would be unfavorable to the city of his residence, kept this matter under advisement for six years, thus preventing it from getting into the United States Supreme Court. When he was about to be appointed Baseball Commissioner he delivered, in 1920, a mere oral opinion in favor of the Government but rendered no decree for an injunction. Finally, after he had retired from the bench in 1922, another judge entered a decree for an injunction with a stay of six months, to enable the defendant to present the record to the Supreme Court. During all this time the diversion of the lakes was proceeding without interruption. Finally, on January 5, 1925, the Supreme Court spiked Chicago's guns by a decision upholding the contention of its adversaries and enjoining the city from continuing its practice after March 6, 1925, without prejudice, however, "to any permit that may be issued by the Secretary of War, according to law."

The action itself had been commenced in the name of the United States under its sovereign power to regulate commerce, to control navigable waters within its jurisdiction and to carry out treaty obligations assumed under a treaty of 1909 with Great Britain concerning the maintenance of the natural level or flow of boundary waters. The court held that this was a matter in which the situation was such that the state of Illinois could not require Chicago to withdraw an excessive amount of water from the lake in the face of the fact that it was thereby impeding navigation and interstate and international commerce, and that hence the Illinois Act, under which Chicago had organized the Sanitary District and which required the district to maintain a continuous flow of one cubic foot for each five inhabitants of the district, was unavailing as a defense. The case clearly establishes the right of the United States to determine the amount of water that shall flow through the channel and the manner of such flow.

The statement made in the opinion of Holmes J. of the legislation by Congress and of the various licenses that have been granted by the Secretary of War under such legislation is very interesting. This legislation by Congress goes back to 1822. In 1899, power was given to the Secretary of War to authorize the alteration or modification of the course, location, condition or capacity of any canal or channel of any navigable water of the United States. Under this grant the Secretary of War has issued various licenses, the general result being that Chicago was limited to 250,000 cubic feet per minute. In fact, it has for many years taken from 400,000 to 600,000 such cubic feet per

minute. Its attempt to set up these licenses as a defense of course was futile since it clearly had exceeded them.

At the same time this general statement of the legislation and the action of the Secretary of War under it, points the way out of the present difficulty. The legislation gives the Secretary of War extensive powers in the matter. A license by him increasing the amount of water which Chicago may divert until such time as proper sewage disposal plants have been erected, will protect not only the interests of Chicago and its inhabitants but the interests of those outside of Chicago and will also preserve the lakes themselves—all this within the strict meaning of the judgment of the Supreme Court which, as already mentioned, granted its injunction, "without prejudice to any permit that may be issued by the Secretary of War according to law."

That this result is highly satisfactory to all concerned, excepting uncompromising Chicagoans of the "I will" variety, is beyond a doubt. The United States Supreme Court by this decision has again demonstrated how important is its place in the Government and affairs of the nation, and how vital it is to the well-being of us all. A situation such as this would, in Europe, lead to war and the flowing of blood. In the United States, it merely leads to a law suit and the spilling of ink.

In referring to the city of Chicago, the writer of this note is, of course, fully aware that it was, technically speaking, the Sanitary District which took the reprehensible action. This district was organized by the Illinois Legislature independently of the city of Chicago, because the very inhabitants of Chicago, for good and sufficient reasons, did not wish to give to their city council, with its grey wolves, additional power. While the district covers territory outside of the city limits, the denizens of Chicago constitute such an overwhelming majority of the inhabitants of the district, that the writer believes that he is justified in treating, for the purposes of this note, the city as identical with the district.

War: Confiscation of alien property: Construction of enemy Trade Act.—*Swiss National Insurance Company Ltd. v. Thomas W. Miller and Frank White.* 45 Supreme Court Reporter 213. The appellant plaintiff had a Swiss charter though its stockholders were largely German, at least during the war. It was engaged in business in Germany while hostilities were in progress. It transacted business in the United States during the fateful days of 1917 and 1918. To obtain the necessary licenses it had deposited about one million dollars worth of bonds with various state treasurers. These securities were seized by the alien property custodian one week after the Armistice. There can be no question but that this sequestration was permissible since the Enemy Trade Act expressly included any corporation incorporated in any other country other than the United States and doing business within the territory of any enemy nation. Its appropriateness at the particular time when the war was practically though not theoretically at an end presents another question with which the courts, however, are not concerned.