

LONDON AND SA EXPLORATION CO v ROULIOT (1890 – 91) 8 SC 74

Importance	This case is significant for affirming a right to lateral support between adjacent pieces of land. The import of the precedent is that ownership of land includes a 'natural' right to lateral support of one's land from adjoining pieces of property. Where this is threatened or compromised (for instance, by the removal of ground for mining purposes) the landowner would have a basis for an interdict or claim of damages against the person compromising the lateral support. The circumstances of this case relate to adjacent and not subjacent support, although the court referred to the latter in its review of the English law. The application of the right to lateral support to factual circumstances involving subjacent support was subsequently challenged, but ultimately affirmed in the case of <i>Anglo Operations Ltd v Sandhurst Estates (Pty) Ltd</i> (2006) 1 All SA 230 (T).
Parties	Appellant: London and SA Exploration Company Respondent: Rouliot (lessee of claims from the above)
Facts	<p>The appellant company owned the farm Dorstfontein on which was situated the Du Toit's Pan mine (this mine contained diamondiferous soil). The respondent represented a joint stock company which leased 210 claims from the appellant company. The claims had been worked by the respondent company for many years and in March 1888 it appeared that a part of the claim had reached a depth in excess of 260 feet. The respondent apprehended that if he continued working, soil from the appellant's land would then have fallen into the respondent company's claim thus endangering the works. He accordingly broke into and entered the ground of the appellant adjoining the claims leased to the respondent company and dug away and removed 17 000 loads of diamondiferous stuff and about 160 000 loads of other ground. These loads were placed upon another portion of the appellant's farm.</p> <p>The appellant company thereupon sued the respondent company in the High Court of Griqualand West for the sum of £10 000 for an alleged trespass. The respondent company's defence was that the ground had become dangerous to the working of its claims and of necessity they were forced to remove it. The court dismissed the application for trespass.</p>
Relief sought	Appeal against a decision of the High Court of Griqualand West dismissing an application for trespass.
Legal Issues & Judgment	<p>After finding that the relationship between the appellant and the respondent companies was one of lessor and lessee, the court considered the following two legal issues:</p> <p>Issue 1: Was the defendant entitled to remove ground from within his own claims without regard to the effect such removal may have upon the adjoining land belonging to the appellant company?</p>

	<p>Judgment: The court noted that this issue required it to determine whether a right of removal (granted by the lease) is limited by a right on the part of the adjoining landowner to support for such land from lateral pressure (a 'right to lateral support'). Until this case, the question had been undecided in South Africa's colonial courts. After a review of Roman law and the rules then applicable in the Civil Code of France, the law of Scotland and the law of England, the court came to the conclusion that the right to lateral support exists as a 'natural incident' to the landowner's right to land. As such, when a contract of lease was concluded allowing for the digging down of claims that <i>would</i> potentially compromise the lateral support given to adjoining lands, the parties to a contract must be deemed to have contracted with a view to the continued existence of the right (at 93). In the absence of an express stipulation to the contrary in the contract, 'the presumption is in favour of an intention to preserve a well-established natural right of property, rather than to part with such a right (ibid).</p> <p>Issue 2: If the respondent company was entitled to remove ground in a manner that would compromise the lateral support of adjoining land, was it entitled to go a step further and break down the adjoining land?</p> <p>Judgment: The court considered this issue notwithstanding that it was not, strictly speaking necessary (given that the court had found for a right to lateral support on the first legal issue). The court concluded that there was no right arising out of necessity that justified the respondent company trespassing upon the land of the appellant company (at 97). The proper cause of action would have been for the respondent company to apply for an interdict against the continuance of the danger posed by the higher land, or to bring an action for an abatement (ibid), and not to resort to self-help.</p>
Outcome	The appeal was upheld but, as the court found that the damage was not great the fine was reduced to £5.
Obiter	None.