

NEW HERIOT GOLD MINING COMPANY LIMITED v UNION GOVERNMENT (MINISTER OF RAILWAYS AND HARBOURS) 1916 AD 415

Importance	<p>This precedent is of limited value because the court dealt mainly with issues of fact rather than law. It is of relevance to situations where mining companies are impacted by the failure of another authority to properly manage their infrastructure. The present case dealt with negligence on the part of the state railway to collect and divert water from a railway embankment, which subsequently flooded the appellant's mine. There are contexts in which this type of scenario may then impact, in turn, upon the mine's obligations to manage water on its property in a lawful manner (e.g. on the West Rand we have encountered situations where the mining companies allege that the barriers of their pollution control dams are breached as a result of the road agencies' failure to properly manage storm-water). This case affirmed general principles of law applicable to the state authority's management of its infrastructure. The case is also useful, however, for demonstrating the pragmatic approach of the court in undertaking an investigation into the liability of the state railway, notwithstanding that the precise contribution of the railway company's action to the flow of water into the appellant mine could not be established with 'mathematical' certainty. It is therefore an interesting case from the perspective of legal causation.</p>
Parties	<p>Appellant: New Heriot Gold Mining Company Limited Respondent: Union Government (Minister of Railways and Harbours)</p>
Facts	<p>The case relates to the liability of the government railway company for damages caused by floodwater to a mine. The railway company had been built under statutory authority in the late 1800s by the Netherlands Railway Company, but it had been acquired first by the Transvaal Government at the conclusion of the Anglo-Boer War in 1902, and subsequently by the Union Government in 1910.</p> <p>On 13th November 1913, there was a heavy downpour on the Witwatersrand and the plaintiff mining company's underground works were flooded, causing damage which was fixed at the amount of £15 545. The mining company alleged that the flooding was caused by storm-water which had been collected and diverted from its natural course by a railway embankment belonging to the railway company and running immediately to the north of its property. The mining company claimed that the railway company was liable by virtue of its negligent failure to take all proper precautions in the construction and maintenance of the railway embankment so as to prevent damage to the mining company's property to the south. Specifically, it was alleged that the railway company had not made sufficient provision for carrying off the water collected and diverted by its embankment and that, in consequence, it had overflowed the line and flooded the mine.</p>

	<p>The defendant denied that it had been negligent and also raised the defences that if there was negligence in the construction of the embankment it was owing to the negligence of the Netherlands company by whom the line was built; that the downpour was <i>vis maior</i>, or an 'Act of God'; that the water which flooded the mine had been diverted by a siding which the railway company had constructed from the railway line to the mining company's property at the latter's own request; and that there had been contributory negligence on the part of the plaintiff in that it had (a) failed to make adequate provision for the protection of its underground workings against the storm-water, and (b) made openings between its mine and the adjacent Jumpers mine through which water flowing into the latter found access into the New Heriot mine, causing a subsidence on the surface and thereby opening a way for storm-water to flow into its underground workings.</p> <p>The court <i>a quo</i> found against the appellant.</p>
Relief sought	An order for damages caused by the flooding of the appellant company's mine.
Legal Issues & Judgment	<p>This case dealt almost exclusively with issues of fact. The general legal principles which governed the dispute were not in contention. Briefly these were as follows:</p> <ul style="list-style-type: none"> • Apart from servitude, no one is entitled by means of artificial works to discharge upon his neighbour's land water which would not naturally flow there, or to concentrate or increase the natural flow to the detriment of his neighbour. • This principle is not applicable where the works that result in the discharge or concentration have been authorized by statutory authority. • This exemption for liability (in the case of works statutorily authorized) is subject to the proviso that the works must not have been negligently executed or maintained. • The failure to take reasonable practicable measures to avoid the damage constitutes negligence (<i>Halliwell v Johannesburg Municipality</i> 1912 AD). <p>On an examination of the facts the court (per Innes and Solomon) found against the defendant railway company on every ground.</p> <p>Although not framed as an express issue to be decided, one of the interesting aspects of this case is that the railway company was responsible for only <i>part</i> of the water which entered the appellant mining company's mine. The fact that a precise mathematical apportionment of the water which arose from the respondent's negligence was not possible did not deter the court from undertaking an inquiry into the respondent's liability. In this regard the court said: 'The case is one in which mathematical apportionment is impossible. But the appellant should not on that account be disentitled to relief. The company has proved that it has sustained very substantial damage</p>

	<p>owing to the negligence of the Administration, and it should be possible, on general considerations, to arrive at some amount which will do justice between the parties. As the matter presents itself to me that could best be done by ascertaining as nearly as possible what proportion of the water which entered the mine was water diverted from its natural flow by the railway works. That same proportion of the total damages sustained would be the amount for which judgment should be entered' (at 443). The approach of the court is relevant to the argument, made in the context of liability for the causation of acid mine drainage, that it is impossible to determine how much liability should be apportioned to each company because it is impossible to determine the extent to which that company's operations contributed to the pollution. The approach of the court in this case shows that the impossibility of mathematically or scientifically determining the proportion of damage should, firstly, not deter an investigation into liability and, secondly, that a pragmatic approach should be followed in order to arrive at some amount that would do justice between the parties.</p>
Outcome	<p>The appeal was upheld and the defendant was held liable for that portion of the flow of water which was due its to its negligence in failing to construct and maintain the embankment properly.</p>
Obiter	<p>None.</p>