

In New Jersey it has been decided that a water company has no right to divert the water from a stream in order to make merchandise of it, and no right to transport any portion of the water to a distant point for the use of others. *Wilson vs. East Jersey Water Co.*, 78 N. J. Eq. 329, 79 A. 440.

In Georgia, where a lower riparian owner sought to enjoin an upper proprietor from interfering with his rights in a non-navigable stream by diverting a part of the water into another stream, the Court held that an injunction should be granted even though the threatened injury was such as to result in no material damage to the complainant. The Court explained that such an injunction would restrain acts which might, with the lapse of time, become the foundation for an adverse right. *Chestatee Pyrites Co. vs. Cavenders Creek Gold Min. Co.*, 118 Ga. 255, 45 S. E. 267.

In New Jersey it has been held in a number of cases that the diversion of a water course is a nuisance and consequently can be prevented by injunction. *Shields vs. Arndt*, 4 N. J. Eq. 234. It is generally held that the diversion of a water course is an irreparable injury. *Holsman vs. Boiling Spring Bleaching Co.*, 14 N. J. Eq. 335. But even though the injury does not appear to be irreparable, a water company will be enjoined from wrongfully diverting the water of a stream which has been used for mill power. *Higgins vs. Flemington Water Co.*, 36 N. J. Eq. 538.

The same rule is applied in California, where it is said that riparian owners have correlative rights in a stream, and neither owner is a trespasser against the other until he abstracts more than his share and thereby injures the other; but where any attempt is made to divert the water of a stream to nonriparian land, then the person making the diversion of the water is a trespasser on the lower riparian owner's property rights from the beginning, giving an immediate right of action. *Anaheim Union Water Co vs. Fuller*, 150 Cal. 327, 88 P. 978; *Miller vs. Lux*, 169 Cal. 443, 147 P. 567; *Fresno Canal & Irrig. Co. vs. People's Ditch Co.*, 174 Cal. 441, 163 P. 497.

Likewise, in Michigan, where a complainant sought to enjoin the diversion of the water of a river, which had been running from a lake to his flour mill, the Court held that the complainant was legally entitled without question to "the use of all the water that would naturally come to his mill pond." It was argued by counsel for the township of Jefferson and the highway commissioner that the injunction should be refused because "the loss to the complainant caused by the diversion of the water is trivial, while the damage the defendants would sustain if a permanent injunction is granted would be very great." But the Court said: "It does not appeal to one's sense of justice to say that the exercise of a right possessed is not of as much benefit to the possessor as the taking of that right from the owner would be to the trespasser, and therefore the trespasser should be allowed to continue his trespass. - - - It has always been settled that the owner of realty is entitled to the aid of equity to prevent permanent and continually recurring injuries to the enjoyment of his property. To deprive him of such enjoyment is to deprive him of the property itself, wholly, or to the extent of the mischief. Neither can it be allowed for wrongdoers to rely on their own wrong to change or lessen his means of redress. When they do mischief, it is their own fault if they render a stringent remedy necessary, and they must take the consequences." It was also urged in that case that the right of the complainant to maintain his dam and use the water that would naturally flow to his mill should give way to the right of the public. But the Court said: "It is sufficient reply to this argument to say that it has long been the fundamental law of the land that a man is not to be deprived of his property without due process of law, and without compensation." *Stock vs. Jefferson*, 72 N. W. 132.

Maryland has followed the common-law principle prohibiting the diversion of water from a stream for nonriparian use. This was recognized in an early case by the Court of Chancery: