

have a profit in the lands they have conveyed or leased by furnishing water-power for the factories thereon. As they or their predecessors could have bought the water right without buying the land in the first instance, so they can sell the land without selling the water-power now, or they can sell the water right and retain the land; the only restriction being that whatever water-power is used must be used in factories erected on this tract, and that no more may be taken than is necessary for these purposes.

19, 20. The defendants have no right to use the ditch for the purpose of floating logs, timber or cordwood, without protecting its sides from the erosion that is necessarily caused by such use of it. Courts will not interfere with a change of use of an easement of this character unless it imposes an additional burden in some way upon the servient tenement, but it is clear that unless the banks of the ditch are protected, either by booming, riprapping with stone or bulkheading with timber, such use will add to the burden, and it should be prohibited until this is done.

The defendants will be permitted to widen their ditch so as to bring it up to 50 feet in width, and will be enjoined from further widening it, and from throwing mud and silt from the bottom upon adjacent property. Neither party will recover costs here or in the court below.

MODIFIED.

MR. CHIEF JUSTICE MOORE, MR. JUSTICE BURNETT and MR. JUSTICE BENSON CONCUR.

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Argued June 28, modified August 1, 1916.

EUGENE v. CHAMBERS POWER CO.

(159 Pac. 576.)

From Lane: JAMES W. HAMILTON, Judge.

Department 1. Statement by MR. JUSTICE McBRIDE.

This is a suit by the City of Eugene against the Chambers Power Company, a corporation, and Frank L. Chambers. From a decree in favor of plaintiff, defendants appeal. MODIFIED.

For appellant there was a brief with oral arguments by *Messrs. Thompson & Hardy*.

For respondent there was a brief over the name of *Messrs. Skipworth & Lewis*, with an oral argument by *Mr. Jay L. Lewis*.

MR. JUSTICE McBRIDE delivered the opinion of the court.

This is a suit brought by the City of Eugene to prevent the defendants from widening their ditch passing through the city where it crosses certain streets therein, and to enjoin them from floating logs, timber and cordwood along said ditch to the injury of the banks where it crosses the streets. Every question involved in this case is fully considered in the case of *Patterson v. Chambers Power Co. et al., ante*, p. 328 (159 Pac. 568), and this case will take the same course, and a decree will be entered herein to the same effect as in that case. Neither party will recover costs in either case. MODIFIED.

MR. CHIEF JUSTICE MOORE, MR. JUSTICE BURNETT and MR. JUSTICE BENSON concur.

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