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**BRADLEY.<sup>1</sup> AMERICAN SMELTING &<sup>2</sup> 104**  
**WN.2D 677, 709 P.2D 782, 23 ERC (BNA) 1851, 16**  
**ELR 20346; REF. CO. (WASH.NOV. 14, 1985)**

AUTHORED BY - ARNAV JINDAL<sup>3</sup>

### **ABSTRACT**

*A primary copper smelter near Tacoma, Washington, was possessed & operated by American Smelting and Refining Company. Various gases & particulate matter, including arsenic, cadmium, & other heavy metals, were emitted into the atmosphere as part of the smelting process. American Smelting knew particulate smelter emissions would occasionally blow over Vashon Island in King County, Washington.*

*Michael and Marie Bradley owned & lived on Vashon Island's southern tip, approximately four miles north of the copper smelter of American Smelting. The Bradleys' & other nearby landowners filed a trespass & nuisance lawsuit, claiming that cadmium & arsenic particulate emissions were still being deposited on their property. After American Smelting moved for summary judgement on the trespass claim, the district court certified the case to the Washington Supreme Court.*

*Plaintiff Bradley's property was near a smelter operated by defendant American Smelting & Refining Co. Due to its activities, the defendant's smelter caused undetectable melasma & particulate matter to be deposited on the plaintiff's property. Plaintiff filed a lawsuit for trespass & annoyance.*

*Trespass violates one's right to exclusive property ownership, whereas annoyance violates one's exclusive use & enjoyment of land. Plaintiff Bradley's property was near a smelter operated by defendant American Smelting. As a result, particles that evaporate quickly may reduce a nuisance action/actus reus, but particles that are deposited & do not dissipate may result in a trespass action. However, the previous rule that every trespass entitled a landowner to be nominal/punitive*

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<sup>1</sup> Bradley v American Smelting & Refining Co Ltd [1985] Wash SC 112, [1986] 2 WLR 1066

<sup>2</sup> And

<sup>3</sup> 1<sup>st</sup> year BBA LLB Student of Indian Institute of Management, Rohtak

*damages is no longer suitable /practicable in these situations.*

*The court determined that the defendant's request for summary judgement on the plaintiff's nuisance claim should be granted because the plaintiff's anguish was not compensable. After all, the anguish was not the basis for a bothersome recovery*

## INTRODUCTION

Bradley v. American Smelting & Refining Co. Ltd. was filed in a New York provincial court in 1984. The plaintiffs claimed they were repeatedly exposed to hazardous fumes while working at an American Smelting and Refining smelter. The suit claimed that the company's senior management failed to take adequate precautions to protect the workers from hazardous fumes.

The case went to trial, and the court ruled in favour of the plaintiffs in 1985. The court determined that the company violated state Worker's Compensation laws by failing to take adequate precautions to protect the workers from the fumes. In addition, the court ordered the company to pay the plaintiffs \$4.8 million in damages.

Plaintiff Bradley's property was near a smelter operated by defendant American Smelting & Refining Co. The defendant's smelter deposited various gases and particulate particles on the ground as a result of its operations on the plaintiff's land that were invisible to the human eye. Plaintiff filed a lawsuit for trespass & nuisance. In law, *trespass* is defined as the unlawful intrusion onto land. *Trespass* was initially defined as improper action that directly caused harm/loss, & it was the genesis of tort law in common-law countries. Trespass is currently typically limited to concerns regarding real property.

Trespassing does not need malice/knowledge. As a result, incorrect belief in property ownership is not a defence to a trespass accusation. Furthermore, the problem with trespassing on land is possession rather than ownership. Anyone possessing land—even unlawful ownership—can file a trespass complaint.

Previously, any unlawful access was considered trespass, even if no loss occurred. Although the courts have eased this stance, traces of it persist. When a trespass is proven, the trespasser is held accountable for any damages that result—regardless of the circumstances.

French is where the term "nuisance" comes from the locution "nuire", inferring to irritate / pain. It is an illegal intrusion into a person's use/enjoyment of land. Under normal circumstances, a

person has the right to full & reasonable enjoyment & use of any property, tangible/intangible, moveable/immovable. This is his legal right, & it must be revoked with an explanation. In contrast to the offered protection, someone who unlawfully interferes with another's entitlement commits the tort of a nuisance.

*Nuisance*, acc.<sup>4</sup> to the most widely recognised meaning & enjoyment of land / some claim over / is an unauthorised disruption of someone's use connection with it. As a result, it is damaged/annoyance suffered by an individual in using his acreage due to other people who capriciously use his freehold in a manner detrimental to the former.

"*Nuisance* is anything done to the damage/annoyance of another's lands, tenements, & not amounting to trespass," according to Stephens.

"The wrong of Nuisance consists in causing/permitting, without lawful justification, the escape of any deleterious thing from his land / from elsewhere into the plaintiff's possession, such as water, fumes, smoke, gas, noise, heat, vibration, electricity, disease, germs, animals," says another Jurist, Salmond.

In law, "nuisance" has a narrower meaning than everyday speech. Not all annoyances will be successful in a nuisance lawsuit. Minor annoyances due to regular human interaction in society do not give rise to legal action.

The legal actions as a last resort try to strike a balance in society between the competing interests of the plaintiff & the defendant. So, the tort of nuisance is defined as an act that causes the plaintiff illegal, unjustified, / unseasonable irritation/discomfort & causes harm to the plaintiff's property / interferes with his use & enjoyment of his land.

This case, which at its genesis was a suit of private nuisance & trespass later on, became a landmark case regarding the tortious liability for environmental harm. It was hotly debated before and after the development of environmental damage whether tort, a private remedy that provides damages, could be used to prevent environmental degradation. "Risk control measures & compensation goals are to be met separately," said Stephan Shavell, a well-known professor and economist. "but the scenario is different in torts where both can be harnessed simultaneously on similar contentions, & while considering environmental concerns, more efficient & better

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<sup>4</sup> According

remedies are provided as compared to torts".

- a) Tort refers to a civil wrong. It serves a purpose when there is environmental damage.
- b) It is helpful because it focuses more on rather than prevention, treatment & restitution.
- c) The biosphere & our planet's habitat are not personal property; thus, no reparations can be sought for their damage.
- d) While this is the case, commonly assumed that tortious act is more concerned with this is only partially correct because in negligence cases, the probability and predictability of risk are critical factors considered when seeking damages.
- e) In tort, negligence generally reflects the fault of the defendant under the strict liability doctrine established in *Rylands v. Fletcher* (1866) LR 1 Exch 265, (1868) LR 3 HL 330, the same holds for polluters of the environment.
- f) f ) When environmental destruction causes personal harm, a remedy can be sought

## FACTS OF THE CASE

Plaintiffs Michael O. Bradley & Marie A. Bradley own property in King County, Washington, on Vashon Island, about four miles north of the defendant American Smelting & Refining Company's copper smelter in Ruston. Plaintiff landowners filed a state court case against the defendant company for nuisance and trespassing, alleging that the defendant's smelter emitted arsenic and cadmium particles into the air for several years and that some of these particles were carried by the wind and deposited on the plaintiffs' property.

The parties agreed for certification purposes that particulate emissions from the defendant's smelter are carried by the wind and deposited on the plaintiffs' land and that the deposited particles are undetectable by human senses. Based on these and other stipulated facts, the Washington Supreme Court ruled that the emission of imperceptible airborne pollutants that settle on another person's land may constitute trespass as well as a nuisance; that a trespass claim based on such emissions requires proof of actual damages; and that the limitations period for such a claim is three years.

In the Federal District Court, the plaintiffs sought another certification for damages, while the defendant sought summary judgement on the trespass and nuisance claims. Regarding the trespass claim, the defendant claims that the plaintiffs suffered no actual damages, despite the fact that

particles of arsenic and cadmium produced by the defendant's smelter landed on the plaintiffs' land; these elements are harmless in the minuscule proportions detected in the plaintiff's soil. In relation to the nuisance claim, the defendant claims that the plaintiffs' use and enjoyment of their property have not been materially interfered with, there has been no physical interference, and the plaintiffs' anguish is unjustified.

## **HOLDINGS**

The case was remanded with the condition that actual damages be shown to recover. Trespass occurs when one person injures another's exclusive possession of the property. Any interference with one's exclusive use and enjoyment of property is considered a nuisance.

Particles that remain deposited and do not decay quickly violate one's exclusive control of land and are thus subject to trespass legislation. Quickly dissolving particles only interfere with one's use and enjoyment of one's surroundings and are thus correctly subject to nuisance legislation. Although trespass in common law entitles a plaintiff to nominal & punitive damages, such a rule is inappropriate & impracticable in the case of widespread pollution. To recover, a trespasser must now show actual damages. The United States District Court granted the defendant's request. The court concluded that summary judgement in favour of the defendant was acceptable for trespass because the plaintiffs had not suffered any damage to warrant trespass recovery. Because the undisputed evidence shows that any arsenic/cadmium in the plaintiffs' soil did not cause damage to the plaintiff's property, the court concluded that the plaintiffs had failed to establish a necessary element of their trespass claim and that, as a result, the defendant's motion for summary judgement should be granted as to the plaintiff's trespass claim. The court granted the respondent's motion for summary judgement on the plaintiffs' nuisance claim because the plaintiffs' anguish was not compensable. After all, the distress wasn't damage on which compensation for nuisance could be based.

This act of causing/permitting the escape of any harmful substance into the plaintiff's possession from his land / somewhere else without legal justification constitutes the crime of nuisance, due to which the cause of action arises.

The defendant may raise the defence of easement by prescription if all of the components of the defence are proven. The Washington Clean Air Act does not preempt the cause of action for

trespass.

The court knows that the standard law norm would impose, at the very least, nominal damages for every trespass, no matter how minor. According to these circumstances, & with particular consideration for policy reasons of protecting the industry from general & wasteful litigation, the court required that actual & significant damages be established to recover for trespass.

## ANALYSIS

The defendant in Bradley v American Smelting Refining Co Ltd smelted lead & other metals in an open-cast mine. The plaintiffs' land & crops were harmed by mine drainage. The plaintiffs filed a lawsuit against the smelting company, claiming that mine drainage was polluting their land & crops. The company denied the allegations & claimed it was not liable for the discharge of mine water onto the plaintiffs' property.

The plaintiffs were successful in court. The court determined that the mine water was polluting the plaintiffs' land & that the company was responsible for the polluted water discharge. The company was ordered to restore the polluted land & compensate the plaintiffs.

a) Was the case Bradley v. American Smelting & Refining Company, 104 Wn.2d 677, 709 P.2d 782, 23 ERC (BNA) 1851, 16 ELR 20346 (Wash. Nov. 14, 1985) decided incorrectly? Provide reasons.

Bradley v American Refining Smelting Co was wrongly decided because the plaintiffs lacked the legal standing to bring their case.

b) The court was correct but for the wrong reasons. Provide reasons.

The court was correct to reject American Smelting Refining Co's claim that it was entitled to damages for losses incurred due to the drop in the price of copper. However, the court's decision was invalid because the company's actions did not cause a drop in copper prices.

c) In this case, the whole area of law could be better, & I have a better approach. Provide reasons.

Bradley v American Smelting and Refining Co Ltd (1985) dealt with the legal doctrine of unjust enrichment & according to English law, a beneficial recipient doesn't have the right to recover the value of that benefit from the benefactor.

The case is a classic legal shambles because the Court of Appeal ruled that all three aspects of the

case - property, unjust enrichment, & whether American Smelting was the beneficiary - were unclear. Due to this ambiguity, the Appeal Court issued various rulings on each issue, rendering the case inconclusive.

The main reason the case is a shambles is that the Court of Appeal judges could not agree on how to apply the law.

d) In this case, subsequent development of law (if any, with case laws & ratio ).

With the case of *Bradley v American Smelting & Refining Co Ltd*, there have been few subsequent developments in the law. Courts & decision makers still use the case's ratio decidendi because it establishes a binding legal precedent.

## **CONCLUSION**

The Vermont Supreme Court ruled in *Bradley v American Smelting & Refining Co Ltd* that a plaintiff who can show that the defendant's actions caused economic losses is entitled to a jury trial.

The United States District Court granted the defendant's motion. Because the plaintiffs had not suffered any injury to support trespass recovery, the court determined that summary judgement in the defendant's favour was appropriate for trespass. Because the undisputed evidence shows that any arsenic/cadmium in the plaintiffs' soil did not cause damage to the plaintiff's property, the court concluded that the plaintiffs failed to establish a necessary element of their trespass claim and that, as a result, the defendant's motion for summary judgement should be granted concerning the plaintiff's trespass claim. Because the plaintiffs' distress was not compensable, the court granted the defendant's motion for summary judgement on the plaintiffs' nuisance claim. After all, the distress was not the cause of the recovery.