



**Please quote the reference number below when contacting the office:**

Our Ref: 3619  
Your Ref: P/ 233442/F

18 March 2024

Development Control  
Herefordshire Council  
PO Box 4  
Hereford  
HR4 0XH

HEREFORDSHIRE COUNCIL PLANNING SERVICES DEVELOPMENT CONTROL
19 MAR 2024
To: .....
Ack'd: ..... File: .....

Online submission and by post.

Dear Sirs,

**Re: Planning proposal for steps and crane P 233442/F**  
**Our member: Hereford and District Angling Association**

We write further to our letter of 11 December 2023. Our member above has brought to our attention revised proposals for the boat ramp, presumably reflecting the fact that our members own the bed of the River Wye at this location and no consent to carry out foundation piling has been sought or given.

We note that the revision to this proposal involves a cantilever mechanism. As such it does strike us as a somewhat 'Heath Robinson' attempt at a solution purely and simply because the Sea Cadets do not seem to want to engage with our members, who own the bed of the river at this point, in any constructive dialogue.

**Our objections as previously stated stand** and in particular if this structure is consented it will represent a private nuisance to the fishing rights of our member, which includes over 1000 local people who belong to it and will result in litigation if built. We have already cited the Sudjic case to you. We enclose a copy of the same, which as you will see is very close in its facts to this proposal.

We have not resorted to circulating a petition among Hereford and District Angling Club's membership, as the adversity that would result to them, should this proposal be passed, is obvious.

Furthermore, construction would almost certainly entail the need to enter our members' land. We are instructed that consent to such entry would not be forthcoming.

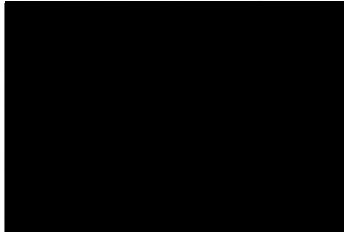
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Were this proposal granted it may well create an eyesore, rather than an everyday item of riverside furniture and, as we have said, will create direct conflict with another property owner. It is a misconceived proposal and should be refused.

Yours faithfully



Geoff Hardy  
Solicitor, Fish Legal

Encs



## **Tummel Valley Leisure Limited v Branislav Sudjic**

XA161/10

Extra Division, Inner House, Court of Session

8 December 2011

**[2011] CSIH 82**

**2011 WL 5903223**

Lord Reed Lord Bonomy Lord Kingarth

8 December 2011

### **Representation**

Act: Clarke, Q.C. , Balfour + Manson .

Alt: Summers, Q.C. ; Drummond Miller .

### **Judgment**

Lord Reed

#### **Introduction**

1 Is there an interference with a right to fish for salmon where the operations of a riparian proprietor prevent fishing by fly, if it remains possible to fish by spinning? That, in essence, is the question which arises in this appeal.

2 The appellant owns property on the bank of the river Tummell. The salmon fishings on that stretch of the river are owned by the respondents. In about 2003 the appellant erected decking over his land on the bank of the river adjacent to his house, at a cost of £3,000. The decking extends from the lawn of his property over the river bank and is supported by a steel girder resting on cast iron poles set into the bank. The bank beneath the decking slopes down to the river. The respondents consider the decking to be an obstruction which prevents them from enjoying the full extent of their right to fish for salmon, and in the present action seek an order requiring the appellant to remove it.

3 The sheriff found that the stretch of the river over which the respondents have the right to fish contains seven pools, which are the most productive areas of the river for fishing. One of these, the Moulinearn Pool, is *ex adverso* the appellant's property. The river is classified in fishing terms as a spring river, and is most productive for salmon fishing at that time of year. The water level tends to be higher then, and the legs of the decking may be in the water. The sheriff also made the following findings:

"[19] The Moulinearn Pool can be fished from either bank. The ability to do so depends on the skill of the fisherman, the water level and may involve those fishing using waders. It was in the past fished (using fly fishing) from the bank where the decking has been erected. The flow of water and steepness of bank immediately in front of the decking makes it difficult for wading especially in high water.

[20] The decking can render an area of the Moulinearn pool more difficult to fish by fly fishing. The area in question amounts to 30 to 40 feet toward the tail of the pool. The ability to fly fish part of the pool which forms a back eddy where the salmon rest and lay

up has been affected. The impact the decking has on the ability to cast a fly depends on the direction of the wind and whether or not the angler is right or left handed and on the ability of the angler.

[21] The decking affects the ability of anglers to walk up and down the banks of the river at times of high water when carrying fishing rods and fishing equipment.

[22] The decking restricts a fisherman's ability to play a fish in order to land it and restricts the ability to land a fish whichever method of casting is employed."

Notwithstanding the somewhat guarded nature of finding 20, it is plain from the sheriff's decision as a whole that he found that, as a consequence of the erection of the decking, part of the Moulinearn Pool — the most productive part for salmon fishing — can no longer be fished by fly and can only be fished by spinning. Notwithstanding his findings, the sheriff concluded that the decking does not materially interfere with the respondents' right to fish. He did so on the basis that it remains possible to catch fish by spinning: the right to fish, he stated, "does not mean in my view that [the proprietor of the right] has to be able to fly fish but he must be able to catch fish".

4 The decision of the sheriff was reversed by the sheriff principal. He noted that the sheriff's findings imply that it is necessary to have access to the bank at the point at which the decking was erected in order to fly fish the whole of the Moulinearn Pool, and in particular the part of the pool where the most productive fishing is to be had. In the view of the sheriff principal, the right to fish is not merely a right to catch fish, without any choice as to the means by which the fish may be caught, but includes the right to fish by fly. Since the erection of the decking has materially restricted that right, it follows, in his view, that the owners of the fishing rights are entitled to have the decking removed.

5 Before this court, counsel for the appellant submitted that, provided the owner of the right was able to fish by rod and line, he had what the law secured to him: the law did not secure any particular technique of fishing by rod and line. Even if that was incorrect, there was no right to fish by fly from the part of the bank where the decking was erected, since the decking affected only one part of a single pool, and the sheriff had found that there was no effect on the value of the respondents' fishing rights. It was necessary to balance the rights of the proprietors of the fishings with the right of the riparian proprietor to use his property. The court should in any event exercise its discretion to refuse to order the removal of the decking in view of the respondents' delay in seeking an effective remedy.

### The nature of the right of fishing

6 Stewart's *Treatise on the Law of Scotland relating to Rights of Fishing* (2nd ed., 1892) states:

"The original right of the Crown to fish for salmon extends to every method by which the fish can be captured" (p 90).

Accordingly:

"A grant of salmon fishing entitles the grantee to exercise the right in any manner recognised by law, with the exception of cruives ... A grant of salmon fishing implies only a right of fishing by the legal methods" (pp 99–100).

Fly fishing and spinning with a lure or bait are both familiar methods of salmon fishing which have been protected or regulated by the courts (see e.g. [Fotheringham v Pasmore 1984 SC \(HL\) 96](#) at p 106 per Lord Cowie and at p 131 per Lord Fraser of Tullybelton). The argument that the exercise of one of these methods can be prevented without there being any interference with the right of fishing is inconsistent with the nature of the right as described in the passages which we have quoted, and was not supported by any reference to authority.

7 Counsel for the appellant founded however upon [section 1 of the Salmon and Freshwater Fisheries \(Consolidation\) \(Scotland\) Act 2003](#), which in prohibiting salmon fishing other than by the methods expressly permitted, refers to fishing "by rod and line", without differentiating



between fly fishing and spinning. This, it was argued, demonstrated that fishing by rod and line was a method recognised by law, whereas fly fishing and spinning were merely techniques of fishing by that method. Provided the method remained possible, it was irrelevant that the use of a particular technique had been prevented. This argument is in our view unsound. The fact that a criminal statute, intended to define the methods of fishing which are unlawful, refers to fishing by rod and line without differentiating between the various techniques which may be employed, does not imply that the prevention of one of those techniques is consistent with the common law right to fish by "every method by which the fish can be captured": a description of the right which encompasses all possible lawful techniques.

### **The right to use the bank for fly fishing**

8 As is stated by Stewart:

"A grant of salmon fishing to one who is not the proprietor of the adjacent land, implies a right to make use of the banks for purposes connected with the fishing" (p 100).

In particular, the owner of the fishings is entitled to use the banks for the purpose of rod fishing (p 159). Accordingly:

"The proprietors of the banks are not entitled to erect anything which will obstruct the fishermen in the enjoyment of their rights; but these rights must be exercised in a way the least oppressive to the landholders, consistent with their full beneficial use" (pp 157-158).

9 These propositions can be illustrated by some of the authorities. As long ago as 1612, this court held that landowners whose property was bounded by a river could not till or build dykes upon a river bank which fishermen used to draw their nets and for other purposes connected with fishing ( *Mathew v Blair* (1612) M 14263) . In *Miller v Blair* (1825) 4 S 214 the right to use the banks was described as an accessory right: accessory, that is to say, to the principal right of fishing. The court observed that rights of that character must be used with discretion: in Lord Balgray's words, "They can only be made use of, so far as they are necessary to carry into effect the principal right to which they are accessory" (p 217). The court found (at pp 216-217):

"that the petitioner's (Blair's) right of salmon fishing ... implies the accessory and necessary privileges of using the adjoining banks for the purpose of drawing his nets, and obtaining access to the fishing stations, but that the petitioner must use his right or privilege in a manner as little detrimental to the proprietors of the banks, as is consistent with a full beneficial use of his right of fishing".

10 In the present case, as we have explained, the full beneficial use of the right of fishing includes fly fishing the whole of the Moulinearn Pool. It follows that the respondents are entitled to use the bank of the river for that purpose. Since the erection of the decking has prevented such use, it follows that it is in breach of the respondents' rights. No question of balancing arises.

11 Two observations should be added. First, the sheriff's finding that the erection of the decking has had no effect on the financial value of the respondents' fishing rights is not material to the issue: the right to prevent an infringement of property rights does not depend on demonstrating pecuniary loss. The finding itself is, as the sheriff principal observed, of doubtful validity, being based solely on evidence that the decking occupied only one thousandth part of the river bank along the stretch owned by the respondents. Equally, the fact that the interference affects only one pool is immaterial: one is entitled to object if a stranger occupies a chair on one's decking, even if one has other chairs to sit on. Secondly, it has to be borne in mind that a person in the position of the appellant must know, or be taken to know, that his rights are limited by those of the respondents. As Lord Ormisdale observed in *Lord Advocate v Sharp* (1878) 6 R 108, 113 :

"When a grant of land, either on a river or the sea, is taken by one without any right to the salmon-fishing, he must know, or be held to know, that he is exposed to the

contingency of another who has already obtained, or who may thereafter obtain, a grant of the salmon-fishing, asserting a claim to the accessorial rights, necessarily incident to such fishing, and therefore, when the contingency arises, and such claim is made, he cannot be held to have any well-founded ground of complaint."

### **Delay**

12 We can deal briefly with the question of delay. Counsel for the appellant did not seek to argue that the respondents' claim was barred by mora, taciturnity or acquiescence. The basis of his submission that a remedy should be refused on the ground of delay, as a matter of discretion, was unclear. No such argument was advanced before the sheriff or the sheriff principal. The issue of delay was not explored in evidence. In these circumstances, it would not be fair to the respondents to allow the issue to be raised for the first time at the present stage of the proceedings.

### **Conclusion**

13 For these reasons we shall refuse the appeal.

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