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NEGLIGENCE — FUMES FROM SPONTANEOUSLY IGNITED REFUSE FROM COAL MINE — LIABILITY TO ADJACENT LANDOWNERS. — Adjacent landowners brought an action on the case against a coal company for the damages resulting to their property from the noxious smoke, fumes and dust emitted from the burning of a gob pile on the coal company's premises. The mine inspector had found the operator leaving machine cuttings (bug dust) in the mine and ordered the same removed, because of its high inflammability. The defendant deposited it on the gob pile and the pile later spontaneously ignited causing the damages. *Held*: That the depositing of the bug dust with the other refuse was actionable negligence. *Rinehart v. Stanley Coal Co.*[1]

Numerous cases have arisen in the several jurisdictions where damage has resulted to adjoining property owners by the operation of industrial plants, but in most of them it was sought to obtain equitable relief against nuisances.[2] Actions at law have been surprisingly few.[3] Slight inconveniences, consistent with, and instant to community usage, do not make out a legal nuisance.[4] Assuming a nuisance to exist a court of equity may be faced with the alternative of stopping a useful industry or granting substantial relief in the form of damages.[5] By allowing damages in an action at law, on the theory of negligence, this later result is in effect obtained, except that damages will be awarded only as of the time of bringing the action, since only in exceptional cases will a law court award permanent damages.[6]

This case is the first in which the West Virginia court has imposed liability for the burning of gob piles, although it has previously laid down the general proposition, that a man can use his property to conduct any lawful business, but if his negligent operation of the same causes injury he will be liable in dam-

[1] 163 S. E. 466 (W. Va. 1932).

[2] Face v. Cherry, 117 Va. 41, 84 S. E. 1v (1915); Stoneburner v. O-Gas-Co Sales Corp., 135 Misc. 216, 237 N. Y. Supp. 339 (1929); Georgia v. Tenn. Copper Co., 206 U. S. 230, 27 S. Ct. 618 (1906), 237 U. S. 474, 35 S. Ct. 631 (1915); Holman v. Mineral Point Zinc Co., 135 Wis. 132, 115 N. W. 327 (1908); City of Selma v. Jones, 202 Ala. 82, 79 So. 476 (1908); Knocker v. Camden Coal Co., 82 N. J. Eq. 373, 88 Atl. 955 (1913).

[3] Chicago - Virden Coal Co. v. Wilson, 67 Ill. App. 444 (1896); United Verde Extension Mining Co. v. Ralston, 296 Pac. 262 (Ariz. 1931); Czarneski v. Bolen-Darnell Coal Co., 91 Ark. 58, 120 S. W. 376 (1909).

[4] Ebur v. Alloy Metal Wire Co., 304 Pa. 177, 155 Atl. 280 (1931); Alexander v. Wilkes-Barre Anthracite Coal Co., 254 Pa. 1, 98 Atl. 794 (1916).

[5] Madison v. Ducktown Sulphur, Copper & Iron Works, 113 Tenn. 331, 83 S. W. 658 (1904).

[6] Bartlett v. Grasselli Chemical Co., 92 W. Va. 445, 115 S. E. 451 (1922).

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ages.[7] It appears from the language of the opinion that the court clearly means to confine the rule of this case to the situation where the defendant has been negligent, for they say, "without deciding whether the defendant would be liable if it had exercised due care in disposing of the mine refuse we are of the opinion that it did not do so." By this does the court mean to say that it is negligence to have a gob pile at all? As appears in the record and briefs, coal mines usually dispose of their refuse by making a gob pile, and all gob piles contain a certain amount of unmarketable coal,[8] along with the slate, bone coal and other impurities.[9] It is submitted that the court in effect took judicial notice of the fact that an ordinary gob pile is not highly inflammable because the facts show "that the dump had existed since 1922 (5 years or longer, but it did not become ignited until a few months after the defendant began depositing the bug dust." It is further submitted that it is the unusual rather than the usual situation for operators to leave the machine cuttings (bug dust) in the mine, as in this case, since the statute prohibits the same.[10] The ruling of the court, therefore, should be confined to the facts, namely, where the machine cuttings were allowed to accumulate in the mine and then were dumped all at one time on the gob pile. If this suggestion is valid the decision is not so likely to place a heavy burden on the coal industry since separate disposition of the machine cuttings that had been allowed so to accumulate could be made without great expense. But if the coal operators must separate *all* of the bug dust, machine cuttings and other unmarketable coal from the refuse and make separate disposition of them, the cost would be so prohibitive that the coal industry of the state would be badly penalized.

—CHARLES H. HADEN.

[7] Snyder v. Philadelphia Co., 54 W. Va. 149, 46 S. E. 366 (1903); McGregor v. Camden, 47 W. Va. 193, 34 S. E. 936 (1899); Powell v. Bentley & Gerwig Furniture Co., 34 W. Va. 804, 12 S. E. 1085 (1891); Chambers v. Cramer, 49 W. Va. 395, 38 S. E. 691, 54 L. R. A. 545 (1901).

[8] Definition of "gob" is "any pile of loose waste in the mine, of coal and other minerals that are not marketable." Glossary of Mining and Mineral Industry Dept. of Interior (Dept. of Mines).

[9] Record of Rinehart v. Stanley Coal Co., *supra* n. 1, p. 166.

[10] W. VA. REV. CODE (1931) c. 22, art. 2, § 11: "In all mines, accumulations of fine, dry coal dust shall, as far as practicable, be removed from the mine, and all dry and dusty operating sections kept thoroughly watered down or rock dusted or dust allayed by such other methods as may be approved by the state department of mines."