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8,1918

In the Privy Council.

No. 46 of 1916.

UNIVERSITY OF LONDON
W.C.1.
26 JAN 1932
INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL

FROM THE SUPREME COURT OF TRINIDAD AND

TOBAGO

BETWEEN—CHARLES FOURIER STOLLMEYER, JAMES
ARTHUR REX STOLLMEYER and
RANDOLPH RUST (Plaintiffs)

APPELLANTS

63316

AND

THE TRINIDAD LAKE PETROLEUM
COMPANY LIMITED and THE NEW
TRINIDAD LAKE ASPHALT COMPANY
LIMITED (Defendants)

RESPONDENTS.

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CASE OF THE APPELLANTS.

RECORD

1. This is an Appeal from a Judgment of the Supreme Court of Trinidad and Tobago (Russell, J.; Blackwood-Wright, J., dissenting) dated the 25th January 1916 dismissing an Appeal from a Judgment of Lucie Smith, C.J. dated the 17th February 1915 in an action brought by the Appellants against the Respondents whereby it was ordered that Judgment be entered for the Respondents with costs.

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2. The action was brought by the Appellants, as owners and occupiers of certain lands called Merrimac situated at the mouth of the Vessigny River, in the Island of Trinidad, for (1) obstructing and stopping the flow of the said river and of one of its main feeders known as the Tobago Ravine by the erection of dams; (2) for abstracting and using large quantities of water from the said river and ravine for non-riparian purposes, in particular for the purpose of supplying or selling the same to the Petroleum Development Company, Limited, for working oil lands in its occupation known as Morne L'Enfer situate at a considerable distance from the river, and for the purpose of supplying a certain plantation called Brighton also situate at a considerable distance from the river; and (3) as against the Respondents the Trinidad Lake Petroleum Company for polluting the water of the said river by discharging therein oil and other noxious matter before it reaches the Appellants' lands. The Appellants claimed (1) damages; (2) an injunction to restrain both Respondents, their servants, agents and workmen (A) from damming up the waters of the said Vessigny River or its tributaries or feeders, so as to stop or interrupt the natural flow of their waters through and along the lands of the Appellants and from erecting or constructing any dams, erections or works in the bed of the said river or its tributaries or feeders

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so as to stop or interrupt or otherwise obstruct the natural flow of their waters ; (B) from taking from the said river or the ravines and streams which feed the same any water for the purposes of supplying the said plantation Brighton and the said Morne L'Enfer lands or any lands through or along which the said river and its tributaries or feeders do not flow or for the purpose of selling to the said Petroleum Development Company for use on the Morne L'Enfer lands or at all ; (3) an injunction ordering both Respondents to remove forthwith all dams, erections and works in the bed of the said Vessigny River or its tributaries or feeders placed there by them ; (4) an injunction restraining the Respondents the Trinidad Lake Petroleum Company 10 from discharging into the said river oil and other noxious matter so as to pollute the waters thereof or render them unwholesome and unfit for use to the injury of the Appellants. The pleadings are printed in the Record.

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3. The Appellants' claim for damages is for nominal damages only and the substantial question arising on this appeal is whether they are entitled to the injunctions claimed.

4. The evidence given on the trial of the action before the Chief Justice is printed in the Record. The material facts about which there is no serious dispute may be summarised as follows :—

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5. The Appellants are executors and trustees of the Will of the late 20 Conrad Frederick Stollmeyer, and as such are the owners and occupiers of Merrimac, an estate consisting of about 100 acres, through which the Vessigny River flows to the sea. The Respondents, who, with the Petroleum Development Company, Limited and certain other companies, are a combination working together under the management and control of the General Asphalt Company, are together the owners of all the lands other than Merrimac through which the Vessigny River flows. The New Trinidad Lake Asphalt Company also own the plantation Brighton, which is more than a mile and a half distant from the Vessigny river. The course of the river and the lands of the Appellants and Respondents are shown on a plan compiled by G. A. McCready, 30 a witness for the Respondents.

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6. The Vessigny River is a well-known river with a well-defined channel about four miles long, and is mentioned in de Verteuil's geographical history of Trinidad. A tributary of the Vessigny River, called the Tobago Ravine, also flows in a clearly defined channel. The Vessigny River is directly dependent on the rainfall, there being no known springs, except near the head of the Tobago Ravine, where there are some small springs which flow to the Tobago Ravine. The dry season commences in January, and rain is supposed to commence in July. The extreme dry season is approximately 100 days. The river is tidal for a length of 1,500 to 2,000 feet, according to one of the 40 Respondents' witnesses, and about 1,200 feet according to Appellants' witness Cornillac. At low tide the river flows through the beach in a channel made in the sand. In 1911 it was full of clear river water at low tide.

7. In 1912 the Respondents erected a dam across the main course of the

- Vessigny River about midway between its source and its mouth. The dam is a wall of earthwork erected in the bed of the river and extending for 151 feet across its course, the wall being 90 feet thick at the base tapering to 16 feet at the top and 25 feet above the level of the river bed. On the top of the dam is a concrete conduit (called a floodway or spillway) 38 feet wide, 5 feet deep and 6 feet long for conducting the overflow water to the bottom of the bed of the river on the other side of the dam. The distance from the bed of the river to the floodway is 20 feet, and there is no other outlet to the water above the dam except the floodway. The effect of the dam, therefore, is wholly to keep back the flow of the waters of the river until the floodway is reached, and after the floodway is reached to keep back so much of the water as is equivalent to the quantity withdrawn from the reservoir and not returned to the river. The capacity of the reservoir is at least 25 million gallons. The Respondents have erected and maintain a similar dam across the course of the Tobago Ravine, entirely stopping the flow of water in the ravine. The capacity of the Tobago reservoir is from 4 to 5 million gallons. In the McCready plan the watersheds drained by Vessigny and Tobago reservoirs are coloured pink.
8. It was admitted by the Respondents' General Manager that the Respondents withdraw from the Vessigny reservoir an average of 120,000 gallons a day, 40,000 gallons of which are used for oil wells near the dam and 80,000 gallons for the works of the Petroleum Development Company; and also that the Respondents withdraw from the Tobago reservoir 60,000 gallons a day, which is taken to the works at Brighton. In cross-examination he admitted that the average consumption at Brighton was 120,000 gallons a day, and that the work at Brighton and at the Development and Vessigny oil fields was continuous. The water is conveyed to Brighton and to the Development Company's works in 4 inch pipes and none of it is returned to the river. Brighton is about $1\frac{1}{2}$ miles from the Tobago Reservoir and the works of the Development Company about $1\frac{3}{4}$ miles from the Vessigny reservoir.
9. The Respondents' witnesses admitted that considerable pollution of the river by oil was caused, not only by gushers but also by the working (i.e. pumping) of the oil wells near the Vessigny dam, and that there was leakage from sumps in which the oil from the wells was collected, which would find its way into the stream. The water used at the wells near the dam is also returned to the river very dirty with oil. This pollution goes right on to the sea, where there is an oily substance covering the whole breadth of the river and the effect of the pollution is to render the water unfit for any use whatever.
10. Merrimac estate has pitch on it and it is thought by the Appellants to be a good oil field, two of the best wells being from 200 to 300 feet from the estate. Water is absolutely necessary for working the asphalt and oil and also to attract labourers. Without water the estate is of no value whatever as a pitch and oil producing property, and there is no water supply apart from the Vessigny. As oil lands the Appellants value the estate at £250 an acre. The Trinidad Lake Petroleum Company's mining engineer expressed the opinion that it was not impossible from an engineering point of view to get a

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supply of fresh water for the estate, though it would be a very costly undertaking.

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11. The Chief Justice held that the Appellants as riparian owners had such rights as existed *jure naturae*, that is to say, the right to have the course of the stream along their land in the same state as it existed naturally, no riparian owner higher up the stream having the right to interrupt or disturb the stream to their prejudice, but thought that the dams erected by the Respondents did not affect the flow or quality of the water to any appreciable extent. As his reason for this view he said "Directly the reservoirs made by the defendants are filled up to the level of the spillway which would be in a very short time after the rains set in, the same amount of water that comes into the reservoir must flow over the spillway and down the watercourse . . ." thus overlooking the fact that both before and after the reservoir is filled up to the level of the spillway the Respondents admittedly withdraw an average of 120,000 gallons a day, of which 80,000 gallons a day is never returned. The learned Chief Justice was further of opinion that the injunction asked for could not be granted on the ground that possibly by some sort of work the Appellants might be able to keep out the sea and conserve the fresh water from the upper reaches—they were only entitled to what nature had given them. As to the pollution, he held that the Respondents had the right to work their wells, and if they did so in a proper manner without negligence, they were not responsible for the oil finding its way by gravitation to the watercourse and being washed down by the rains.

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12. On the appeal to the Full Court, Russell, J., said that he was inclined to agree with the Chief Justice with regard to the general merits of the case; but he based his opinion that the appeal ought to be dismissed principally on the view that the Vessigny River and its tributaries and feeders were not watercourses in respect of which riparian rights could exist. The learned Judge did not deal with the question of pollution at all. Wright, J. was of opinion that the river was a natural stream, that the abstraction of the water and the pollution were violations of the Appellants' riparian rights, and that the Judgment of the Chief Justice ought to be reversed and an injunction granted against the Respondents taking water out of the River for non-riparian purposes and to restrain them from artificially polluting the water with oil or other noxious substances. Wright, J., was also inclined to think that the Appellants were entitled to an injunction restraining the pollution on the additional ground that it constituted a nuisance.

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13. The Appellants humbly submit that they are entitled to the injunctions prayed for, for the following amongst other

REASONS.

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- (1) Because the Vessigny River and the Tobago Ravine are natural streams or watercourses.
- (2) Because the acts complained of are infringements of the Appellants' riparian rights.

- (3) Because the pollution complained of is a nuisance.
- (4) Because damages are not an adequate remedy.
- (5) Because it is impossible to assess the damages for the injuries once for all.
- (6) Because the acts complained of are continuing wrongs and the Respondents claim the right to continue them.
- (7) Because the Respondents may acquire a prescriptive right to continue the acts complained of if they are not restrained.

P. OGDEN LAWRENCE.
W. BOWSTEAD.

In the Privy Council.

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AND TOBAGO.

BETWEEN—

CHARLES FOURIER STOLLMEYER
and Others (Plaintiffs) ... *Appellants*

—v.—

TRINIDAD LAKE PETROLEUM
COMPAY LIMITED and Another
(Defendants) *Respondents.*

CASE OF THE APPELLANTS.

MAPLES, TEESDALE & CO.,
6, Frederick's Place,
Old Jewry, London,
Appellants' Solicitors.