[PRIVY COUNCIL.]

STOLLMEYER AND OTHERS . . . . . APPELLANTS; J. C.* 1918

AND

TRINIDAD LAKE PETROLEUM COMPANY, LIMITED, AND OTHERS . . . . . RESPONDENTS. *Feb.* 4.

ON APPEAL FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO.

Trinidad—Watercourse—Stream exclusively fed by Rainfall—Cessation of Flow in Dry Season—Riparian Rights—Petroleum Mining Industry—Sensible Diminution and Pollution—Absence of Damage—Declaration of Right—Time to abate Nuisance—Liberty to apply for Injunction subsequently.

A stream which flows in a permanent defined channel, although it is fed exclusively by rain water running off the surface of the land and ceases to flow during a considerable part of each year, is a watercourse; an owner of land upon its bank is consequently entitled to have the natural flow of the water without sensible diminution or increase (subject to the lawful rights of upper riparian owners) and without sensible alteration in its character or quality.

In applying the English law as to watercourses to the circumstances of a very different country, and particularly to a tract of land which is of great value as a petroleum area, and of little value in any other connection, regard must be had to those circumstances in moulding the remedy to be granted to a riparian owner, and in considering whether there has been a sensible diminution or pollution of the water; but the distinction between injuria and damnum is fundamental.

A stream of the above description flowed through lands the whole of which belonged to the respondents with the exception of a plot, situated at its mouth, which belonged to the appellants. The appellants' land was unsuitable for agriculture and was not used for any purpose. The respondents carried on upon their land the business of boring for oil, which was the sole industry of the locality. For the purpose of that business, and in order to supply water to other properties which were not riparian, the respondents diverted part of the water of the stream, and thereby sensibly diminished the flow of water past the appellants' land they also, without negligence, caused by their works a sensible

* *Present:* LORD PARKER OF WADDINGTON, LORD SUMNER, and LORD WRENBURY.

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pollution of the water by oil and salt. The appellants had suffered no pecuniary damage, and the Courts in Trinidad dismissed an action by them for damages and an injunction :—

Held, that the appellants' rights were being infringed, and that they were consequently entitled to relief; that under the circumstances of the case there should be declarations as to their rights, but that no injunction should issue until the respondents had had time to execute works which would enable them to conduct their operations differently; that it should be ordered accordingly that, the respondents undertaking to pay from time to time any pecuniary damage which the Court of first instance should find that the appellants had suffered, the appellants should have liberty to apply to that Court for an injunction after a period of two years.

APPEAL from a judgment of the Supreme Court of Trinidad and Tobago (January 25, 1916) affirming the judgment of the Chief Justice.

Under the circumstances stated in the judgment of their Lordships the appellants sued the respondents in the Supreme Court for damages for the wrongful diversion and pollution of a stream in Trinidad known as the Vessigny river, in which they claimed to have the rights of riparian owners; they also claimed an injunction in respect of the alleged diversion and pollution.

Lucie Smith C.J., the trial judge, dismissed the action. He held that the appellants had the rights of riparian owners in the water. He found that the appellants always had the same amount of water and that there was no material increase of salinity; that a small amount of oil found its way from the works into the river, but not from any negligence of the respondents; that the whole district was an oil district. He was of opinion that if the respondents carried on their business in a proper manner, as they did, they were not responsible for oil finding its way by gravitation into the water; and that there being no known method of controlling a "gusher" of oil, if an injunction were granted it would stop the whole oil industry in a district in which oil was the only industry.

Upon appeal to the Full Court the learned judges (Blackwood-Wright and Russell JJ.) differed; the judgment of the Chief Justice was consequently affirmed.

Blackwood-Wright J. was of opinion that although the abstraction of the water might be very slight, it constituted a violation of the

appellants' rights; also that as some pollution was admitted it was no answer in law that the respondents were working their property in a careful and proper manner. He considered that the appellants were entitled to an injunction. Russell J. agreed with the Chief Justice that the action failed. In his opinion the Vessigny was not in law a river or watercourse so as to render applicable the ordinary rules as to the rights of riparian owners inter se.

1917. Nov. 6, 9, 13, 16. *P. O. Lawrence, K.C.*, and *Bowstead*, for the appellants. The Vessigny flows in a defined channel and is therefore a watercourse the subject of the usual rights of its riparian owners: Angell on Watercourses, ch. 1, s. 4. The rights of riparian owners in a stream extend to that part in which the tide flows and reflows: *Lyon* v. *Fishmongers' Co.* (1); *North Shore Ry. Co.* v. *Pion* (2); Callis on Sewers, 1823, p. 95. The appellants are entitled to have the natural flow without sensible diminution or pollution: *Young & Co.* v. *Bankier Distillery Co.* (3); *Chasemore* v. *Richards.* (4) The evidence shows that the respondents diverted part of the stream, and that they polluted the water. It is no answer to say that the respondents were developing their property without negligence: *Pennington* v. *Brinsop Hall Coal Co.* (5); *Smith* v. *Kenrick* (6); *Baird* v. *Williamson.* (7) The respondents' acts did not constitute a reasonable exercise of their rights of user: *Swindon Waterworks Co.* v. *Wilts and Berks Canal Navigation Co.* (8) Nor is it any answer to say that the appellants suffered no damage. The appellants' legal rights are being infringed, and they are consequently entitled to an injunction: *Imperial Gas Light and Coke Co.* v. *Broadbent* (9); *Jones* v. *Llanrwst Urban Council.* (10) They should not be left to bring a succession of actions for damages.

Hogg, K.C., and *F. O. Robinson*, for the respondents. To constitute a watercourse there must be a bed, banks, and flow, though not necessarily an uninterrupted flow. Upon the evidence the flow of water in the Vessigny was not such as to make it a watercourse the subject of riparian rights. Surface water which intermittently flows

(1) (1876) 1 App. Cas. 662.
(2) (1889) 14 App. Cas. 612.
(3) [1893] A. C. 691.
(4) (1859) 7 H. L. C. 349, 381.
(5) (1877) 5 Ch. D. 769.
(6) (1849) 7 C. B. 515.
(7) (1863) 15 C. B. (N.S.) 376.
(8) (1875) L. R. 7 H. L. 697.
(9) (1859) 7 H. L. C. 600, 612.
(10) [1911] 1 Ch. 393, 402.

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through a ravine does not in law constitute a watercourse: Angell on Watercourses, ch. 1, ss. 4, 4 (*f*); *Bowlsby* v. *Speer* (1); *Hoyt* v. *City of Hudson* (2); there is no authority to the contrary. The physical and economic conditions of the locality in question differ materially from those to which the English decisions relate; the law as to watercourses as laid down in England must be adapted to those conditions: *Srinath Roy* v. *Dinabandhu Sen.* (3) If, however, the appellants have the rights of riparian owners, there has been no infringement of those rights. The evidence shows, and it was found below, that there was no sensible diminution of the flow past the appellants' land. The alleged pollution was of a slight character. The business of oil boring is a natural use by the respondents of their land; provided they carry on their works in a proper manner, which they do, they are not responsible if some oil finds its way into the water: *Wilson* v. *Waddell* (4); *West Cumberland Iron and Steel Co.* v. *Kenyon.* (5) The principle of those decisions applies to a case of pollution arising from a proper working of the oil. But even if the appellants had suffered a legal wrong an injunction was properly refused in the circumstances. It is not an unvarying practice for the Court to restrain by injunction an infringement of the rights of a riparian owner: *Ormerod* v. *Todmorden Mill Co.* (6); *Earl of Harrington* v. *Derby Corporation* (7); *English* v. *Metropolitan Water Board.* (8) So, too, a breach of covenant will not be restrained if the result will be to do much more injury to the defendant than benefit to the plaintiff: *Doherty* v. *Allman.* (9) Having regard to the very serious injury which an injunction would do to the respondents' business, the only local industry, and to the fact that the appellants are not using their land and have suffered no pecuniary damage, no injunction should be granted. The appellants' rights would be sufficiently protected by a declaration of their rights; thereon they could recover damages if hereafter they should suffer any.

Bowstead replied.

(1) (1865) 86 Amer. Decisions, 216.
(2) (1871) 9 Amer. Rep. 473.
(3) (1914) L. R. 41 Ind. Ap. 221, 243.
(4) (1876) 2 App. Cas. 95.
(5) (1879) 11 Ch. D. 782.
(6) (1883) 11 Q. B. D. 155, 162.
(7) [1905] 1 Ch. 205.
(8) [1907] 1 K. B. 588, 603.
(9) (1878) 3 App. Cas. 709, 721.

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1918. Feb. 4. The judgment of their Lordships was delivered by

LORD SUMNER. The river Vessigny is formed by the water collected in a number of steep gullies or ravines in a hilly scrub-clad district in Trinidad and empties into the Gulf of Paria. The whole area within the watershed belongs to the respondent company, except a part of a small estate of about 100 acres in all called Merrimac, which is situated on both banks of the river at its mouth, and belongs to the appellants. The whole region contains petroleum deposits at various depths below the surface, and it is this fact which makes the properties valuable. Merrimac may be susceptible of some kind of cultivation, but its value substantially depends on the prospect of working petroleum there in the future. The respondents have worked petroleum in their area extensively for some years past. Its surface is covered with low tropical jungle, and was of so little value that it remained unexplored until petroleum was prospected for. Throughout the region there are no water springs, and the supplies of water required for engines and boilers and for the personal use of workmen and otherwise must be obtained from the rain water, which either runs off the surface as it falls or is held up for a time in the surface soil by the dense tropical vegetation which grows there. The main river is described as being about four miles long. In the upper part of the basin the fall is steep. Near the sea the land is flat, so much so that although the tide only rises 2½ feet at neaps and 4 feet at springs, it runs up the river to a distance of 300 yards from the mouth. The whole frontage of Merrimac is on the tidal portion of the river. At the mouth the sand forms a natural bar. Whether at any state of the tide the bar dries altogether and cuts off the water within from the gulf without appears to be in dispute, but the river is at any rate shallower at the bar than at any other point along the frontage of Merrimac and at low water is no doubt very shallow indeed, while a little higher up the basin is several feet deep and at high tide is of considerable width.

A few years ago the respondents constructed two dams on their own ground—one on the upper part of the main channel of the Vessigny and the other on a lateral ravine called the Tobago ravine. During the wet season, which lasts about 200 days in the year, rain falls copiously and with violence to about 80 inches altogether. The greater part of it runs rapidly away, and even the portion which

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is retained by the scrub and other vegetation does not take long to exhaust. During the dry season of about 100 days, the streams are often dry altogether, after an intermediate period, when there is first a mere trickle and then only a chain of isolated pools. Evaporation in that climate is considerable.

As a plentiful and still more a uniform supply of water of some sort is required for the business of working these petroleum fields it was necessary for the respondents to make these reservoirs. They were most easily constructed by damming the bottom of a ravine at a point where a dam would control a considerable catchment area. In the result the two reservoirs are capable of holding about 25,000,000 and 5,000,000 gallons respectively. One of them impounds the water from 545 acres out of 1780 acres, the entire area of the basin. When the reservoirs are full the surplus water escapes by a spillway provided for the purpose on the top of each dam, which can be regulated as desired. The respondents or their subsidiary companies now work numerous oil wells both within the Vessigny basin and in other areas, situated at a distance and naturally waterless. For these purposes they (*a*) pump water away from the Vessigny basin to the other properties; (*b*) use water from the reservoirs for the purpose of operations on the riparian properties within the basin; and (*c*) return a portion of this last-mentioned water into the Vessigny river, impregnated with oil as the result of its use. It is of these things that the appellants complained in this action, alleging that as lower riparian proprietors their rights in the water of the Vessigny river were injuriously affected by the acts of the respondents in damming the watercourse and interfering with the natural flow of the water, in abstracting water for purposes and properties not within their rights as upper riparian proprietors, and by polluting the water generally in working their petroleum properties.

The respondents have argued that the Vessigny river is not such a river or natural watercourse that its lower riparian proprietors can complain of anything they may do in dealing with such water as falls on their own lands. Here the decision of the Chief Justice was against them, and their Lordships see no reason to question that decision, nor is this the substantial point in the present case. Certain it is that the Vessigny river and its network of ravines

constitute a natural system of permanent and defined courses for water. Sometimes there is no water in these watercourses, and sometimes what there is does not course, nor are they ever fed by springs; but these circumstances are not critical. A river may be fed by the rains directly, without any intermediate collection of the water in the bowels of the earth, and still be a river, and a river which naturally runs during a good part of the year does not cease to be a river merely because at times it is accustomed to become dry. When the general legal tests, which decide the question whether a watercourse is such that the water in it is the subject of riparian rights, have been applied correctly, as they were here, to the particular features of the watercourse in question, the conclusion is one of fact not lightly to be interfered with, and their Lordships accept it.

The learned trial judge, Lucie Smith C.J., finds: (1.) "I do not think the rights of the plaintiffs have in any material way been affected by the defendants' works. They always have the same amount of water. There may or may not be a slight difference as to the amount of salt in the water, but not in such a material way as, in my opinion, is sufficient to grant an injunction." (2.) "Most of the oil found its way to the watercourse from a gusher which it is impossible to control; a certain amount comes from the rain washing the ground by the wells and from droppings from oil pipes. It is admitted that the defendants carry on their industry in the most approved manner, and I believe that a small amount of oil must find its way from the works by drainage to the watercourse, but it is not owing to any negligence of the defendants that it does so." Of the alleged pollution of the water, which is returned to the stream after being abstracted and used on the defendants' riparian premises, he says nothing. In the course of the proceedings he had visited and viewed the locus in quo.

"The law relating to the rights of riparian proprietors," said Lord Macnaghten in *Young & Co.* v. *Bankier Distillery Co.* (1), "is well settled. A riparian proprietor is entitled to have the water of the stream, on the banks of which his property lies, flow down as it has been accustomed to flow down to his property, subject to the ordinary use of the flowing water by upper proprietors,

(1) [1893] A. C. 691, 698.

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and to such further use, if any, on their part in connection with their property as may be reasonable under the circumstances. Every riparian proprietor is thus entitled to the water of his stream, in its natural flow, without sensible diminution or increase and without sensible alteration in its character or quality. Any invasion of this right causing actual damage or calculated to form a claim which may ripen into an adverse right entitles the party injured to the intervention of the Court." Under the circumstances of this case it is difficult to suppose that, after the respondents had constructed their dams and had begun to use them, the Vessigny still came down to Merrimac without sensible diminution at least of its flow, and hence the use by the trial judge of the adjective "material" instead of the adjective "sensible" seems significant. Russell J., the member of the Court of Appeal who upheld the judgment of Lucie Smith C.J., seems to have understood it in this sense, for he observes: "With regard to the general merits of the case, I am inclined to agree with the Chief Justice. A degree or two of difference in the degree of salinity in the water flowing past the plaintiffs' mangrove swamp at low tide seems to me a matter which is practically negligible. It is not now, and it is practically inconceivable that it ever should be, a sensible injury. *Kensit* v. *Great Eastern Ry. Co.* (1) seems to me to some extent an analogous case. It is true that there a comparatively small quantity of water was taken, and that practically all was returned undeteriorated in quality, whereas here a very large body of water is taken, and not returned. That makes the present case a much more difficult one. But the principle there in effect laid down applies, viz., that a man will not be allowed to invoke the law simply to injure his neighbour, where the infraction of rule of which he complains really does not concern him, being of such a nature that he cannot be injured thereby." It is the fact that at present the plaintiffs' land at Merrimac is worth nothing as agricultural land, though it is hoped that, if some one were willing to buy the property in spite of its insignificant size, and then were lucky enough to find oil by boring within its borders, a considerable sum might be paid for it and be money well laid out. If, as seems possible, these learned judges were impressed with the character of the plaintiffs' cause of

(1) (1884) 27 Ch. D. 122.

action as a barren assertion of legal right, crippling the only local industry without affecting their own pecuniary position, the use of the word "material" and the contrast of a "sensible injury" with "the infraction of a rule which really does not concern him" would be at once accounted for.

From the undisputed facts the following conclusions may be arrived at: (1.) While the reservoirs are filling, the amount of fresh water flowing below must be sensibly diminished, and it is not shown that, in the comparatively short distance between them and Merrimac, either evaporation or absorption by the vegetation and the surface soil would have had the same effect in any case. When the reservoirs are full, and the spillways are passing any further water which enters the reservoirs, the flow of the stream below, which is thus restored, takes place nevertheless at a different time from that at which it would have taken place if there had been no dams to interfere with it. (2.) The quantity abstracted every day and never returned, but sent to other properties, and, indeed, sold, is in itself sensible, for it is measured by tens of thousands of gallons. In comparison with the total volume of water which feeds the Vessigny river it might conceivably be so inconsiderable as to be called colloquially "insensible." No doubt to the volume falling from the skies must be added the volume coming in from the gulf to feed the lower Vessigny; but that is confined to the quantity, which will enter over a bar, that nearly dries at low tide if it does not actually do so, and spans a river of small width. When all these allowances are made, the quantity which the respondents convey away altogether can hardly be said to cause no sensible diminution. (3.) During many hours out of every twenty-four the influx of the sea keeps a considerable volume of water in the channel of the Vessigny in front of Merrimac, and would do so whether the river water was coming down to mingle with it or not. Let it be assumed that during these hours the presence of a greater or less volume of fresh water is material only to salinity, though it does not appear that the wide river channel in this neighbourhood could not well accommodate the increase caused by the entrance of greater quantities of fresh water. Still it seems clear that, at low water and for some substantial period before and after the turn of the tide, the basin opposite Merrimac can hold

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only its minimum volume of sea water, and that an abundant flow of river water, or even such an increase as would occur if the respondents abstracted no water above, might well produce a sensible, and probably a substantial, rise in the water level at that time and in that place. (4.) It may be that at all states of the tide, and in all stages of the river water, the salinity of the water opposite Merrimac is so high that the water is useless for domestic purposes, and also for boiler purposes, unless it is subjected to some special treatment, or unless at the risk of deteriorating the boiler. Still it cannot be said, except as a mere speculation, that the expenditure of money or the advance of scientific knowledge might not within a reasonable time make it possible to derive benefit from even this salt water for both purposes. The witnesses made various suggestions on the subject. Whatever merit those suggestions have commercially, they at any rate point to directions in which it is not impossible that the appellants might seek and find relief from the natural disadvantage of the brackish water, which adjoins their banks.

In view of these considerations, their Lordships think that it is impossible to hold that what the respondents admittedly do occasions no sensible diminution in that enjoyment of the stream, to which the possession of Merrimac entitles the appellants if and when they develop their property. There can be no doubt that if the respondents have caused such sensible diminution and this violated the appellants' rights, they cannot excuse or defend their wrong by showing how disproportionate is the loss which they will suffer by being restrained to any loss which the appellants have suffered or are likely to suffer by their wrongful acts, or by dwelling on the general importance of the enterprises, which, if they cannot obtain a supply of water, must promptly come to an end. These considerations may be relevant to the form of the remedy, especially to the time and opportunities which should be given them for finding some way out of their difficulty, but they cannot operate to deprive the appellants of their right to have their wrong redressed, if wrong has been done them.

In the similar case of *McCartney* v. *Londonderry and Lough Swilly Ry. Co.* (1) the House of Lords made a declaration which

(1) [1904] A. C. 301.

their Lordships propose to follow. The declaration will be that the respondents are not entitled to use the water of the Vessigny or its tributaries for the purpose of supplying it or selling it to undertakings not carried on upon their riparian properties. The appellants do not ask for the removal of the dams, saying, as indeed is plain, that they will be well content with regulation of the overflow, so as to secure to them an adequate and constant body of water, and this the respondents will be able to ensure.

There remains the question of pollution. It takes two forms: Firstly, it is alleged that the water returned to the Vessigny after the respondents have used it on their riparian property is polluted with oil. The quantity of this water, as has been said, is considerable. Secondly, it is alleged that in the course of boring for and pumping oil on their own property the respondents spill oil on the surface, and thus the ordinary drainage of surface water during the rains into the Vessigny river and its ravines comes to be drainage of polluted water, which affects the lower course of the river. As to this the trial judge appears to be of opinion that most of this pollution is due to a "gusher which was struck by the respondents in the ordinary course of boring, and could not by any known means have been controlled." It seems fairly clear that gushers are uncontrollable at first, and for a time run to waste, and that in their own interest the respondents would stop this waste as soon as possible; but it is by no means clear that there is any evidence of any such gusher flowing at the time in question. The rest the trial judge seems to trace to drainage of oil from the respondents' works. There is evidence that in this petroliferous region there is, apart from artificial borings, some natural escape of oil, and a modicum of oil on the river makes an appearance and perhaps a reality of extensive pollution, but the ground on which the learned trial judge and Russell J., who agreed with him on appeal, decide to proceed is that this region is useless except for winning oil, but for that purpose is valuable and a subject of public interest, that gushers may be struck at any moment and cannot be avoided, and that the respondents' operations are carefully conducted. Hence, it is concluded, there being no negligence proved against them, an injunction would stop their industry altogether, and, as the appellants' injury,

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if any, is accompanied by insignificant damage, they cannot be allowed to complain so as to interfere with the respondents' enterprise. Alike on the evidence and on the judgments, it must be confessed that in this respect matters are left in an unsatisfactory position.

If the Vessigny river is naturally polluted with escapes of oil and any additional pollution due to the respondents' workings is either insensible or so slight that the maxim de minimis non curat lex can apply to it, the appellants fail. If, again, the pollution, such as it is, arises simply because the rain water falls on an oily surface and, running over it till it reaches the defined channel or watercourse, collects there and flows away as oily water, the appellants would again fail. The respondents are not bound to abstain from a normal use of their own ground merely in order that it may remain as clean a catchment area for the rainfall as it was in its virgin state. In the course of the proceedings the respondents abandoned any claim to rely on the natural escape of oil, independently of artificial working, as the explanation of the appellants' grievances, and their engineer in his evidence admitted that there was considerable pollution by the working of the oil wells. On the other hand, Mr. Charles Stollmeyer admitted in cross-examination that when it rains the water is "pea-soupy," and said "up where dam is it is drinkable, not down where I am—never has been." The oil is not suggested to make the water unsuitable for boiler purposes, but, although the water is naturally undrinkable, it may be polluted for other domestic purposes by reason of the oil. Their Lordships think that it must be taken that the pollution from oil is not such as, in an ordinary region, an upper riparian proprietor would be entitled to inflict upon a lower one, except by prescription.

In their case the respondents actually put their contention thus: "The district is an oil district, and the respondents' business of oil mining and boring is a natural use of their lands, and they are entitled to carry on their business, provided they do so in a usual and proper manner, notwithstanding that as a result thereof some oil mingles with the rain water, which at times flows along the ravine known as the Vessigny river."

Their Lordships are prepared to recognize that in applying English law, which is the law governing this case, to the circum-

stances of a very different country and particularly to a tract of land which has great value as a petroleum area and little in any other connection, regard must be had to such special circumstances alike in moulding the remedy to be granted and in measuring the amount of change which might take place without its being necessary to hold that the lower riparian rights were sensibly affected by the upper riparian operations. They think, however, that the difference between injuria and damnum is in this connection fundamental. (1) It would not be an application of English law to Trinidad, but an abandonment of it, to hold that an invasion of the appellants' rights must go without remedy, unless it is accompanied by present and substantial damage. Still less can it be called an application of the maxim sic utere tuo to Trinidad to say that while in England a landed proprietor must not discharge his own filth on to his neighbour's land at all he may do so in Trinidad, if only he is careful about it and does it for his own benefit. They are accordingly of opinion that, in respect of the claim for pollution by oil, the appellants are entitled to a declaration similar to that in respect of abstraction of water, namely, that the respondents are not entitled to allow oil from their workings to flow into the river Vessigny or its tributaries so as to cause pollution to the water of the river flowing through a part of the appellants' lower riparian property called Merrimac.

Their Lordships are, however, of opinion that no injunction should go forthwith. The declarations will safeguard the appellants' rights, and no pecuniary harm worth mentioning is being done at present. The respondents, by their counsel, have given an undertaking to pay from time to time any damage actually found by the Court of first instance to have been suffered by the lower riparian property, and, in their Lordships' opinion, they ought to have a reasonable and ample time within which to find some means of securing themselves in their operations. They may be able to intercept the water required before it has reached the Vessigny, so as to become the subject of rights in the appellants at all. They may be able to intercept the oil, which they set free, before it reaches the river. If so, time will be required for the necessary works. It will be sufficient to give to the appellants liberty to apply for

(1) See, further, the judgment of their Lordships in *Stollmeyer* v. *Petroleum Development Co.*, immediately following.

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injunctions to the Court of first instance after a period of two years. Of course, the respondents must pay the costs here and below. Their Lordships will humbly advise His Majesty accordingly.

Solicitors for appellants : *Maples, Teesdale & Co.*
Solicitors for respondents : *Ashurst, Morris, Crisp & Co.*

NOTE.

STOLLMEYER *v.* PETROLEUM DEVELOPMENT COMPANY, LIMITED.

APPEAL from a judgment of the Supreme Court of Trinidad and Tobago (January 4, 1916) affirming the judgment of Russell J.

The respondents and the appellant were respectively upper and lower riparian owners upon a stream known as the Vance river in Trinidad. They carried on upon their respective lands the business of boring for oil. The appellant sued for an injunction to restrain the respondents from polluting the stream with oil and salt water, and for damages.

Russell J., the trial judge, found that the respondents had polluted the water with both oil and salt water ; he awarded them 50*l.* damages, but refused to grant an injunction.

The appellant appealed to the Full Court against the refusal to grant an injunction. Lucie Smith C.J. agreed with that refusal. Blackwood-Wright J. was of opinion that the respondents should be restrained from pumping salt water so as to flow into the stream. The learned judges thus differing, the judgment was affirmed.

1917. Nov. 2, 5, 6, 16. *P. O. Lawrence, K.C.*, and *Bowstead*, for the appellant.

Hogg, K.C., and *F. O. Robinson*, for the respondents, referred to the cases cited in the above reported appeal as to the right to an injunction, and contended that in the circumstances of the case no injunction should be granted.

1918. Feb. 4. The judgment of their Lordships (Lord Parker of Waddington, Lord Sumner, and Lord Wrenbury) was delivered by

LORD SUMNER. In this case a lower riparian proprietor's rights in the unpolluted flow of water in a watercourse have been violated by an upper riparian proprietor in the course of working the upper lands, and will continue to be so violated unless the latter takes steps to stop the nuisance, which he contends are commercially impracticable. The question is whether the injured party must rest contented with a judgment for accrued damages and the right to sue for further damages from time to time, or is forthwith entitled to an injunction in support of his right. The Courts below (Blackwood-Wright J. dissenting) have held the former.