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7, 1918

In the Privy Council.

No. 47 of 1916.

ON APPEAL

FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO.

UNIVERSITY OF LONDON
W.C.1.
26 JAN 1952
INSTITUTE OF ADVANCED
LEGAL STUDIES

63319

BETWEEN—CHARLES CONRAD STOLLMMEYER (Plaintiff) APPELLANT

AND

THE PETROLEUM DEVELOPMENT
COMPANY LIMITED (Defendants) RESPONDENTS.

CASE OF THE APPELLANT.

RECORD

10 1. This is an appeal from a judgment of the Supreme Court of Trinidad and Tobago (Lucie Smith, C. J. ; Blackwood-Wright, J. dissenting) dated the 4th January, 1916, dismissing an appeal from so much of a judgment of Russell, J., dated the 13th May 1915, as dismissed the claim of the Appellant for an injunction in the terms of paragraph 2 (b) of the prayer for relief in the Appellant's Statement of Claim. p. 130 p. 124

20 2. The action was brought by the Appellant, as the owner and occupier of certain lands situated at the mouth of the Vance River in the Island of Trinidad for obstructing and stopping the flow of water in certain ravines and streams feeding the said river and for abstracting water from the said ravines and streams and for polluting the said ravines and streams by discharging therein large quantities of oil and salt water and other noxious matter. The Appellant claimed damages and an injunction to restrain the Respondents, their servants, agents and workmen (inter alia) "(B) from " discharging from the Respondents' lands into the said ravines and streams " salt water and 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 " Appellant." The Pleadings are printed in the Record. p. 4, l. 36 pp. 3-5

30 3. The action was tried before Mr. Justice Russell on various days in March and April, 1914, and by the said Judgment of the 13th May, 1915, it was ordered that Judgment be entered for the Appellant for £50 damages and costs, with liberty to the Appellant to bring further actions against the Respondents for further damages if and when they were sustained, or when the condition of matters had developed if the circumstances justified it, for an injunction. The appeal of the Appellant to the Full Court was confined to so much of the Judgment as dismissed his claim for an injunction in the terms a p. 124 p. 125

above set out, and the only question raised by this appeal is whether the Appellant is entitled to an injunction in respect of the pollution complained of.

4. The more material facts, about which there is no serious dispute, may be summarised as follows:—

p. 7, l. 36

p. 8, l. 8

p. 8, l. 11

Book of Plans No. 1
RECORD

p. 65, l. 4

5. The lands comprising the Perseverance estate, of which the Appellant is the owner and occupier and on which he carries on business as an oil refiner, are about 983 acres in extent, and are situated at the mouth of the Vance River, which flows through the said lands to the sea. The Respondents are the occupiers of lands through which a tributary (called the "main ravine") and other smaller feeders of the Vance River flow. The plan marked C.C.S.2 10 shows the river and the lands occupied by the Appellant and the Respondents respectively, the watershed area of the Respondents, consisting of 143 acres, being enclosed by blue lines.

p. 8, ll. 12, 16, 30

p. 8, ll. 19, 23

p. 17, l. 31

p. 8, l. 38

p. 38, l. 16

p. 34, ll. 14-19

p. 36, ll. 10-12

p. 62, ll. 20, 30

p. 80, l. 39

p. 58, l. 35

p. 86, l. 10

p. 91, l. 46

p. 92, l. 1

p. 92, l. 1

6. The Vance River has a well-marked defined channel, the width of the bed being from 10 to 50 feet, and the banks in some places being 40 feet high. It flows continuously throughout the rainy season, which usually lasts from the latter part of May until the middle of January and it is tidal for a distance of less than a mile from the sea. The main ravine running through the Respondents' land has also a defined channel for about one-third 20 of a mile up by the end of the Respondents' oil field. It is about 2 feet wide at the source and about 15 feet at its confluence with the Vance River. The main ravine is fed by other tributaries, all having well-defined courses and all of them have a continuous flow in the rainy season, their sources of supply being surface water from rainfall. The Respondents' witness, Mr. Macready, whose evidence on this point was accepted by Mr. Justice Russell, said that there were no springs feeding the river at all above tide water, and none feeding any tributaries.

p. 8, l. 2

p. 83, l. 6

p. 9, l. 14

p. 11, l. 13

p. 38, l. 20

p. 44, l. 24

p. 9, l. 42

p. 9, l. 45

p. 10, l. 21

p. 39, l. 41

p. 10, l. 39

p. 40, l. 45

p. 44, l. 33

p. 59, ll. 27, 28

p. 60, l. 18

7. The Appellant started oil operations—boring wells for oil on his estate in 1910, and was successful. The Respondents started mining operations in the latter part of 1913. Before they commenced work the water 30 in the main ravine was good drinking water and the water in the Vance River was used for drinking washing and household purposes. In May, 1914, the Appellant had trouble with his refinery boiler, which he discovered was due to the fact that the water in the Vance River, which he used for the boiler, was very salt and corroded the mountings and joints of the boiler. The trouble was traced to the Respondents' oil fields, it being found that the salt got into the Vance River from their wells through the main ravine. Besides the pollution by salt, there was a continuous pollution by oil in varying quantities, which came down the Vance River every day. The Respondents' witness, Mr. Fletcher, admitted that the main ravine, where it joined the Vance River, 40 was polluted by a considerable quantity of oil.

p. 21, ll. 2-4, 9-11

8. It was proved that the pollution, both by salt and by oil was caused to a great extent by the pumping of the Respondents' wells. One of Appellant's witnesses saw oil and muddy water pumped from their wells into a dam, from

- which the water found its way into the Vance River, and two other witnesses saw water, oil, oil sand and mud discharged from pumps along the line of the main ravine. They also saw a large oil storage tank flushed out and cleaned, and muddy water flowing out of the tank into the main ravine towards the Vance River. The Respondents' manager admitted that in some cases the Respondents brought water and oil to the surface, from whence it flowed into the main ravine. He also admitted that in the watershed area occupied by the Respondents the Respondents had 22 wells and 9 or 10 dams; that 17 or 18 wells were being pumped in that area, of which 8 or 9 originally gave salt water and 7 still gave salt water on the 24th March, 1915; and also that a great part of what was pumped up found its way to the Vance River.
9. The Respondents tried to prove that the pollution complained of was inevitable notwithstanding that they conducted their operations in the usual and proper manner. One witness, Mr. Fletcher said that their system of working and methods were the most up to date of any there are in the world, and another witness, Mr. Ibbett, that they were quite up to date in machinery and appliances. But Mr. Fletcher admitted that there were a good many systems which might prove successful in shutting off the salt water. He also said that the escape of oil could be controlled, though it was more expensive to prevent the loss of oil than the value of the quantity lost, and that salt water pumped up could be controlled though it was cheaper to let it flow into ravines. He saw one of the wells from which salt water and oil were being pumped up, and there would have been no difficulty in controlling the salt. The Respondents' manager, Mr. Fowler, admitted that the pollution might be prevented at considerable cost.
10. The Appellant complained to the Respondents of the pollution on the 21st May, 1914, and the Respondents replied on the 8th June, 1914, assuring him that all salt water had been shut off from the wells. On the 15th August, 1914, the Appellant complained that the injury still continued, and the Respondents replied on the 21st August, 1914, disclaiming any liability. The writ was issued on the 17th September, 1914, but the Respondents still continued the pollution. On the 4th and 5th February, 1915, four samples were taken, sample A from the Vance River about 100 yards above its confluence with the main ravine. Sample B from a ravine in the Appellant's land about a quarter of a mile from his dam and about 300 yards from the Vance River; sample C from the main ravine about 100 yards above its confluence with the Vance River; and sample D from the tank at the Appellant's refinery. These samples were analysed and the result of the analysis is given in Document No. 44. Samples A and B were normal river water. Sample C contained 845.7 parts per 100,000 of total soluble salts, the principal ingredient being sodium chloride. Sample D contained 575.4 parts of soluble solid matter, the largest ingredient being common salt 455.8. In D 529 parts of soluble solids had been added to water A, these solids being mostly common salt and sodium carbonate. They amounted to at least 52 lbs. per 1,000 gallons. Water D was very bad for a boiler because of the amount of soluble solids put in, and was not drinkable at all. Soap also was found in C and D, but none in A or B.

pp. 114-124
p. 116, l. 5
p. 118, l. 18

11. Mr. Justice Russell, whose judgment is printed in the Record, found that the Vance River had a substantial existence as a stream or watercourse, and that it was clear on the evidence that the Respondents had been polluting the stream both with oil and with salt water brought or coming up from their wells, with the result that the usefulness of the water of the stream for primary purposes had been destroyed or impaired and its fitness to supply the Appellant's boiler at his refinery had been impaired. The learned Judge refused an injunction to restrain the pollution mainly on the ground that the Appellant had polluted his own ravine with oil and would probably in the course of development "pollute the water, both with oil and salt, more and more." 10

p. 121, ll. 1-7
p. 121, l. 36

pp. 126-128
p. 127, ll. 1-5

12. On the appeal to the Full Court, Lucie Smith, C.J., thought that it was not without doubt whether the so-called Vance River "is a watercourse in respect of which riparian owners have certain legal rights," but that, as the questions of diversion and obstruction had been abandoned, it was immaterial whether the Vance River can legally be called a watercourse or not. He agreed that it was not a case for an injunction, and had great doubt whether the Respondents were liable at all. Blackwood-Wright, J., was of opinion that the Appellant was entitled to an injunction restraining the Respondents from bringing up salt water from below and letting it down on the Appellant's land or into the Vance River by artificial means (such as pumping) and that the judgment of Russell, J. should be varied accordingly. 20

pp. 129, 130

p. 12, l. 19
p. 19, l. 6
p. 131, l. 28

13. It is absolutely necessary for the working and development of the Appellant's estate that he should have unpolluted water. He claimed damages in the action merely as a matter of form, and if an injunction is not granted to restrain the pollution, future damage will accrue and the value of the estate will be seriously depreciated. He has a larger oil refinery plant than the one at present in use ready to be put up, but has refrained from putting it up owing to the continuance of the pollution.

p. 131, l. 24

14. The Appellant humbly submits that he is entitled to an injunction 30 in the terms of paragraph 2 (B) of the prayer for relief in the Statement of Claim for the following amongst other

REASONS.

- (1) Because the Vance River and Main Ravine are natural streams or watercourses.
- (2) Because the pollution complained of is an infringement of the Appellant's 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 injury 40 once for all.
- (6) Because the injury is a continuing one and the Respondents claim the right to continue the pollution.

- (7) Because the Respondents may acquire a prescriptive right to pollute the river if they are not restrained from polluting it.
- (8) Because the facts that the Appellant has himself polluted the river with oil and that he may in the future pollute it with salt are immaterial.

P. OGDEN LAWRENCE.
W. BOWSTEAD.

In the Privy Council.

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AND TOBAGO.

BETWEEN

CHARLES CONRAD STOLLMMEYER

Appellant

— v. —

PETROLEUM DEVELOPMENT

COMPANY LIMITED *Respondents.*

CASE OF THE APPELLANT.

MAPLES, TEESDALE & CO.,

6, Frederick's Place,

Old Jewry, London,

Appellant's Solicitors.