

PC
GN 9.9.2

7,1918

No. 47 of 1916.

In the Privy Council.

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

ON APPEAL

FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO

63318

BETWEEN CHARLES CONRAD STOLLMAYER (*Plaintiff*) - *Appellant*

AND

THE PETROLEUM DEVELOPMENT COMPANY
LIMITED (*Defendants*) - - - - - *Respondents.*

CASE FOR THE RESPONDENTS.

RECORD.

10 1. This is an Appeal from an Order dated the 4th of January 1916 of the p.130.
Supreme Court of Trinidad and Tobago dismissing an Appeal of the Appellant p. 124.
(*Plaintiff*) from a Judgment dated the 13th of May 1915 of Russell, J., in an
action tried in the said Supreme Court whereby it was ordered that Judgment be
entered for the Appellant for £50 with costs.

2. The question to be decided upon this Appeal shortly stated is whether the
Appellant is entitled to a perpetual injunction in respect of the alleged pollution by
the Respondents of certain waters in the Island of Trinidad.

3. The Appellant is the owner and occupier of certain lands called
Perseverance consisting of about 980 acres and situate in the Ward of La Brea
20 and Guappo in the Island of Trinidad. The Respondents are the occupiers of
about 7,000 acres of land in the said ward. The said lands of the Appellant and
Respondents are situate in a district in which the only substantial industry is that
of boring wells for and obtaining therefrom crude petroleum oil. The Appellant
and the Respondents are both engaged in the said oil industry.

4. The surface water from the rainfall on the Respondents' lands is carried
off by certain channels or ravines and the said water ultimately flows into a main
ravine known as the Vance River the course of which passes through the
Appellants' said lands.

5. The method by which the business of obtaining oil is carried on by the
30 Respondents and by other persons, including the Appellant, in the said district, is
either to pump the oil from the well into "sumps" or reservoirs which are erected p. 9, l. 36.
in the ravines for its reception, or to allow the oil to flow from the well into the
reservoir. The oil when it comes from the well is often largely mixed with water,
which is sometimes salt or brackish. The water is subsequently drawn off from

RECORD. the reservoirs and allowed to run down the ravines. This method of obtaining
 — and dealing with the oil is admittedly necessary for the reasonable working of the
 p. 14. oil industry in this district. The Respondents' machinery and other appliances
 are of the most modern description.

6. It is impossible to predict of any particular oil well in this district,
 whether it will or will not contain salt water, or at what depth, or in what
 p. 67. quantity. If the salt water is not pumped out of a well it rises by the force
 of gravitation and flows out. In some cases salt water bursts out in the form of a
 "gusher," spreading itself to a distance of 100 yards. This has occurred in the
 p. 66. case of four wells on the Respondents' land. There is no known method of 10
 dealing with the salt water in oil wells by which it can be prevented from
 escaping from the wells.

7. Salt water has been found in 10 out of the 23 wells worked on the
 Respondents' land. No salt water has up to the present time been found in the
 three wells worked on the Appellant's land, but the deepest of these three wells is
 only 460 feet, whereas salt water is more usually found in wells of a greater depth
 than that.

8. On the 17th of September 1914 the Appellant issued the writ in this
 p. 1. action. By his Statement of Claim he alleged that in May 1914 and thenceforth
 p. 3. the Respondents had rendered the waters of the Vance River unwholesome and 20
 unfit for domestic purposes and for the purposes of the Appellant's business as
 an oil refiner. The Appellant claimed (*inter alia*) an injunction to restrain the
 Respondents from discharging oil and salt water into the ravines &c. on the
 Respondents' lands so as to render the water thereof unwholesome and unfit for
 use to the injury of the Appellant, and the Appellant further claimed damages
 for pollution. The Statement of Claim alleged certain other matters of complaint
 against the Respondents and claimed relief in respect thereof, but the Appellant's
 claims in respect thereof were subsequently abandoned either at the trial of the
 action or in the Appellate Court and it therefore is unnecessary to refer to them
 further in this case. 30

9. The Respondents by their Defence alleged (*inter alia*) that they were
 p. 5. entitled to mine or bore mines or wells on their land and to win petroleum
 therefrom in the usual and proper manner and without default or negligence and
 that if any oil or salt water escaped into the said ravines the same was inevitable
 and due to the force of gravitation and the action of other natural forces
 independently and irrespectively of any acts of the Respondents; that prior to
 May 1914 the Appellant had himself discharged oil and salt water into the
 Vance River and had continued so to do.

10. The action was tried before Russell, J., on the 9th, 10th, 11th, 15th,
 18th, 23rd, 24th, 25th and 29th of March and 1st and 14th of April 1914. 40

11. It was not denied by the Respondents' witnesses that oil and salt water
 had escaped into the ravines from the Respondents' reservoirs, but it was stated
 that it was impossible to prevent this. It was also stated by the Respondents'
 p. 16. witnesses, and admitted by the Appellant that when a "gusher" of oil occurred the
 p. 11, l. 9. oil was uncontrollable and that it would spread to a distance of 100 yards. It was
 admitted by the Appellant that in May 1912 a gusher of oil was struck on his
 land and that in consequence of the bursting of a dam owing to heavy rain the

accumulated oil to an amount of 60,000 barrels flowed down the Appellant's ravine, saturating the banks thereof, into the Vance River. It was contended by the Respondents' witnesses that some of the pollution of the Vance River at the present time was due to this cause. There was also evidence that shortly before the hearing of the action, oil was escaping from the Appellant's land into the river. RECORD. — p. 90.

12. With regard to the salt water the evidence of the Respondents' witnesses was to the effect that the Respondents had made various efforts to deal with the salt water and the results of these efforts showed that it was commercially impossible to deal with the salt water otherwise than as the Respondents were doing and that even if the Respondents ceased to pump salt water from their wells there would still be a flow of salt water from the wells into the ravines, and that a well may at any time unexpectedly "gush" salt water; that if the Appellant further developed the working of his oil field, as he said he intended to do, it was inevitable that salt water would be found in some of his wells, in which case, the Appellant would not be able to prevent it from flowing into the Vance River. p. 13, l. 18, 19.

13. The evidence for the Appellant as to the damage sustained by him through the pollution of the Vance River was mainly directed to proving that a boiler at his refinery had been damaged by using in it salt water obtained from the river. The Respondents' witnesses stated that the damage to the boiler was not due to the presence of salt in the water but to lack of care on the part of the Appellant's workmen. 20

14. Russell, J., delivered his Judgment on the 13th of May 1915. He found as a fact on the evidence that the Respondents had polluted the Vance River both with oil and with salt water from their wells with the result that the usefulness of the river for primary purposes had been destroyed or impaired and its fitness to supply the Appellant's boiler had been impaired. He assessed the amount of the damage sustained by the Appellant at £50 and he gave Judgment for the Appellant for that sum with costs, with leave to bring further actions for further damages, if and when they should be sustained, or for an injunction if the circumstances should justify it. p. 118, l. 20. p. 124, l. 15. 30

15. Russell, J., refused to grant an injunction. He found as facts that the river was polluted with oil from the Appellant's oil field as well as from the Respondents' oil field, and that when the Appellant further developed his oil fields, as he admitted it was his intention to do, he would not be able to prevent an increase in the pollution of the river by the escape of both oil and salt water from his lands any more than the Respondents with a highly qualified staff and the most modern appliances had been able to prevent the escape of oil and salt water from their lands. The oil industry in the district in question was admittedly in its infancy and would be greatly extended in the near future, and in the opinion of the learned Judge the Court in exercising its discretion as to granting an injunction ought to consider not merely the present but the future, and that it would be most unsafe to grant a perpetual injunction on the assumption that the existing position of matters was permanent when in point of fact it was certain to change in so far as related to the Appellant's own workings. p. 122, l. 30. p. 119, l. 1. p. 121, l. 37. p. 124, l. 3. p. 119, l. 35. 40 p. 119, l. 1. p. 124, l. 2. p. 120, l. 11.

16. The Appellant appealed to the full Court from so much of the Judgment

RECORD. as dismissed the Appellant's claim to an injunction. The Appeal was heard by
 — Lucie Smith, C.J., and Blackwood-Wright, J., who differed; consequently the Appeal
 p. 130. was dismissed and the Judgment of Russell, J., was affirmed.

17. Lucie Smith, C.J., was of opinion that the Appeal should be dismissed.
 p. 126, l. 30. As regards the pollution of the river by oil he agreed with the findings of fact
 in the Court below. The Respondents had carried on their industry, which was
 p. 127, l. 19. practically the only industry carried on in the locality, in the ordinary course ;
 it was admittedly impossible to prevent the escape of oil from a "gusher" or
 p. 127, l. 40. from leakage ; there was leakage from the Appellant's own workings ; and the
 Appellant had suffered no damage from the leakage of oil. With regard to the 10
 pollution by salt water the Chief Justice held on the evidence that even if the
 Respondents did not pump up salt water it would in any event come to the surface
 and flow by natural gravitation into the river. The granting of an injunction
 would involve the cessation of all drilling operations, but the Respondents were
 p. 128, l. 18. entitled to obtain oil provided they worked with skill and in the ordinary manner.
 Even if an injunction were granted oil and salt water would still find their way
 p. 128, l. 23. by natural causes from the Respondents' lands into the river. The Chief Justice
 had great doubts whether the Respondents were even liable for damages, but he
 was not prepared to dissent from the finding of Russell, J.

18. Blackwood-Wright, J., did not express any dissent from the findings of fact 20
 by Russell, J., and Lucie Smith, C.J., but he was of opinion that, as the Respondents
 admittedly allowed some salt water to flow from their lands into the river, that in
 p. 129, l. 32. law constituted a nuisance ; and he was further of opinion that the Respondents
 could not for the purpose of enjoying their property to the full infringe the
 rights of the Appellant. He thought, therefore that the Appellant was entitled
 to an injunction to restrain the Respondents from bringing up water by artificial
 means and allowing it to flow on to the Appellant's land or into the river.

19. There were thus concurrent findings of fact by Lucie Smith, C.J., and
 Russell, J., dissent from which was not expressed by Blackwood-Wright, J., that 30
 the Appellant had himself contributed to the pollution of the river and that he
 would do so to a still greater extent when he further developed his business ; that
 the damage to the Appellant from the pollution was very trifling ; that the oil
 industry was the only substantial industry of the district ; that the Respondents
 carried on their business in a proper manner and without negligence ; and that,
 even if an injunction were granted, there would still be some pollution of the
 river due to natural causes beyond the control of the Respondents.

20. It is also to be observed that the injunction, to which Blackwood-
 Wright, J., thought that the Appellant was entitled, if granted, will not prevent
 the pollution of the river by oil or by some salt water.

21. The Respondents humbly submit that the Order appealed from is right 40
 and ought to be affirmed for the following, among other

REASONS:

- (1) Because on the concurrent findings of fact by Russell, J., and
 Lucie Smith, C.J., the said Judges were entitled in the exercise
 of their discretion to refuse to grant an injunction :

- (2) Because on the said findings of fact the said Judges in refusing to grant an injunction rightly exercised their discretion: RECORD. —
- (3) Because the reasons of Russell, J., and of Lucie Smith, C.J., for refusing to grant an injunction were right and the reasons of Blackwood-Wright, J., in support of granting an injunction were wrong:
- (4) Because the effect of granting an injunction will be to cause damage to the Respondents very much greater than any possible benefit which the Appellant can derive therefrom:
- (5) Because even if an injunction were granted there will still be some pollution of the river by oil and salt water:
- (6) Because the Order appealed from is right and ought to be affirmed.

10

JOHN SIMON.

F. O. ROBINSON.

In the Privy Council.

ON APPEAL

FROM

THE SUPREME COURT OF TRINIDAD AND
TOBAGO.

BETWEEN :

CHARLES CONRAD STOLLMAYER
(Plaintiff) - - - - - *Appellant*

AND

THE PETROLEUM DEVELOPMENT
COMPANY LIMITED *(Defendants) Respondents.*

Case for Respondents.

ASHURST, MORRIS, CRISP & CO.,
17, Throgmorton Avenue, E.C.,
Respondents' Solicitors.