

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO

UNIVERSITY OF LONDON
W.C.1.
26 JAN 1962
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN CHARLES FOURIER STOLLMEYER, JAMES
ARTHUR REX STOLLMEYER AND RANDOLPH
RUST (*Plaintiffs*) - - - - - *Appellants*

63315

AND

10 THE TRINIDAD LAKE PETROLEUM COMPANY
LIMITED AND THE NEW TRINIDAD LAKE
ASPHALT COMPANY LIMITED (*Defendants*) - *Respondents.*

CASE FOR THE RESPONDENTS.

RECORD.

1. This is an Appeal from an Order dated the 25th of January 1916 of the Supreme Court of Trinidad and Tobago dismissing an Appeal from a Judgment of the Chief Justice of the Island of Trinidad dated the 17th of February 1915 whereby it was ordered that Judgment be entered for the Respondents (*Defendants*) with costs. p. 73. p. 62.

2. The questions to be decided upon this Appeal shortly stated are (1) whether certain waters in the Island of Trinidad are a natural stream or watercourse and (2) whether the Appellants as riparian owners are entitled to an injunction and damages in respect of the alleged damming up, diversion and pollution of the said waters by the Respondents. 20

3. The Respondents are the owners of the freehold in about 4,000 acres of land forming one continuous area in the Ward of La Brea and Guapo in the Island of Trinidad and are also in possession as lessees or licensees of about 2,000 acres of Crown Land adjoining the said freeholds. The Respondents have for several years carried on upon all the said lands a large industrial, mining and manufacturing business in asphalt and petroleum oils. No other industry either commercial or agricultural is carried on in the district in which the said lands are situate. p. 20, l. 5. 30

4. The district comprising the Respondents' lands is of a very hilly character but is entirely destitute of springs of water. Between the hills are ravines which lead down to a deeper and larger ravine which in its turn leads to the sea and when rain falls the water runs down to the bottom of these ravines and so, by way of the main ravine, to the sea. Except during heavy tropical rains, and shortly after, p. 59, l. 24.

RECORD. — practically no water flows, and though the main ravine is called the "Vessigny River" no river in the ordinary sense exists. During the dry season, which lasts for about three months in each year, no rain falls; and at no time does either snow or spring water provide any source of flow.

p. 25, l. 18. 5. The Appellants are possessed of certain lands called Merrimac situate on either side of the mouth of the so-called "Vessigny River" and extending along the "river" for a distance of about 400 feet. The floor of the ravine called the "Vessigny River" where it passes through the Appellants' said lands is so low that the tide flows and reflows along it and it continues to be tidal for a distance of about 2,000 feet from the mouth. Consequently when the water passes along the "Vessigny River" through the Appellants' said lands it is brackish and for that reason is not used by the Appellants, and is incapable of user, for any domestic or commercial or manufacturing purpose. The Appellants' said lands comprise not more than 100 acres and are uninhabited. 10

p. 48. 6. In 1911 and 1912 the Respondents for the purposes of their said business constructed reservoirs in the "Vessigny River" and in a tributary ravine known as the Tobago Ravine, by means of dams. In these reservoirs the Respondents collect the rain water in flood time and during continuous rains, and use the water so collected for the purpose of carrying on and working their factories and machinery. 20

p. 49. 7. No complaint was made by the Appellants with regard to the existence and use of the Respondents' reservoirs and dams until the 9th of July 1914 on which date the Appellants by letter to the first-named Respondents alleged that the "Vessigny River" dam interfered with the Appellants' right to the natural flow of water over the Appellants' said lands—Merrimac. The said Respondents in reply by letter dated the 21st of July 1914 stated that they were most anxious to avoid any possibility of interference with any rights the Appellants might have, and the said Respondents in their said letter offered to undertake that no act of theirs by damming the "Vessigny River" or otherwise, should be construed to be a claim to prescriptive user as from the time when the alleged interference should have commenced. The Appellants did not accept this offer. 30

p. 1. 8. The writ in this action was issued on the 17th of September 1914. The Appellants by their Statement of Claim claimed damages for the wrongful diversion and obstruction of the waters of the "Vessigny River" and for the pollution of the said waters, and an injunction to restrain the Respondents (A) from damming up the waters of the said "river" or its tributaries or feeders so as to stop or interrupt the natural flow of their waters through and along the Appellants' lands, and (B) from taking any of the said water for the purposes of supplying any lands of the Respondents through which the "Vessigny River" and its tributaries do not flow. The Appellants further claimed an injunction to restrain the Respondents from discharging into the said "river" oil or other noxious matter so as to pollute the water thereof. 40

p. 9. 9. The action was tried by Lucie Smith, C.J., on the 18th, 20th, 21st, 25th, p. 20. 26th, 28th and 29th of January 1915. Evidence was given by witnesses called for p. 24. of the Appellants in support of the allegations in the Statement of Claim. On behalf p. 24, l. 42. and 5 hereof as to the nature and character of the "Vessigny River." Evidence

was also given on behalf of the Respondents that the construction of their dams and reservoirs had not interfered with the flow of water over the Appellants' lands to any appreciable extent and that the quantity of water taken by the Respondents from the "Vessigny River" for the purpose of their business was not more than 6 or 7 per cent. of the total fall of rain water on the watershed areas of the "Vessigny River" and the Tobago Ravine, of which quantity of water about one-half was subsequently returned to the "Vessigny River." RECORD. — p. 21, l. 21.

10 10. With regard to the alleged pollution of the "Vessigny River" the Respondents' witnesses gave evidence to the effect, and it was admitted by the Appellants' witness Charles Conrad Stollmeyer, that the Respondents' business is the natural use of the land and that they carry on their business in the most approved manner and with the best available machinery and appliances and that their staff and workmen are efficient. But it was stated by the Respondents' witnesses that in carrying on the business of boring for and gaining oil it is impossible to prevent entirely the escape of some of the oil into the "river" particularly in the case of "gushers" of oil which are uncontrollable and the spray of oil from which spreads for a distance of 100 yards. Further, owing to the force of gravitation and the action of other natural forces, some oil inevitably finds its way from the Respondents' lands into the "Vessigny River." As how-
20 ever the Appellants did not use the waters of the said "river" for any domestic or business purpose it was contended that the presence of oil in the water thereof had not caused the Appellants any damage. p. 11, l. 41. p. 21, l. 35.

11. Lucie Smith, C.J., on the 17th of February 1915 gave Judgment for the Respondents with costs. He was of opinion that the so-called "Vessigny River" and its tributary ravines were a natural drain through which the surface water from the rainfall on the Respondents' lands was carried off. He held that there was a large flow of water in the "river" after tropical rains but that the water was rapidly carried off and shortly after the cessation of the rains there was only a mere trickle in it; that the dams erected by the Respondents had not affected either the
30 flow or the quality of the water to any appreciable extent. With regard to the alleged pollution the Chief Justice found as a fact that a small amount of oil found its way into the "Vessigny River" from the Respondents' works, but not from any negligence in the carrying on of their works; that the whole district was an oil district and 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; that there was no known method of controlling a "gusher" of oil, and that if the injunction asked for were granted, it would stop the whole oil industry, in a district in which oil was the only industry. p. 59, l. 25. p. 60, l. 3. p. 60, l. 30. p. 61, l. 35. p. 60, l. 40.

12. From this Judgment the Appellants appealed to the full Court. The
40 Appeal was heard by Blackwood-Wright, J., and Russell, J., who differed. Consequently the Appeal was dismissed and the Judgment of the Chief Justice was affirmed. p. 63.

13. Blackwood-Wright, J., was of the opinion that the evidence showed that the "Vessigny River" was fed by no springs, with the possible exception of one small one, and was wholly dependent on rainfall, and contained no running water after a few weeks of dry weather, but he held that as there was a distinct bed or channel through which the water of the "Vessigny River" ran, when there was p. 64, l. 33.

RECORD. any, it was a river or stream within the definitions in the English authorities, and although he agreed that the damage to the Appellants from the holding up or
 p. 65, l. 11. abstraction of the water might be very slight, it constituted in his opinion a violation of the Appellants' legal rights. He also held that as some pollution by the Respondents was admitted it was no answer in law that the Respondents were working their property in a proper and careful manner. He was of opinion that the Appellants were entitled to the injunction claimed by them.

p. 68, l. 8. 14. Russell, J., agreed with the Chief Justice that the action failed. He was of opinion that mere surface water from rains flowing in ravines, which are at times destitute of water, the water in the "Vessigny River" being of that 10 character, was not a watercourse in the legal sense so as to render the ordinary rules as to the rights of the riparian owners *inter se* applicable to the Appellants and Respondents.

15. It will thus be seen that there were concurrent findings of fact by the Chief Justice at the trial and by both the Judges in the Appellate Court that the water in the "Vessigny River" and its tributary ravines is only surface water from rain falling on the Respondents' lands and that the bed of the river is at times practically dry, and there were concurrent findings of fact by the Chief Justice and by Blackwood-Wright, J., that the damage to the Appellants from the holding up of the water was in any case very slight. 20

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

REASONS:

- (1) Because the question whether the "Vessigny River" is a natural stream or watercourse is a question of fact depending on local circumstances and topographical evidence, as to which the decision of the trial Judge should not be disturbed especially when it is confirmed by the Order of the Appellate Court:
- (2) Because the Respondents are entitled to collect and store in 30 reservoirs all the surface water from rain which falls on their lands and to use the said water for the purposes of their business:
- (3) Because there are concurrent findings of fact by the Chief Justice and by Blackwood-Wright, J., that the collection and storage of water by the Respondents has not diminished to any appreciable extent the quantity of the water flowing in the "Vessigny River" over and through the Appellants' lands:
- (4) Because the district is an oil district, and the Respondents' 40 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":

- (5) Because the slight amount of pollution that was proved or admitted has not caused and cannot cause any damage to the Appellants: RECORD. —
- (6) Because the reasons of Lucie Smith, C.J., and Russell, J., were right and the reasons of Blackwood-Wright, J., were wrong:
- (7) Because the Order appealed from is right and ought to be affirmed.

JOHN SIMON.

F. O. ROBINSON.

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AND RANDOLPH RUST (*Plaintiffs*) *Appellants*

AND

THE TRINIDAD LAKE PETROLEUM
COMPANY LIMITED AND THE NEW
TRINIDAD LAKE ASPHALT COM-
PANY LIMITED (*Defendants*) *Respondents.*

Case for Respondents.

ASHURST, MORRIS, CRISP & CO.,
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