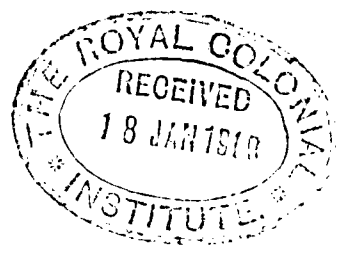


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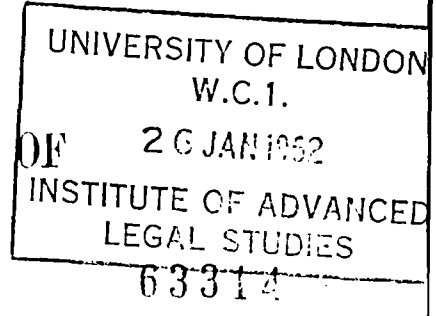
8, 1918



# In the Privy Council.

No. 46 of 1916.

## ON APPEAL FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO.



BETWEEN

CHARLES FOURIER STOLLMEYER, JAMES ARTHUR REX STOLLMEYER and RANDOLPH RUST (*Plaintiffs*) *Appellants*,

AND

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

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V. & S., Ltd.—60159.

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# In the Privy Council.

No. 46 of 1916.

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## ON APPEAL FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO.

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BETWEEN

CHARLES FOURIER STOLMEYER, JAMES ARTHUR  
REX STOLMEYER and RANDOLPH RUST (*Plaintiffs*) *Appellants*,

AND

THE TRINIDAD LAKE PETROLEUM COMPANY,  
LIMITED and THE NEW TRINIDAD LAKE  
ASPHALT COMPANY, LIMITED (*Defendants*) *Respondents*.

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## RECORD OF PROCEEDINGS.

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No. 1.

Writ of Summons.

George V., by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To The Trinidad Lake Petroleum Company Limited whose registered office is at Brighton in the Ward of La Brea and The New Trinidad Lake Asphalt Company Limited of Port of Spain.

We command you that within eight days after the service of this Writ  
10 on you, inclusive of the day of such service, you do cause an appearance to

RECORD.

*In the  
Supreme  
Court.*

No. 1.  
Writ of  
Summons,  
dated 17th  
Sept., 1914.

RECORD.

*In the  
Supreme  
Court.*

No. 1.  
Writ of  
Summons,  
dated 17th  
Sept., 1914  
—continued.

be entered for you in our Supreme-Court, Port-of-Spain, in an action at the suit of Charles Fourier Stollmeyer, James Arthur Rex Stollmeyer and Randolph Rust and take notice that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

Witness: His Honour Eric Blackwood-Wright LL.D. Acting Chief Justice of our said Court at Port-of-Spain, in the said Island of Trinidad, this 17th day of September 1914.

*Endorsement.*

The Plaintiffs' claim is for damages for wrongfully diverting the natural flow of and abstracting water from the Vessigny River situate in the Ward 10 of La Brea and Guapo in the Island of Trinidad and also for obstructing and polluting the same to the damage of the Plaintiffs. And for a perpetual injunction restraining the Defendants their servants agents and workmen

(A) From damming up the water of the said Vessigny River so as to interrupt the flow of the water through and along the land of the Plaintiffs and from erecting or constructing any dams erections or works in the beds of the said Vessigny River so as to interrupt and otherwise obstruct the natural flow of the water of the said River and

(B) From taking any water from the aforesaid River for the purpose of selling to or supplying the plantation Brighton and the lands of the 20 Petroleum Development Company Limited with water and

(c) From discharging from the Defendants' lands 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 Plaintiffs and

(D) Ordering the Defendants to remove forthwith all dams erections and works in the bed of the said Vessigny River placed there by them.

The Plaintiffs' claim is as Trustees under the Will of Conrad Frederick Stollmeyer, deceased.

This writ was issued by Mr. Charles Leonidas David of No. 32 St. 30 Vincent Street Port of Spain (and whose address for service is the same place), Solicitors for the Plaintiffs, who reside respectively at No. 9 Queen Park East, Port of Spain, No. 112 Picton Street, Port of Spain, and Sweet Briar and Gray, Port of Spain.

CHAS. LEONIDAS DAVID,  
Plaintiffs' Solicitor.

**No. 2.****Appearance of the Defendants.**

Enter an Appearance for the Defendants The Trinidad Lake Petroleum Company Limited and The New Trinidad Lake Asphalt Company Limited to the Writ of Summons herein, whose respective addresses are at Brighton in the Ward of La Brea.

Dated this 28th day of September 1914.

Yours etc.

PHILIPPE DE LA BASTIDE  
Defendants' Solicitor.

10

The place of business of Mr. Philippe de la Bastide is No. 107 Queen Street, Port of Spain. His address for service is the same.

To the Registrar of the Supreme Court.

RECORD.

*In the  
Supreme  
Court.*

No. 2.  
Appearance  
of Defendants  
28th Sept.,  
1914.

**No. 3.****Statement of Claim.**

No. 3.  
Statement  
Claim,  
9th October,  
1914.

1. The Plaintiffs are the Executors and Trustees under the Will of Conrad Frederick Stollmeyer deceased and as such were at all material times and are possessed of certain lands called Merrimac situate in the Ward of La Brea and Guapo in this Island along and through which the Vessigny River flows and were and are entitled by their riparian rights as owners and occupiers of the said lands to the natural flow of the water of the said river along and through the said lands without any obstruction or hindrance thereof.

2. The Defendant Companies along with the Petroleum Development Company Limited hereinafter mentioned and other Companies are a combination working together under the management and control of the General Asphalt Company.

3. The Defendants The New Trinidad Lake Asphalt Company Limited are the owners and occupiers of certain lands situate in the said Ward of La Brea and Guapo through which the said Vessigny River flows before it reaches the lands of the Plaintiffs.

4. In or about the year 1912 and thenceforth until the date hereof the Defendants The Trinidad Lake Petroleum Company Limited and/or the Defendants The New Trinidad Lake Asphalt Company Limited wrongfully obstructed and stopped the flow of the said Vessigny River by erecting maintaining and continuing a wall or dam in the bed of the said river before

30



RECORD.

*In the  
Supreme  
Court.*

No. 3.  
Statement  
of Claim,  
9th October,  
1914

—continued.

the said river reaches the lands of the Plaintiffs and thereby penned forced and kept back the waters of the said river so that except in time of flood they were hindered and prevented from flowing along and through the said lands of the Plaintiffs and the Plaintiffs have thereby been completely deprived of the headwaters of the said river and its feeders and of the natural unretarded and undiminished flow of the water of the said river along and through their said lands.

5. In the alternative the Plaintiffs say that the Defendants The New Trinidad Lake Asphalt Company Limited are the owners and occupiers of the bed of the said Vessigny river at the place where the said wall or dam 10 has been erected maintained and continued by the Defendants The Trinidad Lake Petroleum Company Limited with the knowledge consent and privity of the Defendants The New Trinidad Lake Asphalt Company Limited and for the use and benefit as well of them the said Defendants The Trinidad Lake Petroleum Company Limited as of the said Defendants The New Trinidad Lake Asphalt Company Limited.

6. Large and appreciable quantities of the water penned back as aforesaid have been and still are being taken and used by the Defendants The Trinidad Lake Petroleum Company, Limited, for the purpose of working oil wells situate on the lands of the Defendants The New Trinidad Lake 20 Asphalt Company Limited.

7. Other large and appreciable quantities of the same water have been and still are being supplied or sold by the Defendants or one or the other of them to The Petroleum Development Company Limited for the purpose of working oil lands known as Morne L'Enfer in the occupation of the said Petroleum Development Company Ltd. situate at a considerable distance from the said Vessigny river through along or near which the said river does not flow.

8. Other large and appreciable quantities of the same water have been and still are being taken and used by the Defendants the said New Trinidad 30 Lake Asphalt Company Ltd. for the purpose of supplying the plantation Brighton owned and occupied by the Defendants the said New Trinidad Lake Asphalt Company Ltd. situate at a considerable distance from the said Vessigny river through along or near which the said Vessigny river does not flow.

9. Not any portion of the water taken as alleged in the three preceding paragraphs is returned to the said Vessigny river in the volume or character in which it is taken or at all.

10. In or about the year 1911 and thenceforth until the date hereof the Defendants The New Trinidad Lake Asphalt Company Ltd. wrongfully 40 took diverted and used and still take divert and use large and appreciable quantities of the water from the main feeder of the said Vessigny river known as the Tobago Ravine to and for the purposes to which the Defendants the said New Trinidad Lake Asphalt Company Ltd. are not entitled namely for supplying water to their lands the said plantation Brighton situate at a considerable distance from the said river and its tributaries and through along or near which the said river and its tributaries do not flow.

11. The Defendants still continue the acts complained of in paragraphs 4, 5, 6, 7, 8, 9 and 10 hereof and threaten and intend to continue the same unless restrained by injunction from so doing.

12. By reason of the acts complained of in paragraphs 4, 5, 6, 7, 8, 9 and 10 hereof the Plaintiffs have suffered damage.

13. In or about the year 1913 and thenceforth until the date hereof the Defendants The Trinidad Lake Petroleum Company Ltd. and their servants agents and workmen polluted and still pollute the water of the said Vessigny River by discharging therein large quantities of oil and other noxious matter before the said water reaches the Plaintiffs' lands thereby rendering the same unwholesome and unfit for use.

14. The Defendants The Trinidad Lake Petroleum Company Ltd. still continue the acts complained of in paragraph 13 hereof and threaten and intend to continue the same unless restrained from so doing.

15. By reason of such pollution the Plaintiffs have suffered damage and are not able to use the said water for any purpose whatever.

RECORD.

In the  
Supreme  
Court.

No. 3.  
Statement  
of Claim,  
9th October,  
1914  
—continued.

The Plaintiffs claim :—

1. Damages against both Defendants for wrongful diversion and obstruction and against The Trinidad Lake Petroleum Company Ltd. damages for pollution.

2. An injunction to restrain both Defendants 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 Plaintiffs and from erecting or constructing any dams erections or works in the bed of the said River or its tributaries or feeders so as to stop or interrupt or otherwise obstruct the natural flow of their waters;

(B) from taking from the aforesaid 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 Vessigny river and its tributaries or feeders do not flow or for the purpose of selling to The Petroleum Development Company Ltd. for use on the Morne L'Enfer lands or at all.

3. An injunction ordering both Defendants 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 Defendants The Trinidad Lake Petroleum Company Ltd. 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 Plaintiffs.

5. Such further or other relief as the nature of the case may require.

Sgd. L. A. P. O'REILLY, of Counsel.

RECORD.

*In the  
Supreme  
Court.*

No. 3.

Statement of  
Claim,  
9th October,  
1914

—continued.

Delivered this 9th day of October 1914 by Mr. Charles Leonidas David  
of No. 32 St. Vincent Street, Port of Spain, Solicitor for the Plaintiffs.

Sgd. CHAS. LEONIDAS DAVID,  
Plaintiffs' Solicitor.

To Mr. Philippe de la Bastide,  
107 Queen Street, Port of Spain,  
Defendants' Solicitor.

No. 4.  
Statement  
of Defence,  
3rd Nov.,  
1914.

## No. 4.

## Statement of Defence.

1. Except as to the allegation that the Plaintiffs are Executors and Trustees as to which the Defendants are strangers the Defendants deny specifically each and all the allegations contained in paragraphs 1, 4, 7, 11, 12, 13, 14 and 15 of the Statement of Claim.

2. The Plaintiffs' lands called "Merrimac" are situate at the mouth of the so called Vessigny River and the portion of the said lands of the Plaintiffs through which the Vessigny has its course is subject to the influence of the tides and fresh water does not flow through the same. The said lands comprise about fifty acres are uninhabited and the waters of the said so-called river are not used by the Plaintiff for domestic or manufacturing purposes or for any purposes whatsoever.

3. The said river has no source and more particularly at the portion where Defendants have stored water as mentioned in the next paragraph has no natural flow except during continuous rain and except for such storage would be dry the greater portion of the year.

4. The Defendant Companies are together the owners of the freehold in about four thousand acres of land forming one continuous area through which the so-called Vessigny River has its course included in which is its entire watershed and are also in possession of Crown Lands adjoining their said freeholds upon which said lands the Defendants for several years have carried on and still carry on a large industrial mining and manufacturing business in Asphalt and Petroleum oils being the only industry in the district and have bored wells for crude oil made sumps for collecting the said oil and reservoirs in which in flood time and during continuous rains they have collected rain water to enable their factories and machinery to be carried on and worked using therefor reasonable quantities of such water.

5. The Defendants deny the allegations contained in paragraph 10 of the claim as to the Tobago ravine and say that the lands through which the said ravine has its course are part of the above-mentioned freeholds of the

Defendant Companies and further that except in time of flood and of continuous rain no water from the Tobago ravine would reach or flow to the Plaintiffs' lands.

6. The Defendants say that they are entitled to mine or bore mines or wells on their lands and to win petroleum or other production therefrom in the usual manner and without neglect or default on their part and that if any oil or other noxious matter escapes into the so-called Vessigny river the same is inevitable and due to the force of gravitation and the action of other natural forces independently and irrespectively of any acts of the  
10 Defendants.

7. The Plaintiffs have been guilty of laches. The construction of the reservoir on the Tobago ravine was commenced in the year 1911 and the reservoir on the Vessigny was commenced in the year 1912 and though the Plaintiffs well knew that the Defendants were spending large sums of money in constructing the said reservoirs no objection or complaint was made by them until the month of May 1914 long after the completion of the same.

8. The Plaintiffs have not suffered and cannot suffer any damage by reason of dams or reservoirs or from the oil or other noxious matter flowing as alleged through the Plaintiffs' lands and the Defendants have offered  
20 in writing to waive any rights which may be created in their favour by lapse of time or prescription in the future and thereby waive the same.

Sgd. W. BLACHE-WILSON, of Counsel.

Delivered this 3rd day of November 1914 by Mr. Philippe de la Bastide of No. 107 Queen Street, Port of Spain, Solicitor for the Defendants.

Sgd. PHILIPPE DE LA BASTIDE,  
Solicitor.

To Mr. Charles Leonidas David,  
32 St. Vincent Street, Port of Spain,  
Plaintiffs' Solicitor.

RECORD.  
In the  
Supreme  
Court.

No. 4.  
Statement  
of Defence,  
3rd Nov.,  
1914  
—continued.

30

No. 5.

Reply.

No. 5.  
Reply,  
12th Nov.  
1914.

Reply of the above-named Plaintiffs delivered this 12th day of November 1914 by their Solicitor Mr. Charles Leonidas David of No. 32 St. Vincent Street, Port of Spain.

Sgd. CHAS. LEONIDAS DAVID,  
Plaintiffs' Solicitor.

1. Save as to admissions therein contained the Plaintiffs join issue with the Defendants on their Defence.

RECORD.

*In the  
Supreme  
Court.*No. 5.  
Reply,  
12th Nov.,  
1914  
—continued.

2. The sumps and/or reservoirs referred to in paragraph 4 of the Defence have been made by the erection of walls or dams in and across the beds of the Vessigny River and the Tobago ravine respectively. Except that the said sumps and/or reservoirs have been made as hereinabove alleged the Plaintiffs do not admit the allegations contained in paragraph 4 of the Defence.

3. The Defendants have not truly set out the purport of the alleged offer in writing by the Defendant Company The Trinidad Lake Petroleum Company Limited referred to in paragraph 8 of the Defence inasmuch as the said Defendant Company by subsequent writing refused to bind them- 10  
selves by such offer as appears in the following paragraphs hereof.

4. By a letter dated the 21st July 1914 and signed by the Director and Counsel of the Defendant Company The Trinidad Lake Petroleum Company Limited the Plaintiffs were informed that the Company was prepared to undertake that no act of theirs by damming the Vessigny river or otherwise should be a claim to prescriptive user.

5. By a letter dated the 22nd July 1914 signed by the Plaintiffs' Solicitors in answer to the said Letter of the 21st July 1914 the said Defendant Company was asked whether they were prepared to put in writing under seal the understanding that the Company should not have a prescriptive 20  
right in derogation of the Plaintiffs' claim as riparian owners limiting a time for the duration of the license and providing for its termination upon notice and for a nominal payment.

6. By a letter dated the 10th August 1914 signed by the Solicitor for the said Defendant Company the Plaintiffs' Solicitor was informed that the said Company wished to correct the inexplicable mistake the Plaintiffs had made in construing the letter of the 21st July 1914 and that the Company whilst still willing to adhere to the terms of that letter could find no request therein for a license nor did they admit the necessity for any such license.

Sgd. L. A. P. O'REILLY, of Counsel. 30

To Mr. Philippe de la Bastide,  
107 Queen Street, Port of Spain,  
Defendants' Solicitor.

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## PLAINTIFFS' EVIDENCE.

Messrs. L. A. Wharton K.C. and L. A. P. O'Reilly for Plaintiffs.  
 Messrs. H. A. Alcazar K.C., Edgar Agostini K.C. and W. Blache Wilson  
 for Defendants.

## No. 6.

## Examination of Charles Conrad Stollmeyer.

Manager of Merrimac for Trustees of late Conrad Frederick Stollmeyer  
 (the Plaintiffs). The lands are still vested in the Executors. All funeral  
 and testamentary expenses have been paid. The Vessigny river flows into  
 10 the sea through the Merrimac. Boundaries of the estate are sea and Lands  
 of Asphalt Co. Lever belongs to Trinidad Lake Petroleum Co. Vessigny  
 flows through lands of Trinidad New Asphalt Lake Co. and Lake Petroleum  
 Co. and Merrimac. I have known the river 12 to 15 years. Before 1912 it  
 was a flowing river, it always had water in it all through its course. Water  
 was not polluted that is had not oil; it was not so clear water near the  
 mouth, but clear higher up. At low tide I saw the water running out. At  
 low water from higher water mark to the sea is between 100 to 200 feet.  
 I saw the place yesterday; the river was flowing yesterday pretty fast  
 between high and low water mark 5 or 6 inches deep in a sand beach. It  
 20 had a defined channel; this channel is made every low tide. I have always  
 known the river to flow like that. I first saw upper reaches of river early  
 last year, 9 months ago in dry season. I took drive up to see oil fields.  
 I then saw the dam a huge earth structure built across the river bed and  
 beyond the banks. Subsequently Mr. Cornillac measured it in my presence.  
 This dam keeps back the whole of the flow of the water up to a given height  
 where there is a concrete flood way for overflow waters to flow over. No  
 other means for water to escape except the flood way. When I first went  
 in dry weather no water flowing over flood way. Below dam few stagnant  
 pools. No running water just below the dam in the bed of the river.  
 30 Dam is in New Trinidad Lake Asphalt Co. I think the river bed is boundary  
 between Mon Plaisir and Union. Dam made for use of oil wells near the  
 dam. Some of the water is carried to pitch works at Brighton over 1½ miles.  
 I have seen the pump working and the pipe which delivers the water to the  
 tank there. I have \*water pumped up to the Development Co. through a  
 pipe, a different pipe, a 4-inch pipe—(pipe to Brighton 4-inch). About  
 2 miles off it supplies water for working of their well. Development Co.  
 is a subsidiary Co. to Trinidad New Asphalt Lake Co. None of the water  
 used there or in Brighton is returned to the river. The water used at wells  
 near the dam is practically all returned to the river, but not in same quality;  
 40 it is returned very dirty with oil and everything that water will dissolve  
 out of oil. Trinidad Lake Petroleum Co. work the wells near the dam.  
 This dirty water goes down bed of river—not sufficient to flow by itself  
 down bed of the river—hardly. When there is rainfall it flows, it is all  
 carried down. Banks of river are always in dirty state and bed of river

RECORD.

In the  
 Supreme  
 Court.

Plaintiffs'  
 Evidence.

No. 6.  
 Examination  
 of Charles  
 Conrad  
 Stollmeyer,  
 18th Jan.,  
 1915.

\*sic.

## RECORD.

*In the  
Supreme  
Court.*

Plaintiffs'  
Evidence.

No. 6,  
Examination  
of Charles  
Conrad  
Stollmeyer.  
18th-20th  
Jan., 1915  
—continued.

after water gone off is dirty with oil and refuse. Before oil fields were worked and dam made I've never seen river in condition I have described. Below dam the river receives ravines before it gets to sea so certain amount of water flows but not so much as formerly. Yesterday I tasted the water. I have drank worse water; it was not drinkable; very slightly brackish—but not drinkable on account of oil and other stuff. I have experience of value of lands at La Brea. Merrimac estate has pitch on it as good as pitch in the lake. It is within quarter of a mile of the lake. I should think very good oil field. Two of the best wells within 200 to 300 feet of Merrimac.

Water absolutely necessary for working the asphalt and oil and also 10 to attract labourers to the land. Feeders below the dam would put water in river, more in rainy season. Up to 7th January last had about 18 days heavy rain. About the Tobago, I visited that last Sunday and also with Cornillac, Perreira and Phelps on 21st December last, that part just about the road going into Co's. oil fields, between the road and the dam, the river bed was almost dry. The dam is across the Tobago river. Below the dam there was a little water in the river bed which came from a branch ravine which entered Tobago ravine just below the dam. No water was flowing from the dam. Above the dam a large quantity of water. The Tobago river empties itself into the Vessigny river. I did not know it before the 20 21st December. I knew it existed. Merrimac as pitch producing and oil producing no value without water—no water supply except by the river. There are means of damming out the sea water at Merrimac so as to get fresh water. Banks of Vessigny river from mouth to dam some parts bed shady—by low bush. There would be great evaporation. There is no outlet to waters above the dams except a pipe to the pump. Similar concrete passage or channel to Tobago dam as to the other a flood way. I saw up the Tobago river above the dam for 300 or 400 yards. From the dam Tobago river runs in a defined channel to the Vessigny river. Above the dam there is a basin as far as I could see. 30

Cross-  
examination.

Cross-examination :

Merrimac is about 100 acres. Below the dam on Vessigny there is a branch to the river, it is not equal in size to—

There are branches right through course of river on both sides. The Tobago is a branch, I should say it is the largest. I have heard of it, it is an absolute spring. The Vessigny along Merrimac is subject to the tide, it was slightly brackish when I tasted it at low water. Don't know how far the tide runs up. Don't know tide goes into Tobago river. If we erected dam at mouth we could get fresh water; without dam we could only get fresh water at end of ebb that would be slightly brackish. We could not get absolutely 40 fresh water without a dam except in very heavy rain. There is deposit of salt water on banks would make it brackish. In order to get water for domestic purposes we would have to make a dam. We are not using the water now. If we put in a dam and kept back water water would evaporate in dry season. These lower branches dry up in dry season. I don't know river is dry in dry season above the dam. If you had not put in a dam my property would have water all year round from the Vessigny as a flowing river.

What is dammed by you is main course of river, rest are feeders. I have not been to head of Vessigny, nor of the branches. I have not heard of a spring in the main river. I had not seen river above the bridge on S. main road till last year. I knew Merrimac 15 or more years, at low tide there would be anything up to 3 feet in the depressions in the bed. Before the dam I should say we would always have 1 foot of flowing water. At one time I often walked on beach at Merrimac. Off and on been there—pretty often. We don't grow anything on the land. All water that can be taken is the flow of 8-inch pipe—the suction pipe to the pumps is an 8-inch pipe. There are 2 pumps, one to pump to Brighton, one to Development Co.; 2 other pumps, don't know what used for. I did not see pump working to Brighton, because Tobago basin enough to supply Brighton. I saw pumping to Development. To Development and Brighton there are 4-inch pipes. It may be only one 4-inch delivery pipe—used for Brighton or Development as the case may be—I don't know. I don't know if there is a 10-inch pipe below the Vessigny dam. You can't run oil industry without water. You couldn't work without dam in dry season as you want large volume of water. You would not have enough water unless you made a dam. You would have to collect water. At present no other industry along course of Vessigny except through oil and asphalt Co. You might give us water enough to work with, it can be carried from anywhere. You can give us enough water from the dam. We have contracts with the New Asphalt Co. My father and grandfather had and still have large interests in the New Asphalt Co. The water supply has been serious question. We have two other cases pending about water rights. I know Asphalt Co. have spent 2 or 3 million dollars on the oil industry in that locality. That will be stopped unless we come to some agreement.

Mr. Agostini: We are still willing to abide by our letter that we waived any question of prescription, &c.

Witness: I am not willing to allow things to go on, on your simply waiving all rights of prescription. Nobody would buy our estate under these circumstances as they would be buying a law suit, unless this question is settled. There are some wells, 35 to 44, 10 wells near the dam on the Vessigny, worked by water from the dam. They return the water in a dirty state. When my well gushed oil went down Vance River and polluted it and also the same to some extent. I dammed the ravine to hold back the water and the oil. My gusher 100 feet high—radius 100 yards. I don't pretend that I could prevent it going into the river; it would be impossible to prevent dirtying river a little bit. I value Merrimac at £250 an acre as oil land—worth nothing as agricultural land. I have seen wells of the Defendants; they must be working them well. They have the best of men and of machinery. La Brea is an asphalt and oil district. Vessigny river is in the La Brea District. I know rivers have naturally a coating of oil at Guayaguayare, &c. There are secpages of oil and liquid asphalt. A thick asphalt oozes out. Never seen rains wash it into river. Vessigny has a mud, clay, bed. When it rains water peasoupy. Up where dam is it is drinkable. Not down where I am, never has been. People round there use tank water. I know of no water wells by the Vessigny river. There are houses by the bridge; don't know what water they use.

b

RECORD.

*In the  
Supreme  
Court.*Plaintiffs'  
Evidence.

No. 6.

Cross-  
examination  
of Charles  
Conrad  
Stollmeyer,  
20th Jan.,  
1915

—continued.

B



## RECORD. Re-examination:

In the  
Supreme  
Court.  
Plaintiff's  
Evidence.

No. 6.  
Re-examina-  
tion of  
Charles  
Conrad  
Stollmeyer,  
20th Jan.,  
1915.

Any well water would be dirty surface water. When I wrote letter of 9th July 1914 I meant to assert my right to the river water. Defendants could not carry on their industry without the dam. No objection to their carrying on if it does not injure us. I saw nothing to show any outlet, no flow from bottom of dam, as if there was outlet by 10-inch pipe. None of the water dammed above is returned, only in time of flood from the flood way. In dry season no overflow of the dam. If brackish 1500 feet up, may be salt matters from the oil wells. In some cases in boring get brine instead of oil. Tide would not go up 1500 feet. From half tide each way 10 we would get more or less fresh water. My two other cases have nothing to do with this case. The Vance has seepages, don't know if Vessigny has. Before these operations of Defendants never saw any sign of oil on the Vessigny water or banks. No bubbling of oil but of asphalt—too thick to flow. Easy to dam the mouth of the river.

## No. 7.

## Examination of Jules Cornillac.

No. 7.  
Examination  
of Jules  
Cornillac,  
20th Jan.,  
1915.

Surveyor for 25 years. Mon Plaisir estate surveyed by me in October 1900 and March 1907. In October 1900 Vessigny was a flowing river with defined channel about width of  $16\frac{1}{2}$  feet. At Merrimac 33 feet wide. March 20 1907 it was the same flowing stream. At high tide salt water mixes with fresh water for about 1200 feet. I have not measured it to a point beyond the Southern Main Road. At low tide river flows through the beach in a channel made in the sand. When I was there on 21st December about 40 feet of beach and the tide was still falling. I visited the Vessigny dam, the river bed with high banks each side is dammed by a wall constructed of earthwork 151 feet across its course; wall 90 feet at base tapering to 16 feet at the top and 25 feet above the level of river bed. The river is in a gorge like. Banks of river not high, very low, it is nature of country; the river is about 4 or 5 feet from top of bank to the bed. On top of dam is concrete 30 conduit 38 feet wide, 5 feet deep and 6 feet long conducting the overflow water to the bottom of the bed of the river on the other side of the dam. It is 20 feet from bed of river to the flood way. No other outlet to the water above the dam but the flood way. Day I was there there was a small overflow *i.e.* 21st December. Dam floods surrounding country 180 feet by 150 feet, and beyond that water about 40 feet wide. I estimate capacity of reservoir  $3\frac{3}{4}$  to 4 million gallons. Reservoir not correctly shown in Company's report—the reservoir is in centre of bed of river; it shows it more or less correctly. At bottom of earthwork is an 8-inch pipe connected to the pumps quite near by and serves as a suction to the pumps. I measured 40 it, it was an 8-inch pipe—there are 4 pumps; to 2 of these pumps there were 2 4-inch pipes connected—don't know if 2 pipes connected, but one pipe leads to Development Co.—the other to Brighton. I am \* sure if the pipes are independent. I have marked the Development Co. to which the pipe

\* Sic.

goes with a X D ; it is  $1\frac{3}{4}$  miles. Pipe going to Brighton goes to Tobago first,  $\frac{1}{2}$  mile, then to Brighton is about  $1\frac{1}{2}$  miles. I saw water being pumped to Development Co. I followed pipes some good way. I saw the lower tank at Development where the water was being received. The other line goes to Tobago pumping station then to tank 18 on Brighton lands then on to Brighton. At Tobago station the pumps at Tobago can be closed and water go straight from Vessigny to Brighton. Water coming over dam got into river below and flowed down ; it was December rainy season. Flow of water below the dam considerably decreased from what I saw in 1900 and 1907 ; the volume of water much smaller. The bed of river is mud and sand. In 1900 and 1907 there was good clear water—in rainy season muddy. In December last river below dam water a little muddy little yellow ; the water is polluted by films of oil—quite noticeable. The pollution goes right on to the sea, more so at the sea, river has oily substance on the top of it whole breadth of river. This never existed before. I don't say I followed river from end to end but everywhere I went and took measurements I saw the pollution. On December 21st I inspected the Tobago ravine. Tobago river flows in defined channel width 6 to 8 feet. There is a dam across the river at a valley where land high on both sides ; river itself 3 to 4 feet deep—dammed by earth wall 140 feet across its course—60 feet at base tapering to 17 feet at top and 18 feet above level of the ravine. On top is an open concrete conduit like the Vessigny 35 feet long, 4 feet deep, 15 feet wide conducting overflow waters ; it was not overflowing—water 20 inches to 2 feet below the concrete conduit. Dam stopped entirely the flow of water. There had been heavy rain previous. Reservoir main part is 140 by 200 feet and it also extends into the valley beyond that. There is an 8-inch pipe at bottom of dam connected to the pumping station, pump forces water through a 4-inch pipe which leads to tank 18 on Brighton lands and thence to Brighton works by natural gravitation. The pumps were working. Capacity of reservoirs  $2\frac{1}{2}$  to 2 million gallons. Below dam well defined channel. I did not go above dam. According to plan Tobago river has watershed of 100 acres. Water collected by the dam is water from surrounding country. At foot of dam there is a ravine flowing into Tobago ravine ; no water was flowing.

Cross-examination :

I was there in rainy season in 1900. March would be very dry—dry season commences January rains supposed to commence in July. I know Forest reserve there Morne L'Enfer, that belongs to this Co. Forests reserved for the water supply. There are gullies worn away by storm water which are not rivers. Water would go more quickly if forests denuded. I have been to head of the Vessigny river. I call a river a continuous flow of water. I would not limit myself to calling a river to one that flows from a spring. Water flowing continuous in a proper channel is a river or ravine according to its size. Vessigny is not as big as the Caroni. Ravines take out as drains the water from an estate. Every estate has ravines which are dry in dry weather. Land above the dam is hilly. Where the dam is now I should say in 1900 there was 5 to 6 feet of water. I make a guess and

RECORD.

In the  
Supreme  
Court.

Plaintiffs'  
Evidence.

No. 7.  
Examination  
of Jules  
Cornillac,  
20th Jan.,  
1915

—continued.

Cross-  
examination.

RECORD.

*In the  
Supreme  
Court.*Plaintiffs'  
Evidence.No. 7.  
Cross-  
examination  
of Jules  
Cornillac,  
20th Jan.,  
1915  
—continued.

say gradient of river is about 2 feet in 100 feet from dam to mouth. In 1907 there appeared to be same amount of water. Now from dam to sea is almost denuded of Forest. The rainfall in Trinidad has for the last 5 years decreased about one-third. I don't know the branches of the Vessigny river, cannot say how much water they bring down. At mouth of river are mangrove trees. Land is quite firm. I can't say if it is firm at high tide; I was there low tide. I did not notice high cliff. This plan seems correct—nothing to take objection to. I don't admit it is correct. In 1900 and 1907 it was good drinkable water, usual water in river with mud bed. Water flowing over dam was yellowish, not polluted; pollution came from the sumps 10 below the dam. The flow was about 3 or 4 inches over the concrete. In photo produced does not seem strong flow.

No. 8.  
Examination  
of Felix  
Rojas, 20th  
Jan., 1915.

No. 8.

## Examination of Felix Rojas.

Warden of La Brea and Guapo since 1908. I haven't had occasion to examine river before the dam was made. Since then I've seen it in severe dry season, parts of it dry below the dam, about  $\frac{1}{4}$  of a mile above river mouth, probably more. In the year 1912 it was dry. I can't say since dam built if river bed dry in dry season. I only observed it in 1912.

Cross-  
examination

Cross-examination :

20

In 1912 dam not finished and river was dry. I have not been above the dam. In 1912 where dam was being constructed about 4 or 5 feet wide by 1 foot deep water. I know in 1911 barges of water brought to Brighton from Port-of-Spain to work the plant because there was no water, that was before the dam made. I know in last 5 years there has been a considerable diminution of water in the streams of the Island. All the rivers except the Godino dry in dry season. I don't know about the Vessigny—it is a tidal river. I know rivers and ravines have no water except with heavy rain and they dry in a week. There are no springs about that part that I know of. The Vessigny is a well established river; must be 30 very severe drought to have no water.

Re-  
examination

Re-examination :

In 1911 no pipe line to Brighton from the Vessigny. In 1911 it was high woods. Without dam could not take water to Brighton. I would not call the Tobago ravine a river. Former supply of water to Brighton was the lake. The lake is drained to enable them to dig asphalt; it is rain water collected there. Till severe drought in 1912—water—water gone because of drainage and these operations enlarged. Tobago ravine was not a flowing stream. In dry season does not flow continuously, only in heavy rains. Been there three times. Know nothing of a spring in it.

40

## No. 9.

## Examination of Thomas Irwin Potter.

RECORD.

*In the  
Supreme  
Court.*Plaintiffs'  
Evidence.No. 9.  
Examination  
of Thomas  
Irwin Potter,  
20th Jan.,  
1915.

Registrar-General. From January 1899 to July 1911 I was Warden of La Brea. I know the Vessigny river from the mouth to the main road, and recently, last year and this year I've been to the dam. I know the river about 100 feet beyond the Bridge. It was a tidal river in which was a considerable amount of water. At low tide the river was full of clear river water. I don't remember water being used there for any purpose. I never saw it dry. At the Bridge I should say is 15 to 20 feet wide at low  
10 water. I never sounded the depth but a considerable depth because I could not see the bottom in the middle. At the mouth I saw often clear water flowing into the sea. Between high and low water there is over 100 feet. River flowed across the side in a little channel it had forced through the sand. Channel formed each tide. Last Sunday it had not the same volume as before. Channel considerably diminished to what I knew in my Warden days. I took a picture of the Vessigny dam last Sunday—produced—it shews the spill way. The whole of dam is not there in photo. There was no water coming over the spill way. I came up the river to the dam, there was very little water in the river, 100 feet above the bridge water  
20 was much shallower, I could see the bottom, first time I had seen the bottom. It is not dry enough to walk up the bed of the river. We walked by the side. There had been heavy rains 10 or 11 days before, and there had been 10 days dry weather. I went on Sunday to Tobago dam, which dams tributary, beyond that is penned up a large quantity of water. Vessigny is a well known river, it is mentioned in de Verteuil's geographical history of Trinidad. I can't say much of the Tobago ravine. Below dam was another ravine running down past the pumping station of the Co. The channel of the Tobago river goes on.

Cross-examination :

Cross-  
examination.

30 I had no particular reason for observing Vessigny river when I was Warden, only passing on the road. Upper part was all high bush. I used to bathe at the mouth of Vessigny. Where I could not see bottom was at bridge and 100 feet up. The whole of that part is tidal. Water is clearer at low tide than at high, there was a little difference. I have never observed dry patches in the river. I never had reason to watch the quantity of the water. Some of the water courses are simply ravines carrying off storm water. Wet in wet season and dry in the dry. Never saw any water coming over the dam. I did not notice if pumps were working can't say. I am connected to the Plaintiffs by marriage.

RECORD.

No. 10.

*In the  
Supreme  
Court.***Examination of Emanuel Perreira.**Plaintiffs'  
Evidence.No. 10.  
Examination  
of Emanuel  
Perreira,  
20th-21st  
Jan., 1915.

Manager of Stollmeyer's estate Perseverance. 21st December I went to Vessigny with Cornillac &c. Went first to the Tobago dam, ravine dammed across. No sluice gates but a place where water to flow over in very heavy rains. No water then flowing over. There was a big expanse of water 200 feet before you get to the bend. There was small ravine below which dropped into continuation of Tobago ravine, small quantity of water going down. The channel below the dam 16, 18 or 20 feet wide, I didn't go along it. The pump, one, was at work pumping water to Brighton by a 10 pipe. I went to the Vessigny dam, it is similar to the Tobago one. No sluice gates, conduit on top. Lower down dam were 4 pumps, one pump then working pumping water by pipe to Petroleum Development Co. Manager told me they also pumped to Brighton. Water was coming over the dam.

Before I knew Vessigny river by the bridge for 9 or 10 years, I saw it twice a month or so, formerly the water was clear running down, plenty more water in the old days than now since the Co. have been working. Don't remember ever seeing river dry before the Co. worked. Since Co. worked considerably less water, I have seen it one dry season since the 20 Co. worked almost dry, by the bridge. I have never been up the river above the bridge since the Co. worked, only went on the 21st December last to see the dams. Before Co. worked water flowed through the sand to the sea at low water at high tide water backed up. Since Co. started work it is a river of oil—oil along the banks. When storm water comes comes dirty and oily. Before I have seen people going with buckets to get water. Now it cannot be used for domestic purposes.

Cross-  
examination**Cross-examination :**

I travelled to and fro between La Brea and Guapo. I was in charge of Perseverance, been a little over 9 years. I used to go to La Brea to get 30 Steamer for cases &c. I also went to Guanapo, sometimes twice a month, sometimes less. I used to ride to La Brea. I saw as I was passing. I don't remember stopping at bridge to take notice of the river. No object to look if water was clear. Often times I noticed if high or low tide, because new road then finished. Old road is one going to beach as on the plan. New road was made, 3, 4 or 5 years ago. Old road much nearer the sea, it was not always tidal water. Low water I saw river running through the sand. I don't remember ever seeing river closed. I saw water there in dry season more than now. Last 3 or 4 years drought in the Island, these districts have suffered a great deal, and water has decreased a good deal, some ravines 40 had pools some had running water. Never noticed water in the rivers less now on account of the drought. I have never drunk water from the Vessigny. I have seen water running towards the sea, I consider tidal water gone out and fresh water coming behind. Water considerably less since dam. At times in dry season by the new bridge I have seen little or no water not

running, in height of dry season. Ravine is smaller bed larger one a river, all natural drains to carry water away. It was just about where new bridge I saw people taking water, can't say when. More than 3 years, cannot say the year. No oil coming down then. Might have been 2 or 3 times I saw them. Saw people and women going on little track with buckets, pitch oil tins. Don't know what they used it for. Oil flowed on top of the water. At the Vance river we shake off the top oil and get water underneath, sometimes so bad can't do that.

Re-examination :

10 Sometimes so bad have to take salt from the boilers, that pollution comes from the Co's. well. Since dam I've not seen people taking water from the Vess'gny, the water is unfit for any use whatever. It is the damming of the river not the drought made the water less than before. There have been droughts before but I've never seen the river so dry as since the dam.

#### No. 11.

#### Examination of Claude Phelps.

Manager of La Brea Asphalt Works belonging to the Stollmeyer family, 21st December I visited Tobago river and Vessigny with Cornillac &c. We started at the bridge, looked up and down the river from that point. 20 There was water flowing in the channel, oil on its surface and on banks on both sides a heavy deposit of oil. Oil must have come from oil works, only oil works are those of the Co. on the Vessigny. I have known Vessigny 14 years before the Co. worked, never saw oil in the river. We went to the beach, at the mouth of river, and visited the old bridge that is the remnants of the old bridge. We went to the Tobago ravine, I noticed dam across it effectively damming the water, no sluice gates, a concrete overflow, no water overflowing. Below the dam I saw a well defined channel to the Vessigny river 6 to 8 feet broad. I saw a stream of water flowing round the dam and falling into the channel a little below the dam. Water conserved 30 there to supply Brighton, taken to tank 18 by pipe then to Brighton. It is used in the boilers and also for animals, there are 8 boilers I have seen all 8 in work at once. Each boiler would consume 15,000 gallons every 24 hours. At Brighton they do use water from the lake and rain water from the buildings. When they are refining Asphalt they work continuously day and night. The other supplies of water are totally insufficient to keep the boilers going without the dam. I went to the Vessigny dam, completely blocking water it has a spillway, water was coming over, there are pumps and boilers there. I was told by men in charge of pumps pipe-line goes to Development Co., another going to Brighton, that joins one at Tobago. I frequently

b

RECORD.

*In the  
Supreme  
Court.*

Plaintiffs'  
Evidence.

No. 10.  
Cross-  
examination  
of Emanuel  
Perreira, 21st  
Jan., 1915  
—continued.

Re-  
examination

No. 11.  
Examination  
of Claude  
Phelps, 21st  
Jan., 1915.

RECORD.

*In the  
Supreme  
Court.*Plaintiffs'  
Evidence.No. 11.  
Examination  
of Claude  
Phelps, 21st  
Jan., 1915  
—continued.

pass river, going to Perseverance every fortnight to pay, riding, going to beach to bathe. I knew it by the bridge. In 1901 I went up river about  $\frac{1}{4}$  mile and drank water from the river. Before the dam it was a flowing stream in well defined channel generally turbid, occasionally clear. Always known it as a flowing stream at all times even in driest weather. In my opinion since the dam water very appreciably diminished. River mouth subject to influence of the tide. At low tide tide went out a great distance and river flowed over beach to the sea. You could get fresh water at Merrimac by damming out the sea, in my opinion it can be done.

Cross-  
examination.

Cross-examination :

10

Sea by mouth is turbid. The sea makes no bar. River has not to force its passage out when tide falls. When we were there river 33 feet wide at the mouth, the river was going out through the sand 33 feet wide. Mouth wider in wet weather than in dry. When I say 33 feet I mean that is channel between the banks. Water not full up to top. Can't venture a guess—the width of the water. I should say that the salt water would all run out of river in 3 hours. Can't say if loss in 24 hours of water in boiler is 20%. I went another occasion above the bridge when there was fire, that was after the dam. Only once I visited the river above the bridge once before the dam. I can't say how it could be done to dam out the river. 20 A wall could be put across. I know it could be done. Can't say what would be done until examination of the spot and the soil. It is not swampy ground, there are some mangrove trees, ground is slightly damp.

Re-  
examination.

Re-examination :

I have experience of concrete work. I built a jetty at La Brea. No water taken to Brighton boiler or to Development Co. is returned to the Vessigny. Water makes little channel through the sand depending on the force of the water.

Case closed.

## DEFENDANTS' EVIDENCE.

Mr. Agostini :

Our case fully disclosed by statement of defence.

No. 12.

Examination of John Hendry.

Engineer of Co.'s at Brighton for 2 years.

I surveyed the Merrimac proper. I made a survey from which this map is made, it faithfully shows the ground, proves what is written on the plan. Shows defined channel of the river. I understand what mangrove swamp, there is mangrove swamp as marked flooded at high water, damp at low water, it is drawn to scale—boundaries correctly defined.

Tendered—not objected to—put in.

Boundary of Merrimac—J.K.L.M.O.P.Q.

All the plan is correct.

Salt water goes up 400 feet above Tobago ravine I measured that and it goes higher than 200 or 300 feet. I did not measure that. I know its salt water up Tobago 150 feet at nearly high water. I tasted it. I did not taste the water at low tide. I tasted it falling tide about 1 foot below high water, up the Tobago it was salted. Rise and fall of tide about  $4\frac{1}{2}$  feet. Bed of river is an even grade, channel is like a groove, high tide goes up 1500 to 2000 feet. It is 1800 feet to Tobago, that would be tide goes up 2200 feet. At low water the water runs through mud and sand beach.

Cross-examination :

I have never been up the river, except at dam, its same river Vessigny. Tobago river runs in a clearly defined channel where it joins Vessigny. Can't say if clearly defined channel up to the dam. There is exposed beach between middle high and middle low tide. Water flows through the beach. I say there is water. There is no perceptible current till the last of the ebb. On turn of tide water begins to go down then, there is a back current caused I think by wave action. I don't think there is ever fresh water at the mouth of the river, tide goes out 400 feet, it is a very gentle sloping beach. I suppose fresh water flows out an appreciable time after turn of tide *i.e.* for  $\frac{1}{2}$  hour at dead low water.

Re-examination :

Not fresh water would be drainage of mangrove swamp &c. which would be brackish.

RECORD.

*In the  
Supreme  
Court.*

Defendants'  
Evidence.

No. 12.  
Examination  
of John  
Hendry, 21st  
Jan., 1915.

Cross-  
examination.

Re-  
examination.



RECORD.

*In the  
Supreme  
Court.*

**Examination of William Fowler.**

Defendants'  
Evidence.

No. 13.  
Examination  
of William  
Fowler, 21st  
Jan., 1915.

General Manager of Defendant Co.'s, the Co.'s all work together. All the lands on plan A 9 except those marked as belonging to some one else belong to the Co.'s: it forms one block belonging to the Co.'s. All in same interest. They practically all belong to the General Asphalt Co. We have in fee simple 4000 acres, lots 1, 4, 5 and 6, held from Crown about 2000 acres. I have been Manager since middle of 1911. Co. began first to work oil wells 1909 or 1910 near Brighton. When I arrived in 1909 they were drilling at Brighton. I gave orders for the erection of the Vessigny dam, 10 it was begun in 1912 after the dry season. Wells started near Vessigny dam latter part of 1911. I was put about very seriously for water, we had to put pipe line to La Brea Village and getting water from Port of Spain, 2 barges a week cost \$200 each. I went to see if water in the oil district, people not in the custom of going there, all in forest, dense second growth to about  $\frac{1}{4}$  mile above bridge, above primeval forest Geologist had been there looking for oil. I saw a few pools in Vessigny river but not enough to justify laying pipe-line and pump. No water flowing, that was dry season of 1912. I sent others to search for water, 3 or 4 months after we began construction of the dam. Can't say if river rises in a spring. I have 20 been through "Country" several ravines cannot say which is its source. I did not see any spring. There was no water lower down than the dam, my observations were lower than where dam is. I know the other branches, they are dry in the dry season, with the possible exception of the Tobago, of that I am not certain. It would be impossible to carry on work except in wet season without the dam. From my observation of river and Country, its a very small river if it can be called a river and is dependent on the rain fall. Water in our reservoir is the surface water from the rain. In my opinion dam makes no material difference to the Merrimac lands. Our watershed areas impounded by us are total of 545 acres that is we catch the 30 drainage of 445 acres at the Vessigny dam and of 100 acres at the Tobago dam. Taken the watershed area we impound and the rest of the watershed area that goes to Mr. Stollmeyer no difference to him. The total watershed area drained by the Vessigny river is approximately 1780 acres. On the percentage basis even if we impounded and utilised all the water in Tobago and Vessigny is 31 per cent. of total watershed area drained by the Vessigny. If it is assumed that there are no underground sources feeding the Vessigny river such as springs and if it is a fact as it is that Vessigny river not fed by snow the water which flows in Vessigny water is the water which flows into the river during rains and for undeterminate short period 40 following rains, as the subsoil does collect and absorb some of the rain fall which it afterwards releases by drainage, the water which drains from the subsoil is very small for the subsoil over whole of watershed area varies in thickness from 5 to 10 feet underneath is impervious clay. I am speaking from my knowledge of the whole of this area and from other experience in other places as an Engineer. This subsoil is not a pure retaining reservoir

as it has in it itself Clays and other materials that do not tend to retain water. There is no place in this area—beds of porous sandstone or lime—stone or bed of sands into which rain fall would drain and accumulate and afterwards be discharged at lower level. The Geological formation of the district is such as not to lend itself to the existence, formation or possibility of springs I am speaking of this particular watershed area. That being so water that flows past Stollmeyer's land in the Vessigny river is water which at some period had fallen in the shape of rain in that area, the amount of this water can be calculated by the rainfall and acreage. Rainfall was 60 in. 10 a year, these would flow past Stollmeyer in course of one year, if no allowance made for evaporation and seepage into subsoil which does not reappear and absorption, approximately 3,000,000,000 gallons (3 billions) would flow past Stollmeyer's lands allowing 50% for evaporation and seepage there would still be 1½ billion gallons. At the Vessigny dam and pump station our daily observations made over a period of 3 months, October, November, December and beginning of January (rainy season) we have averaged in water withdrawn from the reservoir 120,000 gallons a day, following over the dam during this same period average daily flow of 800,000 gallons which shows we only used 20% of the watershed area that is dammed by the Vessigny 20 dam or 6% of the whole watershed area. Adding what we use at Tobago 60,000 gallons a day we use 6 to 7% of the water falls on the area. Rain could fall in wet season that is about 7 or 8 inches, 1 inch rain fall gives 27,000 gallons to the acre. River would take it off in 2 or 3 weeks, it would practically take same time for 5 inches. Surface water would be taken off at once the seepage would take longer. No water in dry season. I went specifically to look into the question. We have bored 10 wells near the dam, in boring a log or record is kept of all the strata gone through. There were 9 or 10 wells in Brighton area, all have given some oil, but one casing has collapsed, another one gives 30 barrels a day for the last 3 or 4 years. 30 Lever "B" adjoining Merrimac 7 wells bored, some oil struck in very small quantities, we struck salt water and other things. No well produced oil sufficiently for commercial quantities. They are about one mile from wells at Vessigny dam. These several wells gave very large quantities of oil, 2 actually big gushers, worked on most modern lines, others gushed too. We haven't been able to control them. Everyone else find they cannot control them. Spray from gusher splattered leaves on trees for at least 100 yards. A certain amount of water from reservoir used for these wells. Through the bottom of the big dam is a 10 inch pipe controlled by a big valve at the outlet, as a matter of fact 2 valves, by opening one valve water 40 could be permitted to flow into the channel of the Vessigny, the other valve which is 6 or 8 inches that suction goes to small pumping station where there are 4 pumps, 2 of them are devoted to pumping oil exclusively, one as auxiliary to the other, the other 2 are water pumps, they are not worked simultaneously but one is auxiliary to other in case of accidents. The water pumps discharge through a 4 inch line, no more than 4 inch can be used. If both work simultaneously they can only go through one 4 inch pipe. As things now are and have been none has been pumped to Brighton. Of the 120,000 gallons per day taken we use 40,000 gallons for wells in dam.

RECORD.

—  
*In the  
 Supreme  
 Court.*  
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Defendants'  
 Evidence.  
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No. 13.  
 Examination  
 of William  
 Fowler, 21st  
 Jan., 1915  
 —continued.

RECORD.

*In the  
Supreme  
Court.*Defendants'  
Evidence.No. 13.  
Examination  
of William  
Fowler, 21st  
Jan., 1915  
—continued.

balance for Development. Now as we are drilling by the dam—doing no work at Development we used at dam 60,000, half of that is returned, this is all approximate. At Development wells there is no flowing water, certainly not in dry season. I have been all over County looking. We can only get water by collecting rain water. No method of preventing drainage of oil into general drainage of the land.

Gushers have discharged oil into the Vessigny. Oil would continue for some time. It would take 6 months to a year to wash off the oil from foliage &c. in river bed. In Stollmeyer's gusher 3 years ago still marks in the river of the oil. There is no industry but oil and asphalt there, there 10 are a few cocoa trees and cocoanuts and not looked after. There are people living on our lands near the bridge I have seen them getting water from wells. No houses on Merrimac. I have not seen any pitch seepages.

Cross-  
examination.

Cross-examination :

Water returned is some better some worse, that used for drilling comes up dirty, that used for steam is condensed and better, from drilling only mud with water. After the oil is struck some goes into the river. The river is much polluted with oil, it has a coating of oil. Surface of water has coating of oil. They might by scumming get water fit for domestic purposes. When water flows in rainy season it is muddy. Tobago did have a small dam 20 much higher up the stream. Above dam at Vessigny there is a place where water has flowed and does flow at certain times, a water course. I am inclined to think it is one of the branches that is the largest. I am inclined to call it main river, it is the largest water course. Before the dam was built I visited the place more than once in 1912. I cannot admit that was a drier season than 1913 and 1914, three seasons have been dry. I have never seen a spring. I have been through County as there was no flowing water in dry season there could not be a spring. I did not visit upper reaches before the dam was built. I am in a position to say streams below the dam are dry in dry weather with exception perhaps of Tobago. Tobago 30 is denuded of forest. Above the Vessigny dam is a heavy vegetation, there are some clearings, below the dam, the long branch runs through very heavy vegetation, first two branches heavily wooded. Other branches and Vessigny itself not heavily wooded there is undergrowth, heavy undergrowth. County is not dry and sandy, the subsoil is decayed leaves and clay. We have not drilled between Lever "B" and Vessigny dam. It is not matter of speculation as to No. of gallons in area, in that small area rainfall would be more or less constant. Even if springs at the source my calculations would be the same having in mind this formation. A spring would depend on the rainfall there. I might be called a Geologist. I have 40 studied geology at school and have had practice of it at Guanoco and Brighton. When I calculated it was rainy but I cannot say if heavier rain these last three months than same months year before. Calculated water over spill way by Weir measurement. We took observations once a day, some days no overflow. I have given an average, *i.e.* that total divided by No. of days. If water was flowing at back in ravine the dam would prevent it going down.

In a dry spell there might be no water. I say it is possible water flowing there but I would not say it is probable. There could be no spring from any other place outside the area on account of the 700 or 800 feet of impervious clay. There may be faults but not such as to let water gush out, I say so from my observations and from my drilling. In geology you don't go for small areas. I have been over area pretty generally say 15 times. I have not examined every acre. I did not look for any spring. At Tobago there is a small spring—different formation on account of the pitch. There is a small gully well defined going to the Vessigny above dam channel (at 10 Tobago) becomes fainter and fainter, at the spring no defined channel water flows over the land. We increased flow of spring by digging a channel, before there was great evaporation some of the water gets into the water course which goes into the dam. Defined channel for five-eighths of a mile above the dam. In dry season we dam what little water there is coming from the spring. Water taken to Brighton—none returned.

Field Book and plan of Cornillac's survey of Mon Plaissir put in by consent.

Both above and below the dam Vessigny is well defined water course 3 or 4 miles long, dam is about midway between source and mouth. River 20 running parallel it is not so wide as Vessigny—about 10 feet wide. Vessigny from bank is about 15 to 20 feet. The work at Brighton at Development and at Vessigny oil fields is continuous. Calculation of water used in the rainy season and at that time. Brighton not much work on account of war, that however makes no difference in the consumption, consumption average 120,000 gallons a day. I've never seen the dam dry since dam put. I should say lowest depth of water in Vessigny dam in dry season 5 to 10 feet, say average of 7 ft. Dam holds at least 25 million gallons of water, height of water in wet season before it overflows 20 feet. I should say in dry season there would be from 1 to 4 million gallons in the reservoir.

30 I've never seen the Tobago dam dry, it was reported to me as dry last year by Mr. Weller, I did not go to look, on one or two occasions it was reported to me it was pumped dry. Can't say how long it remained dry. None of water taken from Tobago is returned to river nor is any that is taken to the Development. This Map by Wild has Vessigny river marked on it, I take it to be the Vessigny river.

Map tendered. No objection made—put in.

I have not read de Verteuil's history of Trinidad 2nd edition 1884—original 1856—refers to p. 49 and p. 315.

Book tendered. No objection made—put in.

40 Capacity of Tobago reservoir, I guess 4 or 5 million gallons, in dry weather may be nothing.

Re-examination :

There are 7 to 10 houses on banks of river of people working for us, tenants of ours, between Bridge and sea no one at all. No people above these people near the Bridge up to the dam. Bottom of river at Bridge is lower than bottom of river at the mouth.

RECORD.

In the  
Supreme  
Court.

Defendants'  
Evidence.

No. 13.  
Cross-  
examination  
of William  
Fowler, 21st.  
25th Jan.,  
1915  
—continued.

Re-  
examination

RECORD.

In the  
Supreme  
Court.

No. 14.

## Examination of George Alexander McCready.

Defendants'  
Evidence.

No. 14.  
Examination  
of George  
Alexander  
McCready,  
25th Jan.,  
1915.

Geologist in Defendant's employ since September 1911, and have been working in the district since then. I have had experience in Oregon, California, &c.—I have been searching for oil, there were several Geologists. I've made several plans. I have studied the logs of the wells, *i.e.* records of the boring. These are the logs of group by Vessigny dam. This is log of well 35 showing geological formation. There is log for each well, there are about 40 wells. I did not make the boring myself.

Objected to—not tendered.

10

I have been around the dam a good deal. I have been up the river searching for geological outcrops, a long distance up as far as the water shed. When I first went there was high jungle, this was between September and November 1911. There was old trace going from Mon Plaisir to Union which goes about  $\frac{1}{4}$  mile above the dam, some other logging rods about 1 mile from the southern main road. Most of my walking was in the bed of the river, I noticed no springs. If there had been a spring I would have given special attention as mineral springs have some value estimating value of lands for oil &c. Subsoil semi decomposed products of clays and pitch sands that soil would be about 10 feet down to nothing on hill tops. 20 Ordinary elevation 120 feet above sea level, very rough County intersected by V shaped ravines top would be 80 feet or so above the present dam, water would come down and rush off very fast. Water supply directly dependent on the rain fall. I was in wet months. I cannot remember seeing river dry, flow very variable from almost nothing to torrent, sometimes a mere trickle. I don't remember being there in dry season before dam put. I had finished my detail work. In dry season would not get but very little water, branches would be dry. Oil Fields are I think worked here on most approved methods, it takes a good deal of water, absolutely necessary. There must be some storage of water or work could not go on. 30 Even in wet season not enough to carry on work at all times. In rainy season very heavy flow of water at times. I have made measurement almost daily from beginning of November to beginning of January 1914-1915, made almost daily visits. I gauged water flowing over spill way.

This is statement—tendered—put in.

Most noticeable extreme variation in amount.

These are photos taken correctly in vicinity of Vessigny dam.

When I was in there first there were seepages of heavy asphaltic oil in head of river, that would wash down in the river. I saw one yesterday, it is a natural pitch cone. In heavy rain the reservoir would fill very quickly. 40

\* Sic ? come.

I should say 40 or 50 million gallons could \* down the river in the very heaviest rains.

I cannot see how the dam could make any substantial difference to the owners of Merrimac. It would make no difference if dam was there or not. I visited above the Vessigny dam and made careful observation between Thursday and to-day.

This is a correct plan.

I went round the reservoir, there were 7 places where water was entering the reservoir, 5 on the Eastern side of the reservoir, varied from 2 to 10 gallons an hour.

Flow of these 5 was 30 gallons an hour.

I followed them until there was no more water. The 6th is on the Western side, it flows 5 gallons an hour, no water in it 300 feet from the reservoir. The 5th ran from 50 feet to 200 from reservoir. No signs of spring, dependent on the retardation of the rain fall. The 7th is what is  
10 put as the main river. I followed that up to the divide and explored all the branches that came into it. It was a trickle. I followed each up till no more water.

These are photos taken about 1 mile above Vessigny dam. The trickle is between bottom of picture and the hat. At first point I observed flow of water, using galvanized iron as a weir. On 23rd flow of 2165 gallons per day. On 24th 980 gallons per day of 24 hours. On 23rd and 24th I also visited mouth at Merrimac. On 23rd at 5.30 p.m. it was low water. Water was flowing out to sea, it tasted brackish, going down over gradual sloping beach. At the beach it was flowing out. This is a kind of sand bar. I  
20 should estimate water outside bar 3 to 4 feet deep, going over bar about 6 inches, this indicates lagoon which does not entirely empty.

On the 24th I saw it on rising tide, tide had been rising for sometime. Water salt and very fast current of salt water going up say 3 miles an hour (photos shewn). At the bridge running out sort of eddy fluctuating, water slightly brackish—I tested it, there was reaction for salt. I was also there at mid-day, tide past the flood going out. The water at Bridge and Merrimac line and mouth I tested for salt, test showed it as strong as sea water. Tide had fallen nearly a foot.

Cross-examination :

30 In 1911 I went to see every ravine to see what outcrops. I should say I examined 95% of the ravines. I could not say how many times; from dam to mouth say 20 times. I would say 30 days altogether in the Vessigny basin. I went up from the Southern main road up to the divide, examined all the ravines. I was on the look out for springs to see if any mineral. There were no water springs. There were some oil ones. No springs along any of the branches. Length of Vessigny say 3 or 4 miles. Its a watercourse—well defined channel. By the divide, nearly there, it loses itself in a steep dam.

From dam to divide is about  $1\frac{1}{2}$  mile.

40 I have examined most of the branches below the dam say 90%. In 1911 200 yards from divide no water. Flow say 200 or 300 yards from divide, No. of branches figuring in.

Some called branches are nearly as wide as what is called the main channel.

Channel where dam is put was about 15 to 20 feet wide by 10 feet wide. There are other branches 15 to 20 feet wide.

RECORD.

In the  
Supreme  
Court.

Defendants'  
Evidence.

No. 14.  
Examination  
of George  
Alexander  
McCready,  
25th Jan.,  
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—continued.

Cross-  
examination.

## RECORD.

In the  
Supreme  
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Evidence.

No. 14.  
Cross-  
examination  
of George  
Alexander  
McCready,  
25th Jan.,  
1915

—continued.

After 1911 I was there in 1913, there was a little water flowing. I then located well 36 about 1 mile above the dam. Can't say if it was dry or wet weather. There was only a trickle very small amount of water, say a foot by a couple of inches deep, depending on the sloop. There is defined channel from dam to 200 or 300 yards from divide. I know the Tobago dam. There is a sort of spring an intermittent spring. About 1912 dry season I was there and don't recall any water falling in, there was a marshy place, I call it a swamp. I could not see any water flowing. That swamp or spring is directly dependent on the rain fall. I saw no water flowing into the dam. These swamps are not frequent. There are other intermittent springs up 10 ravine that flows to the Tobago. The swamps give some clue to the surface geology—come from Llanos formation. They are of value for estimating the value, they may or not show anything of value.

I have seen no springs other than those in the Tobago and the general appearance of the ground is against it geologically. Some parts the strata are porous but that is round the North of pitch lake, you get remnant of that at Tobago. Geologically there could be no springs at Mon Plaisir, most of Union &c. No possibility I think of springs on Mon Plaisir.

I say there are none both from personal observations and from the geology. Usually subsoil down to a couple of feet. Frequently little 20 globule of oil would trickle down to the river, not so much above as down below the dam.

Mr. Agostini, K.C.

We don't say pollutions from seepages.

Witness continues :

Below and above the dam oil adheres to vegetation on sides. I consider there is considerable on the water above and below the dam caused by the working of the oil wells. I think it is salt water by Merrimac. They could make some use of salt water, could use it for drilling purposes. If dam there or not, because in dry season we would use the whole by pumping ; 30 if rainy season water goes over the spill way. When dam not overflowing there is none coming in or very little. I don't think 3 weeks after now *i.e.* after rain you would get any water flowing. I have heard what rain fall was in January but I cannot recall figures. I remember rain as late as the 12th. On 23rd there was no water flowing over spill way. Water 1 to 2 inches below top of spill way. On the 17th there was  $\frac{1}{4}$  inch going over spill way at the corner, say 4,500 gallons per hour. This year is my first experience of dry season in that locality. I took no observations of spill way before October last. Rise and fall of tide I should say 3 to 6 feet, it depends whether springs or neaps. Possibly it is 3 feet difference between 40 top of the beach and the end of the beach at low water.

I do not see how Merrimac is to get fresh water. Nothing is impossible if you spend the money on it but I should say practically impossible to make dam to keep the sea out. You would have to have contrivance to let out heavy rain falls, to control the flood torrents. It would not be worth

the money spent on it. To some extent both from gushers and working oil wells oil gets in the river. I don't see how it's possible to keep oil from the ground which would be washed by rain into the river. Don't know of any natural gushers.

RECORD.

*In the  
Supreme  
Court.*

Defendants'  
Evidence.

No. 14.

Re-examination :

Oil goes into sumps. None is allowed to escape if possible. You keep as much as possible to turn into money. First thing in searching is to go through the rivers &c. Plaintiffs could raise 6 feet to the Government Bridge. Land at mouth is low, some of the land would be flooded at high 10 springs. At corner not more than 4 feet above high tide. What is used is 5% or less of the water. No evidence of any springs and I have given a very thorough search. In driest part of dry season I don't think there would be any water flowing. Springs in Tobago look to me as if they come out of the Llanos formation, some of the water comes from the pitch Lake. Most probably rain falls in the district itself, it is flat land and the rain sinks in. I am certain they would not last out a dry season. I have never detected anything but rain water in pitch Lake Tobago shews iron oxides in the water which comes from the ravines.

Re-  
examination  
of George  
Alexander  
McCready,  
25th Jan.,  
1915.

Little swamp is 300 or 400 yards from the lake. Swamp lake is 50 20 feet above sea level. Pitch Lake over 100 feet above sea level.

To Mr. O'Reilly :

Veatch was one of the geologists.

To Mr. Agostini :

He is a great authority on oil.

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No. 15.

Examination of John Henry Weller.

No. 15.  
Examination  
of John  
Henry Weller,  
25th Jan.,  
1915.

Engineer in the employ of Defendants. Not connected with oil, I am a civil Engineer. I have checked Mr. McCready's figures as to water over spill way, they are correct. Yesterday I took levels, and have made 30 sections of bed of the river and is shewn on this plan. Put in J.H.W. 1. This plan shows flow of water within the last 2 days, J.H.W. 2 Plan 1 lines A.—A to F indicate cross sections, referred to datum line that is mean low sea level. Depth of Bridge &c. is lower than the datum line; all the tidal water does not flow out. I took levels yesterday and the day before. Plan 2. I began at dam and followed stream to Southern road. First

b

c



RECORD.

*In the  
Supreme  
Court.*Defendants'  
Evidence.No. 15.  
Examination  
of John  
Henry Weller,  
25th Jan.,  
1915

—continued.

gauging I took was 1500 or 2000 feet below dam, running at the rate of 4500 gallons per day. At "B" at Usine branch in the branch 3500 gallons per day, next branch "C" 50,000 gallons per day. "D" another branch 25,000 gallons per day. I took gauging at "E" in Vessigny above D, below C, shew 54,000 gallons per day. From D to Tobago all other branches dry. Tobago river at F gave 87,000 gallons per day, about 1,000 feet above its junction, above where it is tidal. Below Tobago another stream "I" gauged about 800 feet above its junction above the tide.

At Bridge a discharge of 233,000 gallons per day. I took this at 11 a.m. (said to be top of the tide). I arrived at the 233,000 gallons by totting 10 up the amount of gallons coming in.

When I made the sections I tasted the water it was salt. I made sections at 7.30 a.m. tide had started to flow into the channel of the river, at same time water in river by the old Bridge was going down. Small channel 6 or 8 feet wide, depth 9 or 10 ft. deep. Currents met just above the channel (R), both water flowing up and that flowing down was salt.

I was at Tobago dam Saturday and Sunday, no water coming over spill way, water was 9 inches below crest of spill way. I noticed water seeping through the dam in appreciable quantity below the spill way and also coming down small stream on left hand side of the reservoir. I 20 measured water from the small ravine at (H) above where water seeping through dam comes into ravine, at the same time I measured discharge in ravine below where water seepages into ravine. Leakage through the dam 18,000 gallons per day. Through the ravine came 64000 gallons.

Mr. Wharton, objects: This was never put to our witnesses. We should be given an opportunity to meet this case.

Court: I think this evidence is perfectly admissable, I was trying myself to get amount that came in river below the dam.

Witness continues:—

Last witness referred only to water above the dam, he took no measure- 30 ments below. I was inside the dam at Tobago last year. It became completely dry about the middle of May. We repaired dam—tore out the middle, there was no water coming in or going out.

Cross-  
examination,  
26th Jan.,  
1915.

Cross-examination:

I came last year, my knowledge is from then. I know practically nothing of the Vessigny above the dam. I have been up the Usine Branch *i.e.* first big branch on left coming down.

Been there a year in November. I am in charge of all Engineering works of the Defendants. From the dam to the bridge is the main channel. Have no knowledge of the channel from dam upwards. The branches have 40 a defined channel, some of them as wide and deep as the main channel. The Usine Branch at its junction, width of both channels 10 to 15 feet and 8 to 10 feet deep, that is the channel. Usine is the largest branch. Water shed area of the Usine Branch would be approximately 350 to 400 acres. Last Saturday I made my observations of gauges except at point 1, that I made Sunday morning. We had a spell of dry weather since about the 12th,

between the 7th and 15th. Little rain between 7th and 15th, after that only traces *i.e.* not sufficient rain to measure.

Vessigny reservoir was not dry last year. I don't know what its lowest depth was. Lowest below spill way I could not venture to guess, several feet. Storage capacity I have only got from Veitch's Map, and it worked out approximately 37 million gallons. We take for our work 100 to 120 thousand gallons. Petroleum Development takes say two-thirds and Development Co. one-third.

Some time in April or May I should say water was about 10 or 12 feet  
 10 from top of spill way. Impossible to say without measuring it, but if 7 feet  
 of water only in reservoir I should say it would be less than one-third of  
 the whole capacity. Approximately extreme dry season is 100 days. Except  
 for water stored there is no water for those 100 days or an amount very inappre-  
 ciable. I never estimated storage of Tobago dam. I was there when the  
 dam was repaired last year, it was dry. We pumped it dry in the  
 ordin'ry running of our works. Dry long enough to tear out the middle  
 portion of dam and repair it. It was not pumped dry for purpose of repairs.  
 Don't believe it would run over 50,000 gallons taken from there. We could  
 not take over 50,000 gallons a day for our boilers. 50,000 gallons is the  
 20 most we use at the boilers. If we had greater operations we would have  
 to increase our boilers. It took about 2 weeks to make repairs to the  
 dams. Can't say it commenced to fill immediately after. We did not get  
 water at Brighton immediately after. Vessigny is not navigable, could put  
 small boat in certain portions of it at low tide, say from sand bar at mouth  
 to main Southern Road. I saw boats on the beach. I've never seen them  
 up the river. When Tobago is dry we pumped it off the pitch lake. We  
 tried taking water from Vessigny dam to Brighton for half a day, but we found  
 we could get it easier from pitch lake. Pitch Lake is not good enough for  
 domestic purposes. We use Tobago water for domestic purposes. When  
 30 Tobago is dry we used for domestic purposes at Brighton condensed water  
 (from the lake).

There was no water over spill way either Vessigny or Tobago on the  
 23rd January. Where I tasted water tide was rising but water was still  
 flowing down the river, this was at the old bridge, between sec. E.E and  
 boundary. Current met at sandbar about 7 or 8—about same time I tasted,  
 I just walked up and tasted.

RECORD.

*In the  
 Supreme  
 Court.*

Defendants'  
 Evidence.

No. 15.  
 Cross-  
 examination  
 of John  
 Henry Weller,  
 26th Jan.,  
 1915  
 —continued.

RECORD.

*In the  
Supreme  
Court.*

No. 16.

**Examination of Charles Edward Lawrie.**Defendants'  
Evidence.No. 16.  
Examination  
of Charles  
Edward  
Lawrie, 26th  
Jan., 1915.

I used to be employed by Defendants. I went in 1911 till November last year, not employed now. I was Engineer Road making. Defendants acreage there is all in one block. I made road up to where dam is. I went to Vessigny river in 1911 end of dry season, all high forest. I went with Veitch and Fisehammel to locate the dam, that was in the wet season about November 1911. I knew river in dry season lower than the dam is, not above, about  $\frac{1}{2}$  mile above the Bridge, there was no running water in it, pools of stagnant water. Dam was built in 1912. It was before November 1911 I saw the river in dry season, it was end of May or beginning of June. 10

There is no person or cultivation except abandoned patch of cocoa belonging to Defendants to the river, no other industry &c. but the Defendants. In those parts the streams are dry in dry season. I took samples of water at the boundary of Merrimac lands, at the old Bridge. I took them twice at different tides, both at high tide, not at low tide. I don't remember now. Shewn samples.

One taken at high tide on 28th October 1914 at 11.27 a.m. One taken at low water on 27th October 1914 at 4.32 p.m. I have been above the dam after dam built. I have been in the bush, clearing forest &c. from dam right 20 to Lot 5. 6 miles from Southern Main road. I never noticed any natural springs. I put the seals on the bottles.

Cross-  
examination.**Cross-examination :**

First time I knew river was dry season 1911. Before that dam was built I was running lines &c. I saw the river once in May or June then next time in November 1911. I had knowledge also in 1912 up to 1914. All those streams practically dried in dry season, they got dry towards the end of the dry season. I know the main channel, I knew it above the dam. The branches would get dry before the main channel. I knew the main channel above the dam for about a mile. Stagnant pools 30 or 40 feet apart 30 from each other at spot I saw. I saw no seepages of water, I did not follow streams to their end.

Mr. Wharton K.C. :

Does not wish proof samples duly taken to Analyst &amp;c.

## No. 17.

## Examination of Archibald Edward Collins.

Assistant Government Analyst, I analysed both samples. These are true analysis of the water.\* Put in: Asphalt gives sulphuretted hydrogen, it would occur in pockets by the sea coast, it would come from asphalt in the sea or any place where oil and asphalt. It is a typical salt water. Oil film on water would cause very slight sulphuretted hydrogen. There were very slight traces of oil on the surface. Water not fit for industrial or domestic purposes. You might bathe in it, it would corrode boilers.

10 No. (1)—Small quantity of Sulphuretted hydrogen. The low water would contain 70% of salt water. Other sample same as the salt water in the gulf.

Cross-examination, declined.

RECORD.

*In the  
Supreme  
Court.*

Defendants'  
Evidence.

No 17.  
Examination  
of Archibald  
Edward  
Collins, 26th  
Jan., 1915.  
\* No. (2).  
high water.

## No. 18.

## Examination of Joseph Leon Agostini.

In charge of Agriculture Department of Asphalt Co. Been there 3½ years. Before Vessigny dam was built, about 3 months before beginning of dam I was sent there to find out about water supply. I employed a man to show me, he showed me part of Vessigny water. I should  
20 say half way between dam and beach, perhaps nearer the dam. I saw small pools of water there, above it was perfectly dry likewise below. It was in February 1912 I think. The bed was covered with dry leaves showing water had not flowed for some time. I reported I had failed to find anything that would require his, Mr. Fowler's, requirements.

A year or two ago, I should say about 18 months ago, I went above the dam, there were gullies and ravines, they were quite dry, I saw no springs. Water had not run for some time.

Cross-examination :

30 Known locality for 3½ years. Boats on beach go to sea to fish, don't go up the river. I think it was February 1912. I went at any rate between January and March. Before dam built I never went up as far as where dam is. I paid no particular attention to main channel, I can't say if dry or not. I went to inspect the land, I crossed the ravines they were dry. I saw no springs. I came across no flowing water. I was nearly at the top.

No. 18.  
Examination  
of Joseph  
Leon  
Agostini,  
26th Jan.,  
1915.

Cross-  
examination.

RECORD.

*In the  
Supreme  
Court.*

No. 19.

## Examination of Arthur Ibbett.

Defendants'  
Evidence.

No. 19.  
Examination  
of Arthur  
Ibbett, 26th  
Jan., 1915.

Mining Engineer in charge of interest of the Trinidad Lake Petroleum Co. The Co. has wells producing oil in Morne L'Enfer. I have been to Australia in oil, in the United States in copper and gold and other parts of the world West Africa, India. I know the properties of Asphalt Co. fairly well. I know the Merrimac lands. I went by invitation of Co. to the Vessigny dam. I know the County. I have also seen Vessigny river below the dam. The Vessigny river in common with many other rivers in this Colony has no source in known springs. I've passed by the boundary of 10 Asphalt Co. and had the Vessigny river pointed out to me, probably 3 miles above the dam. I should say it had its source in a basin formed by a spur jutting out from the Northern portion of the same ridge and the surface water falling in that locality forms a course for itself and the Vessigny is that course. Round about there is forest reserve to preserve the water shed and to preserve it by holding back water by vegetation and undergrowth. I took these photos on 12th January last, there had then been three days without rain. It is photos of Vessigny dam. I measure the overflow 36 gallons a minute. Dam forms natural reservoir in the hills. We don't find springs in those strata. There are signs of very extensive floods. Its all 20 surface water. I was there last dry season. All the ravines and water course are dry, the ravine that is deepest and least gradient lasts the longest. I am speaking generally of the forest reserve. Where dam is similar nature similar country.

Honestly I do not think dam being there or not makes any difference to Merrimac. I think Plaintiff would have a busy job to make dam, they could make small dam higher up. Could not carry on any industry with the water at Merrimac, they would have to buy a new boiler every fortnight. Defendants could not work their wells without the dam. I estimated roughly capacity of reservoir at 25 million gallons, somewhere about there. It is 30 difficult to estimate as it runs up different valleys.

Don't use all the water in boilers, it is condensed and brought back, it is so done at Defendant's. I should say for all their steam plant about 40% would be returned. Part of steam in oils for refining Asphalt about 40%. Some for Electric power plant return there about 70%. Oil Field boilers about 20%.

Water is used in rotary drilling, if flushing the water would run back. Only water left would be in the hole, 90% would be returned. In Cable drilling 50 or 60% would be returned. All the works of Defendants are well up to date, being Americans they are lavish with their money. I don't 40 see how a gusher can be controlled, people have tried but failed. One in California and one in Texas now. Oil from wells are collected in sumps.

Photo produced.

Oil first in upper sump overflows to another then to another from which is pumped into pipes. Everything done to preserve the oil. I certainly don't think anything more can be done or anything else.

## Cross-examination :

It is a well known fact all over the world that gushers cannot be controlled. The greatest problem in Baku to hold gushers, one gusher there made channel as big as the Volga. There must be certain amount of leakage from sumps which would find its way to the stream.

Sumps are made of earth works—best—Concrete no better. Leaks would be from the connections that is the pipes. If there was a leak the dams would be blown out. There is a little contamination in the river. I should say most of the pollution—if you call it pollution would be from  
10 drilling operations, must bring it certain amount of oil scum, and where there are pumping wells there is oil on the floor of the rigs which the rain would wash off. The Vessigny is a well defined water course that carries off the water that falls on the land. I do not think there is any percolation. I know area where Vessigny takes its rise. We do very careful work. My statement is from definite knowledge of the county. The only way you get up the forest is to go up the ravine, and the geological exposures are to be found in the ravine, or water courses. It was not necessary to clear areas to see whether there were springs or not. The strata are lying at angles. Layers of sand and clay. Strata is made up of impermeable clays, semi  
20 permeable clays and sand.

Soil would return quicker or slower according to the strata. Then there is evaporation when crust gets hot, water evaporates, you can see the steam. A fault would not make a single bit of difference in that county, might get little oil in it. If clay strata on top it would not sink in, only if sand strata is there. You might get water for a good long time after rainy season, but it is not easy to speculate as to what results you would get. Nothing extraordinary that Mr. Cornillac saw water flowing in March; it may have been exceptionally heavy rain. The sun may not have been so hot then, therefore not so much evaporation, water may not have been  
30 used. When reservoir is full and overflows it makes not the slightest difference to Merrimac. Merrimac would have to dam. If different dams all down the river that's their bad luck. It would rob them of getting the chance of damming if all the channels were dammed. It is not impossible for Merrimac to get supply of fresh water under present circumstances, not from engineering point of view. I have known Trinidad exactly a year. There is no navigation in Vessigny. Oily scum not so much harm in boiler, but not good for domestic purposes. No salt in Vessigny workings.

## Re-examination :

Merrimac has nothing now *i.e.* no water to work any industry unless  
40 he takes mechanical means by damming, keeping out the sea, &c.

No one could work from the Vessigny without a dam. The natural thing is for parties to pool their interests in the water. It would be an enormous dam for Plaintiffs to keep out the sea. All river of Plaintiffs is 475 feet, it is a swamp. If he dammed he would flood his neighbour's lands further up. He would flood right up to the new bridge. It would

RECORD.

*In the  
Supreme  
Court.*Defendants'  
Evidence.No. 19.  
Cross-  
examination  
of Arthur  
Ibbett, 26th  
Jan., 1915.Re-  
examination.

RECORD.

*In the  
Supreme  
Court.*Defendants'  
Evidence.

No. 19.

Re-  
examination  
of Arthur  
Ibbett, 26th  
Jan., 1915  
—continued.

be a very costly undertaking. He would have to pump out the sea water. Merrimac is an alluvial swamp. One barrel of oil would cover 50 square miles of water. Plaintiff has no high land sufficient to make dam to keep out the sea. All he could do would be to dig a tank in the bed of the river. I quite believe that a tide could cover that job on Plaintiff's land. One spring tide came 5 feet 7½ inches high, dam would have to be higher than that to allow also for wind blowing water over.

To Court :

Average gradient from source to mouth is about 6 in 100, higher lands are much steeper gradient, nearer the sea the flatter it is. 10  
If rain fall 5 inches in 36 hours all would be off in 14 days. Length of Vessigny is 4 or 5 miles long. Morne L'Enfer ridge is 320 feet high. There may be a flat in one place, steep gradient in another. I can't speak of the higher part.

Case closed.

Mr. Alcazar K.C. addressed.

Mr. Wharton K.C. replied.

Judgment reserved.

No. 20.  
Certificate of  
Judge's Clerk,  
6th April,  
1916.

No. 20.

Certificate of Judge's Clerk as to correctness of Notes of Evidence. 20*(Not printed.)*

## EXHIBITS.

## No. 21.

## Exhibit A.

Trinidad.

This is the last Will and Testament of me Conrad Frederick Stollmeyer of the Town of Port of Spain in the Island of Trinidad, Esquire—

I declare that I am possessed of real estate in this Island and considerable personal property which consists of shares in the Telephone Company, the Port of Spain Tramways Company, of money invested in mortgages on real estate and other securities in this Island; of a royalty of six cents per ton payable to me by Previté and Company of London in England and a Royalty of ten cents per ton by the Barber Asphalt Company of New York in the United States of America, on every ton of asphalt shipped from La Brea in this Island; a royalty of eighty-eight cents per ton payable to me by my son Charles Fourier Stollmeyer on manufactured Euprée, a royalty of ten cents per ton on raw asphalt exported to the United States of America, Canada and Mexico payable to me by the Barber Asphalt Company; a royalty of twelve cents per ton on raw asphalt shipped to Australia and other countries not already mentioned by the same Company—I direct my executors hereinafter named not to terminate any contracts or agreements that may exist between myself and the parties hereinbefore mentioned and from whom I received the royalties hereinbefore stated, but to continue the said contracts or agreements and to receive the said royalties as I have done in my lifetime as long as the lease to them of the Pitch Lake at La Brea from the Colonial Government continues. To invest on the security of real estate in this Island all moneys that I may die possessed of or entitled to. Out of the moneys received by way of royalties above mentioned and for interest on money invested as above directed I direct that a sum of one hundred dollars be paid to my daughter Sophia Louisa Geofroy wife of Louis Geofroy at the said Town of Port of Spain, Gentleman, monthly as long as she lives and should the said Louis Geofroy predecease her as long as she remains his widow.

The above payment is to be paid free of legacy duty—I give and bequeath my diamond ring which I inherited from my grandfather to my son Charles; I give and bequeath all my household furniture, plate, linen, jewellery, carriages and horses to my wife Eliza absolutely—Subject to the payment of the one sum of money hereinbefore mentioned, I give, devise and bequeath all real and personal property of what nature or kind soever and wherever situate that I may die possessed of to be divided in three equal parts between my son Charles Fourier Stollmeyer, my son James Arther Rex Stollmeyer, and my wife Eliza, so long as she remain a widow, and after them to their heirs in equal shares. Should my wife marry again her share is to go to my said sons Charles and Arthur in equal shares. Of the royalty of ten cents per ton payable to me by the said Barber Asphalt

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 21.  
Exhibit A.  
Probate of  
Will and  
Codicils of  
Conrad  
Frederick  
Stollmeyer,  
20th Sept.,  
1904.

C.F.S.

C.F.S.



RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 21.  
Exhibit A.  
Probate of  
Will and  
Codicils of  
Conrad  
Frederick  
Stollmeyer,  
20th Sept.,  
1904

—continued.

\* C.F.S.

7th Feb.,

1902,

Witnessed by

F. M. Bain

and

P. Hanley.

Company on raw asphalt shipped to the United States of America, Canada and Mexico, Adolph. D. Straus of New York is paid by me a commission of ten per cent. for collecting same—It is my wish that he be allowed to collect the same as long as the concession lasts, and that he be paid the same commission. I nominate and appoint my said two sons Charles Fourier Stollmeyer and James Arthur Rex Stollmeyer and Thomas David Tench\* of Port of Spain, the executors of this my will—In witness whereof I the said Conrad Frederick Stollmeyer have hereunto set my hand at Port of Spain aforesaid this fourteenth day of May in the year of Our Lord One thousand eight hundred and ninety-seven.

10

CONRAD F. STOLLMEYER,

Signed.

Signed by the Testator as and for his last Will and Testament in the presence of us present together at the same time who at his request in his presence and in the presence of each other have hereunto subscribed our names as witnesses—

C. H. A. ATTALE,

GEO. ARMSTRONG of the Town of Port of  
Spain Solicitor and Conveyancer.

Codicil—10th May 1900.

20

The property called “Loyola” in the Ward of Mucurapo which was bought from Mrs. Chantrell by my wife Eliza Stollmeyer, and by her wish and the consent of myself and Mrs. Chantrell transferred to my name, the deed of which is on record, is now my property, and as such will form part of my succession, thereby freeing my wife from all responsibility concerning it—However all the live and dead stock on this property at the time of my demise, I bequeath to her and in case she wishes to take over the said property “Loyola” on the same conditions under which I hold it, she can do so without any reference to other parties.

CONRAD F. STOLLMEYER.

30

Witnesses

A. ROBERT GRAY.

H. F. SMITH.

This is a further Codicil to my Will I desire to give the following pecuniary legacies (which are to be free from legacy duty) namely To the Countess Wachtmeister of 17 Avenue Montaigne Paris the sum of One thousand Dollars such sum to be applied by her entirely for the purposes of the Theosophical Society and the furtherance of its object to my sister-in-law Jessie Margeret Tench the sum of One thousand Dollars for her immediate use. In addition to the Executors appointed by my Will I nominate and appoint Randolph Rust of the Town of Port of Spain Merchant to be an

40

additional executor of my will and I declare that all powers reposed in and made exercisable by the executors therein appointed shall repose in and be exercisable by the said Randolph Rust and the said executors. In witness whereof I have set my hand to this Codicil this fifth day of April 1904.

CONRAD F. STOLLMEYER.

Signed by the above-named Conrad Frederick Stollmeyer as and for a Codicil to his last Will in the presence of us present together at the same time who at his request in his presence and in the presence of each other  
10 have hereunto subscribed our names as witnesses.

JOSEPH CRAGWELL of Boissiere Land Trinidad. Butler.  
ETHEL ROBERTS of Railway Road Arouca. Sick Nurse.

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 21.  
Exhibit A.  
Probate of  
Will and  
Codicils of  
Conrad  
Frederick  
Stollmeyer,  
20th Sept.,  
1904

—continued.

Trinidad and Tobago.

In the Supreme Court.

In the matter of the Estate of Conrad Frederick Stollmeyer, late of the Town of Port of Spain in the Island of Trinidad. Gentleman. Deceased.

The annexed Will and Codicils of the said Conrad Frederick Stollmeyer, who died at the said Town of Port of Spain on the 30th day of April 1904, were proved in the Supreme Court of Trinidad and Tobago, on the 20th  
20 day of September 1904, by James Arthur Rex Stollmeyer of the said Town of Port of Spain Medical Practitioner one of the Executors named therein.

Leave being reserved to grant like probate to Charles Fourier Stollmeyer and Randolph Rust the remaining Executors if and when they shall come in and apply for the same.

Dated this 20th day of September 1904.

T. A. THOMPSON, Registrar.

Trinidad and Tobago.

In the Supreme Court.

30 In the matter of the Estate of Conrad Frederick Stollmeyer late of the Town of Port of Spain in the Island of Trinidad. Gentleman. Deceased.

The annexed Will and Codicils of the said Conrad Frederick Stollmeyer, who died at the said Town of Port of Spain on the 30th day of April 1904,

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 21.  
Exhibit A.  
Probate of  
Will and  
Codicils of  
Conrad  
Frederick  
Stollmeyer,  
20th Sept.,  
1904

—continued.

were proved in the Supreme Court of Trinidad and Tobago, on the 20th day of September 1904, by James Arthur Rex Stollmeyer, of the said Town of Port of Spain, Medical Practitioner, one of the Executors named therein.

Leave being reserved to grant like probate to Charles Fourier Stollmeyer and Randolph Rust the remaining Executors if and when they shall come in and apply for the same.

And Whereas the said Randolph Rust, having applied as Executor to this Honourable Court for a grant of probate of the said Will and Codicils, the said Court doth allow probate of the said Will and Codicils to issue to the said Randolph Rust.

10

Dated this 24th day of November 1904.

T. A. THOMPSON, Registrar.

Trinidad and Tobago.

In the Supreme Court.

In the matter of the Estate of Conrad Frederick Stollmeyer late of the Town of Port of Spain in the Island of Trinidad. Gentleman. Deceased.

The annexed Will and Codicils of the said Conrad Frederick Stollmeyer, who died at the said Town of Port of Spain on the 30th day of April 1904, were proved in the Supreme Court of Trinidad and Tobago, on the 20th day of September 1904, by James Arthur Rex Stollmeyer, of the said Town of Port of Spain Medical Practitioner, one of the Executors named therein.

Leave being reserved to grant like Probate to Charles Fourier Stollmeyer and Randolph Rust the remaining Executors if, and when they shall come in and apply for the same.

And Whereas the said Charles Fourier Stollmeyer having applied as Executor to this Honourable Court for a grant of probate of the said Will and Codicils of the said Conrad Frederick Stollmeyer, the said Court doth allow probate of the said Will and Codicils to issue to the said Charles Fourier Stollmeyer.

Dated this 4th day of November 1904.

30

T. A. THOMPSON, Registrar.

No. 22.

Exhibit A 2.

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 22.  
Exhibit A2.  
Conveyance  
James Arthur  
Rex Stoll-  
meyer to  
Conrad  
Frederick  
Stollmeyer,  
6th Feb.,  
1892.

Trinidad. 201.

James Arthur Rex Stollmeyer to Conrad Frederick Stollmeyer.

Conveyance.

This Deed made the sixth day of February in the year of Our Lord  
One thousand eight hundred and ninety two between James Arthur Rex  
Stollmeyer of the Ward of St. Anns in the Island of Trinidad, Medical  
Student of the one part and Conrad Frederick Stollmeyer of the Town of  
10 Port of Spain in the said Island Esquire of the other part, Witnesseth that  
in consideration of the sum of Thirty six dollars to the said James Arthur  
Rex Stollmeyer paid by the said Conrad Frederick Stollmeyer on or before  
the execution of these presents the receipt whereof the said James Arthur  
Rex Stollmeyer hereby acknowledges the said James Arthur Rex Stollmeyer  
as beneficial owner hereby conveys unto the said Conrad Frederick Stollmeyer  
All that certain parcel of land situate in the Wards of La Brea and Guapo  
in the said Island of Trinidad called "Merrimac" comprising ninety-six  
acres of land together with the buildings thereon and the appurtenances  
To hold the same and every part thereof unto and to the use of the said  
20 Conrad Frederick Stollmeyer in fee simple.

In Witness whereof the said parties hereto have hereunto set their  
hands at Port of Spain aforesaid the day and year first herein written.

The above deed has been prepared by me.

GEORGE ARMSTRONG, Certificated Conveyancer.

Signed and delivered by the within named  
James Arthur Rex Stollmeyer in the  
presence of C. Henry of No. 44a Park  
Street Port of Spain Writing Clerk

J. A. R. STOLLMAYER.

Before me

GEORGE ARMSTRONG,

Certificated Conveyancer.

30

(Certificate of Cornelius Henry, Writing Clerk, together with Certificate of  
registration attached.)

RECORD.

*In the  
Supreme  
Court.*

No. 23.

Exhibit A 3.

Exhibits.

This Deed was prepared by me Aucher Warner Barrister-at-law.

No. 23.  
Exhibit A3.  
Conveyance  
The Hon.  
T. A. Finlay-  
son and  
others to The  
Trinidad  
Asphalt Co.,  
29th April,  
1889.

Trinidad. 943.

This Deed made this twenty-ninth day of April in the year of Our Lord One thousand eight hundred and eighty-nine Between The Honourable Thomas Alexander Finlayson Member of the Legislative Council of the Island of Trinidad Joseph Weedon Previte of Number 2 Crosby Square in the City of London in that part of the United Kingdom of Great Britain and Ireland called England Merchant and Henry Alfred Greig of "The Eaves" <sup>10</sup> Belvidere in the County of Kent in England aforesaid Gentleman of the one part and The Trinidad Asphalt Company being a Company duly incorporated under the laws of the State of New Jersey in the United States of America hereinafter called "The Company" of the other part.

Now this deed witnesseth that in pursuance of the said agreement and in consideration of certain fully paid up shares in the Capital Stock of "The Company" on or before the execution of these presents allotted to the said Thomas Alexander Finlayson, Joseph Weedon Previte and Henry Alfred Greig which said shares the said Thomas Alexander Finlayson, Joseph Weedon Previte and Henry Alfred Greig do hereby accept in full satisfaction of the <sup>20</sup> purchase money of the four several parcels of land in the Ward of La Brea hereinafter described and of the assignment of the said Contracts the said Thomas Alexander Finlayson, Joseph Weedon Previte and Henry Alfred Greig as beneficial owners hereby grant unto "The Company" their Successors and assigns.

Thirdly All and Singular the land called and commonly known by the name of "Brighton" situate in the said Ward of La Brea in the County of St. Patrick in the said Island containing six hundred and seven acres and one-fifth of an acre of land and in which are included as parcels thereof five quarrees of land on which are or were formerly erected certain works <sup>30</sup> for the boiling and manufacture of pitch and abutting on the North on the Sea on the South on the Pitch Lake and on land now or formerly of Pantin Brothers on the East on the Pitch Lake Road and on the West on the Sea and on ten quarrees of land formerly forming part of the Pitch Lake.

To Hold the said four parcels of land hereby intended to be hereby granted unto and to the use of "The Company" their successors and assigns absolutely.

No. 24.

Exhibit A 4.

Deed of Conveyance—No. 1523 of 1890.

This Indenture made and executed this twenty-fifth day of July A.D. 1890 by and between The Trinidad Company, a Corporation duly organised and existing under the laws of the State of New York in the United States of America and having its principal place of business in New York City in the State of New York, party of the first part, and The Trinidad Asphalt Company, a corporation duly organised and existing under the laws of the State of New Jersey in the United States of America, and having its principal place of business in Jersey City in the State of New Jersey, the party of the second part,

Witnesseth :

That the Trinidad Company, the said party of the first part, in consideration of the sum of five dollars and certain other good and valuable considerations to it paid by the Trinidad Asphalt Company, the said party of the second part the receipt whereof is hereby acknowledged, does hereby give, grant, sell and convey unto the Trinidad Asphalt Company, the said party of the second part and its successors and assigns : All that certain parcel of land in the Ward of Guapo in the Island of Trinidad in the West Indies, called (" Union ") being the same premises which were conveyed by Arthur Auckland Cochrane to the West India Shipping Company Limited by his deed dated the thirtieth day of August One thousand eight hundred and eighty and recorded in the office of the Registrar General of the Island of Trinidad under the Number 2567 of the year 1880 and conveyed by the said The West India Shipping Company Limited to the said Trinidad Company by its deed dated the first day of January One thousand eight hundred and eighty-six and recorded in the office of the Registrar General of the Island of Trinidad under the Number 1382 of the year 1886.

To have and to hold all the said hereditaments and premises hereinbefore expressed to be hereby granted unto and to the use of the said Trinidad Asphalt Company, the said party of the second part, and its successors and assigns for ever.

In witness whereof, The Trinidad Company, said party of the first part, and the Trinidad Asphalt Company, the said party of the second part, have

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 24.  
Exhibit A4.  
Conveyance  
The Trinidad  
Co. to The  
Trinidad  
Asphalt Co.,  
25th July,  
1890.

RECORD. hereunto respectively caused their common Seals to be affixed to these presents the day and year first above written.

*In the  
Supreme  
Court.*

Exhibits.

No. 24.  
Exhibit A4.  
Conveyance  
The Trinidad  
Co. to The  
Trinidad  
Asphalt Co.,  
25th July,  
1890  
—continued.

The Common Seal of The Trinidad Company was affixed to the above written Deed in the presence of Walter Scott Wilkinson President and Trustee of the Trinidad Company. } Seal.

GEORGE BAXTER UPHAM,  
Secretary, Treasurer and Trustee  
of The Trinidad Company.

The Common Seal of The Trinidad Asphalt Company was affixed to the above written Deed in the presence of } Seal. 10

AMZI LORENZO BARBER  
President and Director of  
The Trinidad Asphalt Company.

FRANCIS VINTON GREENE,  
Treasurer and Director  
The Trinidad Asphalt Company.

HENRY BOYNTON JOHNSON  
JOSEPH CHARLES KOCK  
ORRAY ERNEST THURBER.

(Certificate of Registration attached.)

No. 25.

Exhibit A 5.

RECORD.

In the  
Supreme  
Court.

Exhibits.

No. 25.  
Exhibit A5.  
Conveyance  
The Trinidad  
Asphalt Co.  
and others to  
The New  
Trinidad  
Lake Asphalt  
Co., Ltd.,  
3rd Feb.,  
1898.

This Deed made the third day of the month of February One thousand eight hundred and ninety eight between The Trinidad Asphalt Company being a Company duly incorporated under the Laws of the State of New Jersey in the United States of America hereinafter called the American  
\*first

Company of the ~~one~~ part Amzi Lorenzo Barber of the City of New York  
10 in the United States of America Merchant of the second part Francis Vinton  
Greene of 11 Broadway New York City State of New York United States of  
America Colonel E Burgess Warren of 2013 Spruce Street Philadelphia State  
of Pennsylvania United States of America \*Edmund Hayes of 110 Pearl  
Street Buffalo State of New York United States of America Charles Matthews  
of Plainfield State of New Jersey United States of America \*Walter  
Scott Wilkinson of 226 Equitable Building Baltimore State of Maryland  
United States of America \*Orray Ernest Thurber of 11 Broadway New  
York City State of New York United States of America \*Robert  
Baxter Upham of Mason Building Boston State of Massachussets  
20 United States of America Joseph Weedon Previte of 2 Crosby Square in  
the City of London England and Henry Alfred Greig of 12 Lansdowne  
Place Blackheath Hill in the County of Kent England the Directors of the  
American Company of the third part and the New Trinidad Lake Asphalt  
Company Limited being a Company duly incorporated under the laws of  
the United Kingdom of Great Britain and Ireland hereinafter called the  
New Company of the fourth part

Now this Deed witnesseth that in pursuance of the said recited agree-  
ments and in consideration of the sum of eighty thousand pounds now paid  
by the New Company to the said Amzi Lorenzo Barber the receipt whereof  
30 the said Amzi Lorenzo Barber doth hereby acknowledge the American  
Company as beneficial owner at the request of the said Amzi Lorenzo Barber  
doth hereby grant and convey and the said Amzi Lorenzo Barber as beneficial  
owner doth hereby grant and convey and confirm and the said F

V Greene E\* Burgess Warren Edmund Hayes Charles  
Matthews Walter S\* Wilkinson Orray E \*Thurber Robert B

Upham\* Joseph Weedon Previte and Henry Alfred Greig as Trustees  
on dissolution do hereby respectively also grant convey and confirm unto the  
New Company their successors and assigns . . . Also all and singular  
the land called and commonly known by the name of Brighton situate in  
40 the said Ward of La Brea in the County of St. Patrick in the said Island  
containing six hundred and seven acres and one fifth of an acre of land and  
in which are included as parcel thereof five quarrees of land on which are or  
were formerly erected certain works for the boiling and manufacture of

\* As original.



RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 25.  
Exhibit A5.  
Conveyance  
The Trinidad  
Asphalt Co.  
and others to  
The New  
Trinidad  
Lake Asphalt  
Co., Ltd.,  
3rd Feb.,  
1898

—continued.

Pitch and abutting on the North on the Sea and on the South on the Pitch Lake and on land now or formerly of Pantin Brothers on the East on the Pitch Lake Road and on the West on the Sea and on ten quarrees of land formerly forming part of the Pitch Lake . . . Also all and singular that certain parcel of land in the Ward of Guappo in the said Island called Union being the same premises which were conveyed by Arthur Auckland Cochrane to the said West India Shipping Company Limited by his deed dated the thirteenth day of August One thousand eight hundred and eighty and recorded in the office of the Registrar General of the said Island under the number 2567 of the year One thousand eight hundred and eighty and conveyed by the West India Shipping Company Limited to the said Trinidad Company by its Deed dated the first day of January One thousand eight hundred and eighty six and recorded in the Office of the Registrar General aforesaid under the number 1382 of the year One thousand eight hundred and eighty six

To hold all the lands and hereditaments hereby or intended to be hereby conveyed unto and to the use of the New Company their successors and assigns in fee simple In Witness whereof the parties hereto of the first and fourth parts have hereunto caused their respective common seals to be affixed and that parties of the second and third parts have hereunto set their hands and seals the day and year first above written.

No. 26.

Exhibit A 6.

2073.

No. 26.  
Exhibit A6.  
Conveyance  
Hon. G. T.  
Fenwick to  
The New  
Trinidad  
Lake Asphalt  
Co., Ltd.,  
26th Sept.,  
1900.

Trinidad.

Regr. Fee £6.

This Deed made this Twenty-sixth day of September in the year of Our Lord One thousand nine hundred between The Honourable George Townsend Fenwick of the Town of Port of Spain in the Island of Trinidad Planter of the One Part and The New Trinidad Lake Asphalte Company Limited a corporation duly registered under the Companies Acts 1860 to 1893 and having its principal office at No. 3 Laurence Pountney Hill in the City of London of the other Part Witnesseth that in consideration of the sum of One thousand two hundred pounds sterling as purchase money to the said George Townsend Fenwick paid by the said New Trinidad Lake Asphalte Company on or before the execution of these presents (the receipt whereof the said George Townsend Fenwick hereby acknowledges) the said George Townsend Fenwick as beneficial owner hereby conveys unto the

said New Trinidad Lake Asphalte. Company All and Singular those two several pieces or parcels of land formerly forming part of the Plantation " Mon Plaisir " delineated and coloured pink on the plan or diagram hereto prefixed marked with the letter " P " the first whereof abutting on the North partly on the plantation Point D'Or and partly on a Lagoon on the South partly upon a lagoon and partly upon land formerly part of the said plantation Mon Plaisir but now partly of one Brathwaite partly of one Chickri and partly of one Gayadeen on the East partly upon a Lagoon and partly upon land formerly part of the said plantation Mon Plaisir but now of one 10 Boodhoosing and on the West on the Point D'Or Estate And the Second thereof abutting on the North partly upon the Vessigny River partly on the Plaisance Estate partly upon land formerly part of the said plantation Mon Plaisir but now partly of one Rousseau partly of one Sanlalsingh partly of one Mongroo and partly of one Samuel Berridge on the South partly upon the Vessigny River and partly upon land of the Crown on the East partly upon land formerly part of the said plantation Mon Plaisir subsequently sold to the Crown and now in the possession of free Indian immigrants and partly upon Crown Land and on the West partly upon the Vessigny River and partly upon the Plaisance Estate To hold the same unto and to the use 20 of the said New Trinidad Lake Asphalte Company in fee simple In Witness whereof the said George Townsend Fenwick hereto has hereunto set his hand the day and year first herein written.

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 26.  
Exhibit A6.  
Conveyance  
Hon. G. T.  
Fenwick to  
The New  
Trinidad  
Lake  
Asphalte  
Co., Ltd.,  
26th Sept.,  
1900

—continued.

This Deed was prepared by me,

LOUIS WHARTON, Barrister-at-Law.

Signed and delivered by the within named  
George Townsend Fenwick as and for his  
deed in the presence of Jos. Glaudon of  
No. 50 Part Street Port of Spain Lawyer's  
Clerk.

G. TOWNSEND FENWICK.

30

and of me

LOUIS WHARTON, Barrister-at-Law.

(Certificate of Joseph Glaudon Lawyer's Clerk together with Certificate of Registration attached.)

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 27.  
Exhibit A7.  
License from  
Governor of  
Trinidad to  
the Petroleum  
Development  
Co., Ltd.,  
5th June,  
1913.

No. 27.

Exhibit A 7.

1506

## License to Prospect for Oil (on Crown Lands).

This Deed made the fifth day of June 1913 between His Excellency Sir George Ruthven Lee Hunte G.C.M.G. Governor and Commander-in-Chief in and over the Colony of Trinidad and Tobago and its Dependencies, Vice-Admiral thereof, Intendant of Crown lands, etc., hereinafter called "the Governor" (which expression is intended to comprise as well the Governor as his successors in office) of the one part and The Petroleum Development Company, Limited, and their assigns hereinafter called "the Licensees" of the other part.

Whereas the Licensees in accordance with the condition laid down in the Land Regulations for the time being in force for the granting of prospecting licenses, have petitioned the Governor for a license to prospect for crude oil in the lands specified in the Schedule marked "A" hereunder written, and have entered into a bond with the Receiver-General in the sum of five hundred and fifty pounds sterling (£550) conditioned for the due and faithful carrying out of the provisions contained in this deed and the 20 schedules A B and C hereto attached.

And whereas the Governor has found that there is no objection to granting the said license.

Now this deed witnesseth as follows:—

In consideration of the payment of the fee mentioned in No. 57 of the Land Regulations 1910, receipt whereof is hereby acknowledged and of the royalties, covenants and agreements hereinafter reserved and contained on the part of the Licensees to be paid and observed, the Governor doth hereby grant and demise unto the Licensees the sole right and license (subject to the conditions hereinafter contained):—

1. To enter upon the lands described in the said schedule marked "A" and to mine, bore, quarry, dig, search for, win and work all or any crude oil lying or being within under or throughout the said lands without any interruption, claim or disturbance from or by the Governor or any other person or persons whomsoever
2. To carry away and dispose of the produce thereof to and for the use and benefit of the Licensees;
3. For the purposes aforesaid to clear undergrowth and brushwood and (with the sanction of the Governor previously obtained in

writing) to make and use any drain or water course and also to make any roads on the said lands necessary for effectually carrying on the prospecting operations hereby licensed;

4. To erect and bring upon the said lands all such temporary huts, sheds and structures, steam and other engines, machinery, and conveniences, chattels and effects as shall be proper and necessary for effectually carrying on the prospecting operations hereby licensed.

Reserving nevertheless to the Governor full power and liberty at all times to enter into and upon and to grant and demise to any person or persons whomsoever liberty to enter into and upon the said lands for all or every purpose other than those for which this license is issued, and particularly (and without hereby in any way qualifying such general power and liberty) to make on over or through the said lands such roads tramways and railways as shall be considered necessary or expedient for any purpose, and to obtain from and out of the said lands such stone earth timber or other material as may be necessary or requisite for making repairing or maintaining such roads tramways or railways or for any other purposes, and to pass and repass at all times over and along such roads tramways and railways, for all purposes as occasion shall require.

20 To have and to hold the said rights, license and other the premises hereby granted with the appurtenances unto the Licensees from the date of this license for the period of two years, rendering and paying therefor free and clear from all rates taxes charges and deductions the royalties in the Schedule marked "B" hereto specified subject to the right of the Licensees to use free of royalty any product or part thereof hereby licensed for the usual and customary works-consumption and to win, use and take free of royalty for the purpose of experiment such quantity of such products not exceeding twenty (20) tons during the said period as the Licensees may require.

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 27.  
Exhibit A7.  
License from  
Governor of  
Trinidad to  
the Petroleum  
Development  
Co., Ltd.,  
5th June,  
1913

—continued.

30

#### Schedule A.

All those lands coloured red on the attached plan\* marked "F" † situate in the Ward of La Brea and Guapo and having an area of one thousand nine hundred and ninety-nine (1,999) acres or thereabouts.

\* See No. 1,  
Book of Plans  
and Photo-  
graphs.

† As original.

#### Schedule B.

Royalty.—For all crude oil or other mineral hereby licensed a royalty of two shillings per ton shall be paid to the Receiver-General on the net output (except such quantity as is herein granted free of royalty) unless the Governor at his discretion require the Licensees to deliver the said royalty in kind.

RECORD.

## Schedule C.

*In the  
Supreme  
Court.*

Exhibits.

No. 27.  
Exhibit A7.  
License from  
Governor of  
Trinidad to  
the Petroleum  
Development  
Co., Ltd.,  
5th June,  
1913

—continued.

The Licensees shall with all reasonable despatch commence operations to search for oil and shall within the term of this license drill not less than seven (7) wells having an aggregate depth of not less than seven thousand (7,000) feet provided that if before seven (7) wells have been sunk sufficient results are obtained to justify the Licensees in making application for a lease the Governor on receiving such application may at his discretion dispense with further prospecting work.

Plan marked "F" referred to in Schedule A.

(See Book of Plans.)

10

No. 28.  
Exhibit  
A 8 (a).  
Letter from  
C. L. David  
to The  
Trinidad  
Lake  
Petroleum  
Co., 9th  
July, 1914.

No. 28.

Exhibit A 8 (a).

No. 32 St. Vincent Street  
Port of Spain.

Trinidad, 9th July 1914.

Messrs. The Trinidad Lake Petroleum Company.

Gentlemen,

My clients, the trustees of the will of the late Mr. Conrad Stollmeyer, have instructed me to call your attention to the interference, caused by the dam recently built by you across the Vessigny River, with their right to the natural flow of its water over the lands known as "Merrimac" in the Ward of La Brea and part of their testator's estate.

There is no desire to prevent you from making such use of the river as you wish ; but my clients are bound to protect the estate against the possibility of any claim, by prescription or user, to put the river bed or its waters to any use in derogation of their rights.

They hope therefore that you will see the propriety of coming to some understanding with them so that their rights may be conserved.

I am, etc.,  
CHAS. LEONIDAS DAVID.

30

No. 29.

Exhibit A 8 (b).

Port of Spain,

21st July 1914.

Ch. L. David Esq.

Dear Sir,

In reply to your letter of the 9th July last referring to the interference (caused by a dam built by the Trinidad Lake Petroleum Co. across the Vessigny River) with your clients' rights to the natural flow of water over the "Merrimac" lands, I beg to state that the Company is most anxious to avoid any possibility of interference with any rights your clients may have.

To conserve such rights to your clients, the Company is quite prepared to undertake that no act of theirs, by draining the Vessigny River or otherwise, shall be construed to be a claim to prescriptive user as from the time when the alleged interference shall have commenced, the intent being that your clients' rights may be conserved to them as from the date of the erection of the dam complained of, and that user from that date shall not establish a legal right in the Company by prescription.

20

I remain, etc.,

EDGAR AGOSTINI

Director &amp; Counsel Trinidad Lake Pet. Co. Ltd.

No. 30.

Exhibit A 8 (c).

No. 32 St. Vincent Street,

Port of Spain,

Trinidad, 22nd July 1914.

Messrs. The Trinidad Lake Petroleum Company.

Dear Sirs,

I am in receipt of your Director and Counsel Mr. Agostini's letter of the 21st July in which it is intimated that you are quite prepared to undertake that no act of yours shall give you a prescriptive right of any sort whatsoever in derogation of my client's claim as riparian owners.

b

D 3

RECORD.

In the  
Supreme  
Court.

Exhibits.

No. 29.  
Exhibit  
A 8 (b).  
Letter from  
E. Agostini  
to C. L.  
David, 21st  
July, 1914.

No. 30.  
Exhibit  
A 8 (c).  
Letter from  
C. L. David  
to The  
Trinidad  
Lake  
Petroleum  
Co., 22nd  
July, 1914.

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 30.  
Exhibit  
A8(c).  
Letter from  
C. L. David  
to The  
Trinidad  
Lake  
Petroleum  
Co., 22nd  
July, 1914  
—continued.

No. 31.  
Exhibit  
A 8(d).  
Letter from  
P. de la  
Bastide to  
C. L. David,  
10th Aug.,  
1914.

That being so I shall be obliged if you will let me know whether you are prepared to put your understanding in writing under seal limiting a time for the duration of the licence and providing for its determination upon notice. It will also be necessary to provide for a nominal payment.

These matters can be arranged, if you are agreeable, at an interview with me.

I remain, etc.,

CHAS. LEONIDAS DAVID.

---

 No. 31.

Exhibit A 8 (d).

10

10th August 1914.

C. L. David Esq.,  
Solicitor and Conveyancer,  
Port of Spain.

Sir,

I am instructed by my clients The Trinidad Lake Petroleum Company Limited to acknowledge the receipt of your letter of the 22nd July ult. in reply to that of Mr. Edgar Agostini of the 21st of the same month.

My clients wish to correct the inexplicable mistake you seem to have made in construing Mr. Agostini's letter. Whilst still willing to adhere to the terms of that letter my clients can find no request therein for a license nor do they admit the necessity for any such license.

I am, etc.,

PHILIPPE DE LA BASTIDE.

No. 32.  
Exhibit A9

---

 No. 32.

Exhibit A 9.

Plan by G. A. McCready—1914.

(See No. 2, Book of Plans and Photographs.)

**No. 33.**

**Exhibit A 10.**

Annual Report to the Stockholders of the General Asphalt Co.,  
30th April 1914.

Appendix A.

(To be produced.)

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 33.  
Exhibit A10.

**No. 34.**

**Exhibit J.G.H. 1.**

Plan of Vessigny River.

(See No. 3, Book of Plans and Photographs.)

No. 43.  
Exhibit  
J.G.H.1.

10

**No. 35.**

**Exhibit W.F. 1.**

Map of Trinidad.

Appendix B.

(To be produced.)

No. 35.  
Exhibit  
W.F.1.

**No. 36.**

**Exhibit W.F. 2.**

de Verteuil's Book on Trinidad (2nd Edition).

Appendix C.

(To be produced.)

No. 36.  
Exhibit  
W.F.2.

20



No. 37.

## Exhibit G.A.M. 1.

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 37.  
Exhibit  
G.A.M.1.  
Letter from  
G. A.  
McCready to  
Ed. Agostini  
and  
Estimates,  
15th Jan.,  
1915.

THE TRINIDAD LAKE PETROLEUM COMPANY LTD.

BRIGHTON, TRINIDAD. B.W.I.

January 15th 1915.

Mr. Edgar Agostini,  
Port of Spain.

Dear Sir,

I am sending to you a list of estimates of the amount of water which has flowed over the dam over the Vessigny "River" during November and 10 December 1914 and January 1915.

Up to a measurement of 1.125 inches at the top of the dam these figures are compared to a weir guaging during the later part of the observations. Over this figure they are computed from the guagings at the top of the dam.

A résumé of the total flow is as follows:—

November 1914	18,625,000 gallons or 443,000 barrels
December 1914	23,058,000 gallons or 549,000 barrels
January 1915	19,693,000 gallons or 469,000 barrels

---

Total for 76 days 61,376,000 gallons or 1,461,000 barrels

Average daily flow:—807,600 gallons or 19,200 barrels.

High water marks along the banks of the stream below the dam and observations by myself at the same place during the highest daily guaging (Dec. 23 and Jan. 6) convince me that there have been days during high floods when double this amount of water has flowed in the stream.

Yours sincerely,

GEORGE A. MCCREADY.

*Enclosure.*

THE TRINIDAD LAKE PETROLEUM COMPANY LTD.

BRIGHTON, TRINIDAD, B.W.I.

January 15, 1915.

I estimate that the following amount of water flowed over the dam on Vessigny "River" in November 1914.

	Date.	Inches at top of dam.	Gallons flow.	Barrels flow.
	1	2.000	705,000	16,800
10	2	No visit		
	3	4.000	5,115,000	121,800
	4	3.000	2,367,000	56,300
	5	2.000	705,000	16,800
	6	1.750	560,000	13,320
	7	1.750	560,000	13,320
	8	1.500	390,000	9,290
	9	1.500	390,000	9,290
	10	1.750	560,000	13,320
	11	1.500	390,000	9,290
20	12	No visit		
	13	No visit		
	14	0.875	31,200	743
	15	No visit		
	16	0.500	12,400	295
	17	0.375	9,000	214
	18	1.000	59,400	1,414
	19	1.000	59,000	1,414
	20	No visit		
	21	No visit		
30	22	No visit		
	23	No visit		
	24	2.000	705,000	16,800
	25	No visit		
	26	1.250	230,000	5,475
	27	1.125	163,440	3,886
	28	1.000	59,400	1,414
	29	0.750	24,000	572
	30	0.500	12,400	295

Total observed flow :—13,107,240 gallons 312,052 barrels

40 Estimated flow during the entire month is 18,625,000 gallons or 443,000 barrels

The average daily flow during the month is 624,000 gallons or 15,000 barrels

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 37.

Exhibit  
G.A.M.1.  
Letter from  
G. A.  
McCready to  
Ed. Agostini  
and  
Estimates,  
15th Jan.,  
1915  
—continued.

RECORD. THE TRINIDAD LAKE PETROLEUM COMPANY LTD. BRIGHTON, TRINIDAD  
B.W.I.

In the  
Supreme  
Court.

Exhibits.

January 15, 1915.

I estimate that the following amount of water flowed over the dam on  
Vessigny "River" in December 1914.

No. 37.  
Exhibit  
G.A.M.I.  
Letter from  
G. A.  
McCreedy to  
Ed. Agostini  
and  
Estimates,  
15th Jan.,  
1915.  
—continued.

Date.	Inches at top of dam.	Gallons flow.	Barrels flow.	
1	0.375	9,000	214	
2	0.750	24,000	572	
3	0.750	24,000	572	10
4	2.750	1,715,000	40,900	
5	2.000	705,000	16,800	
6	No observation			
7	1.500	390,000	9,290	
8	1.000	59,400	1,414	
9	0.750	24,000	572	
10	1.000	59,400	1,414	
11	2.000	705,000	16,800	
12	2.500	1,255,000	29,900	
13	1.500	390,000	9,290	20
14	1.250	230,000	5,475	
15	1.750	560,000	13,320	
16	1.250	230,000	5,475	
17	1.500	390,000	9,290	
18	1.000	59,400	1,414	
19	No observation			
20	1.250	230,000	5,475	
21	No observation			
22	No observation			
23	5.000	8,785,000	208,800	30
24	No observation			
25	No observation			
26	No observation			
27	No observation			
28	No observation			
29	1.250	230,000	5,475	
30	1.250	230,000	5,475	
31	1.000	59,400	1,414	

Total observed flow .. .. . 16,363,600

The estimated flow during the entire month is 23,058,000 gallons or 549,000 barrels 40

The average daily flow during the month is 743,800 gallons or 17,700 barrels

THE TRINIDAD LAKE PETROLEUM COMPANY, LTD. BRIGHTON, TRINIDAD,  
B.W.I.

January 15, 1915.

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

I estimate that the following amount of water flowed over the dam on Vessigny "River" to date in January 1915.

No. 37.  
Exhibit  
G.A.M.I.  
Letter from  
G. A.  
McCready to  
Ed. Agostini  
and  
Estimates,  
15th Jan.,  
1915  
—continued.

	Date.	Inches at top of dam.	Gallons flow.	Barrels flow.
	1	1.750	560,000	13,320
	2	2.500	1,255,000	29,900
10	3	2.250	899,500	21,420
	4	1.750	560,000	13,320
	5	2.500	1,255,000	29,900
	6	5.000	8,785,000	208,800
	7	2.500	1,255,000	29,900
	8	No observation		
	9	No observation		
	10	1.750	560,000	13,320
	11	1.500	390,000	9,290
	12	1.125	163,440	3,886
20	13	1.000	59,400	1,414
	14	No observation		
	15	0.500	12,400	295

Total observed flow .. .. . 15,754,740

The estimated flow during first fifteen days of January is 19,693,000 gallons or 469,000 barrels

The average daily flow during the first fifteen days of January is 1,313,000 gallons or 31,300 barrels.

No. 38.

Exhibit J.C. 1.

No. 38.  
Exhibit  
J.C.I.

Plan of La Brea and Guapo Ward.

(See No. 4, Book of Plans and Photographs.)

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 39.  
Exhibit  
J.C.2.

**No. 39.**

**Exhibit J.C. 2.**

Pages of Field Book, Appendix D. To be produced.  
Plan in Pencil. (See No. 5, Book of Plans and Photographs.)

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No. 40.  
Exhibit  
G.A.M.2.

**No. 40.**

**Exhibit G.A.M. 2.**

11 Photographs.

Appendix E.

(See No. 8, Book of Plans and Photographs.)

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No. 41.  
Exhibit  
G.A.M.3.

**No. 41.**

**Exhibit G.A.M. 3.**

10 Photographs.

Appendix F.

(See No. 9, Book of Plans and Photographs.)

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10

No. 42.  
Exhibit  
J.H.W.1.

**No. 42.**

**Exhibit J.H.W. 1.**

Map of Vessigny River.

(See No. 6, Book of Plans and Photographs.)

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No. 43  
Exhibit  
J.H.W.2

**No. 43.**

**Exhibit J.H.W. 2.**

Map of Vessigny Water Shed.

(See No. 7, Book of Plans and Photographs.)

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20

No. 44.

Exhibit A.E.C. 1 (a).

Department of Agriculture.

Government Laboratory,  
Trinidad, B.W.I.

15th January 1915.

Registered No. 162 U.O.

Date Received 2.1.15.

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 44.  
Exhibit  
A.E.C. 1 (a).  
Analyst's  
Certificate,  
15th Jan.,  
1915.

## Report.

- 10 Sample of Water taken out of the Vessigny River at the point where the eastern boundary of Merrimac estate crosses the river, on the No. 1. 27th October 1914, at low water, 4 hrs. 32 m. p.m. by C. E. Laurie.

Received from C. Dominguez, Esq.

The analysis of the sample gave the following results:—  
In parts per 100,000.

	*Total Solids	2020.00
	Chlorine	880.40
	Free Ammonia	0.075
20	Albuminoid Ammonia	0.022
	Nitrogen as Nitrates	0.012
	*Containing:—	
	Chlorine	880.40
	Sulphur trioxide	96.00
	Sodium Oxide	544.42
	Magnesium Oxide	115.80
	Calcium Oxide	28.60
	Potassium Oxide	8.50
		<hr/>
		1673.72

- 30 The sample has a decided brown tinge and a slightly asphaltic but not unpleasant odour. It is a tidal water and is unfit for human or animal consumption and for washing or boiler purposes.

A. E. COLLINS, F.C.S.,  
Acting Principal Assistant Analyst.

This Report is issued subject to the condition that if published or otherwise used for commercial purposes, it must be fully and accurately reproduced without any alteration in the wording.

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 45.  
Exhibit  
A.E.C.1 (b).  
Analyst's  
Certificate,  
5th Jan.,  
1915.

No. 45.

Exhibit A.E.C.1 (b).

Department of Agriculture,  
Government Laboratory,  
Trinidad, B.W.I.

15th January 1915.

Registered No. 161 U.O.

Date Received 2.1.15.

## Report.

Sample of water taken out of the Vessigny River, at the Point where the 10 boundary line between Merrimac Estate and Lever B. crosses it, No. 2. on the 28th October 1914 at high water 11 hrs. 57 m. by C. E. Laurie.

Received from C. Dominguez Esq.

The analysis of the sample gave the following results :—

In parts per 100,000.

*Total Solids	2904.00	
Chlorine	1462.60	
Free Ammonia	0.015	
Albuminoid Ammonia	0.028	20
Nitrogen as Nitrates	0.008	
*Containing :—		
Chlorine	1462.60	
Sulphur Trioxide	146.80	
Sodium Oxide	902.19	
Magnesium Oxide	169.40	
Calcium Oxide	41.50	
Potassium Oxide	25.20	
	<hr/>	
	2747.60	
	<hr/>	

The sample has a decided brown tinge and smells strongly of Sulphuretted Hydrogen. It is a tidal water and is unfit for human or animal consumption and for washing and boiler purposes. The figures correspond to those obtained on the analysis of water collected in the Gulf during the wet season.

A. E. COLLINS, F.C.S.,  
Acting Principal Assistant Analyst.

This Report is issued subject to the condition that if published or otherwise used for commercial purposes it must be fully and accurately reproduced without any alteration in the wording.

**No. 46.****Exhibit A.I. 1.**

One Photograph.

Appendix G.

(See No. 10, Book of Plans and Photographs.)

RECORD.

*In the  
Supreme  
Court.*

Exhibits.

No. 46.  
Exhibit  
A.I. 1.**No. 47.****Exhibit A.I. 2.**

Two Photographs.

Appendix H.

(See No. 11, Book of Plans and Photographs.)

No. 47.  
Exhibit A.I. 2.

10

**No. 48.****Judgment of Lucie Smith C.J.**No. 48.  
Judgment of  
Lucie Smith  
C.J., 17th  
Feb., 1915.

The Plaintiff claims an injunction to restrain the Defendants "from damming the waters of the Vessigny River or its tributaries or feeders so as to stop or interrupt the natural flow of their waters through or along the lands of the Plaintiff; (2) from taking from the river or the ravines and streams which feed the same any water to supply any lands through or along which the Vessigny River and its tributaries do not flow; an injunction ordering Defendants to remove forthwith all dams erections and works in the bed of the Vessigny River and its tributaries and an injunction restraining the Trinidad Lake Petroleum Co. from discharging into the river oil or other noxious matter so as to pollute the waters thereof or render them unwholesome or unfit for use."

The Vessigny River is a watercourse or natural drain through which the rain that falls in that district is drained. The district is a hilly one and the Vessigny is joined by other watercourses or ravines. The whole district, except a small portion of land where the Vessigny has its exit into the sea which is owned by the Plaintiff, is owned by the Defendants. No other industry, either industrial or agricultural, is carried on in the district except the oil industry carried on by the Defendants: it is as Mr. Stollmeyer calls it an asphalt and oil district. The whole district is more or less all in high tropical forest. Very little is known of the river above the bridge before the Defendants began their works. I have no doubt that what is called the Vessigny River is more in the nature of a drain for the rainfall than anything else; there is a large flow of water after heavy tropical rains, the



RECORD.

In the  
Supreme  
Court.

No. 48.  
Judgment of  
Lucie Smith  
C.J., 17th  
Feb., 1915  
—continued.

water is taken off rapidly, and in the dry season it is more or less dry, it is not fed from springs or from melting snow as is the case with most rivers. Shortly after the rains have ceased there is a mere trickle in it. Mr. Stollmeyer in his evidence says he has known the river 12 or 15 years and it was a flowing river and always had water in it all through its course; but he afterwards admitted he had never seen the river above the bridge till last year. The water up to and past the bridge is tidal. When the locality was visited by me with the representatives of the Plaintiff and Defendants and their Counsel there was a mere trickle of water in what is called the Usine branch—a ravine which is nearly as big as the Vessigny and which is not 10 dammed—although this was in January when the dry season had hardly set in. The watercourse is some 3 or 4 miles long. The Defendants put a dam in the Vessigny watercourse and formed a reservoir, the sides being the hills, and thereby conserved all the rainfall. In the dam there is a spillway some 20 ft. above the bed of the watercourse. They also put a similar dam in the Tobago ravine. The Plaintiff's land is on each side of the mouth of the Vessigny for a distance of some 400 ft. The whole of the river by the Plaintiff's land is tidal, and it is tidal for more than 1,500 ft. The river along the Plaintiff's land is deeper and at a lower level than the beach over 20 which the water has its exit to the sea and it forms a small lagoon with mangroves growing in it. I think the water along the Plaintiff's land is always brackish and unfit for use either for domestic purposes or for use in boilers. Mr. Stollmeyer himself says in order to get water for domestic purposes we would have to make a dam; and further he says "up where dam is, water is drinkable, not down where I am, never has been."

The Plaintiff as riparian owner has rights, such rights as exist *jure naturae*, that is to say he has the right to have the course of the stream along his land in the same state as it exists naturally, no riparian owner higher up the stream can interrupt or disturb the stream to his prejudice. I think the dams erected by the Defendants do not affect the flow of water 30 or the quality of the water to any appreciable extent at the Plaintiff's land. 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; in dry weather if the water had not been conserved there would practically be no water flowing down the watercourse and the Plaintiff is in no worse position when the water in the dry weather falls below the level of the spillway. The Plaintiff's land extends only 400 ft. from the mouth, and for that distance the water is for all practical 40 purposes always the same in volume—the high tide is always to the same level and the low tide always the same level, irrespective of how much or how little water there may be in the so-called river in its upper reaches. It may be that when there is a larger volume of water in the upper reaches, or what may be called a freshet, the water may be a little less salt at low water, but I think the water along the Plaintiff's foreshore is to all intents and purposes sea water, and the dam makes no difference to his getting that. It is contended on behalf of the Plaintiff that he may by some engineering, which is stated would be a very large feat, erect a dam so as to keep out

the sea and preserve the fresh water: in fact without some such dam the Plaintiff admits the water is no use to him. It is extremely doubtful whether there is place or space for the Plaintiff to make a reservoir on his land. With that, however, I have nothing to do. I am of opinion that the injunction asked could not be granted to the Plaintiff on the ground that possibly by some sort of works he might be able to keep out the sea and conserve the fresh water from the upper reaches—he is only entitled to what nature has given him. The case of *Lyon v. Fishmongers Co.*, 1 A.C. 662, was greatly relied on by the Plaintiff to shew that he was entitled to have the  
 10 flow of water unimpeded. In that case the Plaintiff had a frontage on the tidal part of the river Thames and also on an inlet running up to the river called Winchworth's Hole. The Defendants obtained permission from the Thames Conservators to make an embankment which would have the effect of entirely displacing the water from Winchworth's Hole; and it was held that an injunction should go restraining them from so doing. The Lord Chancellor and Lord Selborne in their judgments stated that the riparian owner at the tidal part of the river had the same rights as a riparian owner above the tide. In this case I do not think the rights of the Plaintiff have  
 20 in any material way been affected by the Defendants' works. He always has 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. Being of this opinion, it is hardly necessary to go into the other points raised during the trial of this action.

The question of the pollution remains. There is no doubt there is a slight film of oil on the water, and I believe even out at sea, and the sides of the watercourse and the vegetation is coated with asphaltic oil. The whole district is an oil district and it is alleged, and I have no reason to disbelieve it, that most of the oil found its way to the watercourse from a  
 30 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. Applying the principle laid down in *Wilson v. Waddell*, 2 A.C. 95; *Fletcher v. Smith*, 2 A.C., 781, and other similar cases, the Defendants have the right to work their mine or wells and if they do so in a proper manner they are not responsible for the oil finding its way by gravitation to the watercourse or drain and being  
 40 washed down by the rains. It is certain on the evidence that there is no known method of controlling a gusher and the oil thrown up by it must be washed into the watercourse or drain. The Court could not grant an injunction restraining the Defendants from striking a gusher which would be the effect if an injunction were granted: such an injunction would stop all oil industry in an oil district where the only industry is oil.

Judgment must go for the Defendants with costs.

17th February, 1915.

RECORD.

*In the  
Supreme  
Court.*

No. 48.  
Judgment of  
Lucie Smith  
C.J., 17th  
Feb., 1915  
—continued.

RECORD.

*In the  
Supreme  
Court.*No. 49.  
Order,  
17th Feb.,  
1915.

No. 49.

Order.

On the 17th day of February 1915.

Before His Honour the Chief Justice.

This action coming on for trial on the 18th, 20th, 21st, 25th, 26th, 28th and 29th days of January 1915, in the presence of Counsel for the Plaintiffs and the Defendants Upon reading the pleadings filed herein, the office copy of the Probate and Will marked "A" the certified copy of the Deed No. 201 of 1892, the certified copy of the Deed No. 943 of 1890, the certified copy of Deed No. 1523 of 1890, the certified copy of the Deed No. 512 of 1898, the certified copy of the Deed No. 2073 of 1900, the certified copy of the Deed No. 1506 of 1913, the four letters dated the 9th July 1914, the 21st July 1914, the 22nd July 1914, and the 10th August 1914, the plan compiled by George A. McCready, 1914, the annual Report of Stockholders of the General Asphalt Company for the Fiscal Year ending 30th April 1914, the Plan of the Vessigny River from Tobago River to Sea, The Map of Trinidad, the Second Edition of the Book on Trinidad by de Verteuil, the letter dated the 15th January 1915, and estimates, the Plan and page of Field Book put in evidence marked "J.C.1" and "J.C.2," the eleven photographs, the ten photographs, the map of Vessigny River from Tobago River to the Sea, the map of the Vessigny Watershed, the Report of the Analyst, the photograph, the two photographs—put in evidence and marked respectively "A 2," "A 3," "A 4," "A 5," "A 6," "A 7," "A 8," "A 9," "A 10," "J.G.H. 1," "W.F. 1," "W.F. 2," "G.A.M. 1," "G.A.M. 2," "G.A.M. 3," "J.H.W. 1," "J.H.W. 2," "A.E.C. 1," "A.I. 1," and "A.I. 2," Upon hearing the evidence of Charles Conrad Stollmeyer, Jules Cornillac, Felix Rojas, Thomas Irwin Potter, Emmanuel Perreira, Claude Phelps, John Hendry, William Fowler, George Alexander McCready, John Henry Weller, Charles Edward Laurie, Archibald E. Collins, Joseph Leon Agostini, and Arthur Ibbett taken upon their oral examination at the said trial, and upon hearing what was alleged by Counsel for the Plaintiffs and Defendants

The Court did Order that this action do stand for judgment: and this action standing for judgment in the paper this day

The Court doth order that judgment be entered for the Defendants with costs of suit to be taxed and paid: Therefore it is this day adjudged that the Plaintiffs do recover nothing against the Defendants but that the Defendants do recover against the Plaintiffs costs of suit to be taxed and paid.

T. A. THOMPSON, Registrar. 40

Which said costs have been taxed and allowed at £496 18s. 2d. as appears by the Judge's certificate dated the 15th day of April 1915.

T. A. THOMPSON, Registrar.

## No. 50.

## Plaintiffs' Notice of Appeal.

Take notice that the Full Court will be moved on Tuesday the 16th day of March 1915 at the hour of 10.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Mr. Louis Anthony Wharton, K.C., of Counsel for the above-named Plaintiffs for an order that the Judgment herein of His Honour the Chief Justice made in this action and dated the 17th day of February 1915 whereby it was adjudged that the Plaintiffs recover nothing against the Defendants and that the Defendants recover <sup>10</sup> against the Plaintiffs their costs of defence to be taxed and paid may be reversed and that it may be adjudged that Judgment be entered for the Plaintiffs in the said action in terms of the Statement of Claim And that the Defendants may be adjudged to pay to the Plaintiffs their costs of the said action to be taxed And that it may be ordered that the costs of this Appeal may be paid by the Defendants to the Plaintiffs.

Dated this 20th day of February 1915.

Yours, &c.,

CHAS. LEONIDAS DAVID,

32 St. Vincent Street, Port of Spain,  
Plaintiffs' Solicitor.

20

To Mr. Philippe de la Bastide,  
107 Queen Street, Port of Spain.  
Defendants' Solicitor.

## No. 51.

## Judgment of Blackwood Wright J.

This is an appeal from a judgment of the Chief Justice who gave judgment for the Defendants. The action was brought by the Plaintiff as a riparian owner on the banks of the Vessigny (which he alleges to be a river or natural stream) against the Defendants who are oil mining companies <sup>30</sup> for diminishing the flow of water opposite his land and for polluting the Vessigny with oil. The Chief Justice held on the facts that the Plaintiff had always the same amount of water and, as to the pollution, that the Defendants were entitled to use their land for oil mining purposes and that the oil escaped without any negligence in their working their properties. The Chief Justice therefore gave judgment for the Defendants. Against

b

RECORD.

*In the  
Appeal  
Court.*

No. 50.  
Plaintiffs'  
Notice of  
Appeal, 20th  
Feb., 1915.

No. 51.  
Judgment of  
Blackwood  
Wright J.,  
25th Jan.,  
1916.

RECORD.

In the  
Appeal  
Court.

No. 51.  
Judgment of  
Blackwood  
Wright J.,  
25th Jan.,  
1916  
—continued.

this judgment the Plaintiff appeals. The greater part of the facts are in no way in dispute. The Defendant companies own practically all the watershed of the alleged river above the Plaintiff's land. The Vessigny flows for the last 400 or 500 feet of its course through the Plaintiff's land known as Merrimac. This property is about 100 acres in extent and is low lying land partly mangrove swamp at the mouth of the river. The Vessigny is tidal all the distance it flows through the Plaintiff's land and also for some 1,400 to 1,600 feet beyond. The tide rises in the Gulf of Paria (into which the Vessigny flows)  $2\frac{1}{2}$  feet at neap tides and 4 feet at spring tides. At full tide and until below half tide there can obviously be no difference <sup>10</sup> in the level of the water: its level can only be affected after the tide has more than half gone down. The evidence is that the beach is very slightly sloping and that the tide leaves about 400 feet of beach. It is therefore hard to see how the flow of water can be diminished except for a few hours in the day even if the Vessigny is dried up. Opposite the Plaintiffs' land the bottom of the channel of the Vessigny is 3 or 4 feet below low water mark and is so up to a bridge on the road above Plaintiffs' land and there is therefore water in it at every state of the tide. It is possible that if a great deal of fresh water flowed while the tide was flowing out of this deep channel which continues for rather more than 400 feet of the 2,400 (which the tide <sup>20</sup> comes up altogether) that the water in this small lagoon or deep bed of the river might for a short time be practically fresh, and that its level be slightly higher during the time between half tide and low tide. The watershed of the Vessigny is approximately 1,780 acres and the Defendants as owners of the soil above the Plaintiffs' land have impounded the water falling on 545 acres of this area by erecting two dams; one across the main stream which impounds the water from 445 acres and one across a tributary stream called the Tobago which impounds the water off 100 acres. For about two hundred days in the year there is rain which is estimated to amount to about 60 inches altogether, during about 100 days there is no rain. The subsoil of the <sup>30</sup> area is absolutely impervious to water being clay some hundreds of feet thick. The superficial soil varies between 1 foot and 10 feet in thickness. The result of this is that the Vessigny is fed by no springs with the possible exception of a small one in the Tobago tributary where there is a fault in the strata and is wholly dependent on rainfall and that after a few weeks of dry weather there is no running water. At the same time there is a distinct bed through which the water runs when there is any. This seems to show that it is a river or stream within the definitions laid down by the English cases. *King v. Inhabitants of Oxfordshire* 1830 1 Bar. & Adol. 289 and *King v. Trafford* 1851, 1 Bar & Ad. 874 and *Queen v. Inhabitants of Derby* <sup>40</sup> 1842, 2 Q.B. 745. The cases seem to go so far as to hold a lower riparian owner is entitled to flood water or freshets *Drewitt v. Sheard* 7 C. & P. 463 and *King v. Trafford (ubi supra)*. The Defendant companies for the purposes of their undertaking have impounded the water. The Vessigny dam holds 25 million gallons of water and the water has to be 20 feet deep before it overflows. The dam on the tributary Tobago, is capable of holding about 4 to 5 million gallons. The companies use daily about 120,000 gallons; about 40,000 gallons of this is used in connection with riparian land, *i.e.*

land in the Vessigny watershed and the remaining 80,000 gallons are pumped out of the watershed partly to their works at Brighton and partly for the use of developing their oil wells at a property outside the watershed called "Development." They admit they use from 6 to 7 per cent. of the total water that falls into the stream and that about 4 per cent. is never returned. Although a riparian owner may take a reasonable quantity of water for the purposes of his riparian land he has no right at all to take water for purposes unconnected with his riparian land. See *McCarty v. Londonderry & Lough Swilly Railway Co., Ltd.*, 1904 A.C. 301. Therefore the Plaintiff must

10 succeed (if the Vessigny is a natural stream) so far as this part of the case is concerned; although the damage may be of the slightest; as such abstraction of the water is a violation of the Plaintiffs' rights, there being no distinction between the rights of a riparian owner on the tidal part of a stream and of one on the non-tidal part. See *Lyon v. Fishmonger Co.* 1 Ap. Cas. 683 & *North Shore R. Co. v. Prior* 14 Ap. Cas. 612. As to the question of pollution there is also no dispute. Mr. McCready the Defendants' engineer admitted that the water was considerably polluted by the working of the oil wells, *i.e.* by pumping. The only question is one of law as to whether the

20 Defendants are entitled to pollute the river when working their property in a proper and careful manner for oil and using the best methods. Mr. Agostini admitted for the Defendants that the pollution did not come from natural seepages of oil. As I understand the effects of *Young v. Bankier Distillery Co.* 1893 A.C. 693 it is not sufficient to say that the Defendants' industry is valuable and that the Defendants cannot prevent pollution if they are to work their properties for oil. I am bound by the principles laid down by Lord Shand in that case when he said: "I am, however, of the

30 "opinion that while a lower proprietor must submit to the flow of water "coming down on his lands by the natural force of gravitation, he is not "bound to receive water brought up from a depth by artificial means, "such as pumping. The Appellants would, no doubt, be entitled in mining "to excavate and remove the strata of minerals in the lands leased to them "to any depth practicable to which they might choose to go. If in doing "so in the ordinary course of working they should happen to tap springs "or a water waste from which the water by gravitation rose to the surface "and flowed down to a lower proprietor's land, this must be submitted to: "but the mine owner is not entitled by pumping to increase this servitude "or burden on one unwilling to submit to it by pumping up water which "might never rise to the surface, or which might only do so gradually and "slowly and in a much smaller volume." Dealing with the decision of the

40 Supreme Court of Pennsylvania and the case of the *Pennsylvania Coal Co. v. Sanderson*, Lord Shand said:—

" . . . the grounds of the judgment seem to me to be sufficient  
 "to deprive the case of any real weight. These grounds appear to me  
 "from a perusal of the judgment to be fairly stated in the head-note  
 "as follows: 'The use and enjoyment of a stream of pure water for  
 "'domestic purposes by the lower riparian owners, who purchased  
 "'their land, built their houses, and laid out their grounds before the  
 "'opening of the coal mine, the acidulated waters from which rendered

RECORD.

*In the  
 Appeal  
 Court.*

No. 51.  
 Judgment of  
 Blackwood  
 Wright J.,  
 25th Jan.,  
 1916

—continued.

RECORD.

In the  
Appeal  
Court.

No. 51.  
Judgment of  
Blackwood  
Wright J.,  
25th Jan.,  
1916  
—continued.

“ ‘ the stream entirely useless for domestic purposes must *ex-necessitate*  
“ ‘ give way to the interests of the community, in order to permit the  
“ ‘ development of the natural resources of the country, and to make  
“ ‘ possible the prosecution of the lawful business of mining coal.’ I  
“ shall only add, that while the enormous value of the mining interests  
“ in the district of Pennsylvania, from which the case came, and which  
“ is fully explained in the judgment, might have formed a good reason  
“ for appealing to the legislature to pass a special measure to restrain  
“ any proceeding by interdict at the instance of surface proprietors,  
“ and to confine them to a right to damages only for injury sustained, 10  
“ that value could in my opinion afford no good legal ground for allowing  
“ a proprietor of a mine so to work his minerals for his own profit as to  
“ destroy or greatly injure his neighbour’s estate by subjecting it,  
“ by means of artificial operations, to the burden of receiving water  
“ enlarged in quantity and destroyed in quality without payment of  
“ compensation or damage for the injury done.”

The result is that in my view the Chief Justice’s judgment must be reversed and an injunction must be granted against the Defendants’ 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. I come 20 to the conclusion with regret and think legislation should be passed to enable the Courts to compensate by way of damages persons suffering from injury done to their land by the working of oil and I think it would be a misfortune if every injured person could by obtaining an injunction force an oil company either to stop working or else to buy the injured person’s property at an exorbitant price.

The point has not been argued in this case that the Defendants’ letting down water polluted with oil on to the Plaintiffs’ land constituted a nuisance, but I am inclined to think that the Plaintiff is entitled to an injunction against the Defendant company on this ground also by artificially bringing 30 up oil to the surface of his land and thus letting it flow on to the Plaintiffs. An injunction similar to that I thought should be granted in the other oil case.

25th January, 1916.

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No. 52.

Judgment of Russell J.

No. 52.  
Judgment of  
Russell J.,  
25th Jan.,  
1916.

This case raises the same question as I had to deal with in another case between the same parties, viz. : whether a so-called “ river ” (the “ Vessigny River ” in this case, in the other case the “ Vance River,” the two being admittedly alike in general character), ought to be reckoned a watercourse 40 in the legal sense, so as to render the ordinary rules as to the rights of riparian owners *inter se* applicable to owners of lands through which these so-called rivers pass. My judgment in that other case came, I think, to this : that

to constitute a watercourse the law requires (a) flowing water, (b) a well-defined bed, (c) a more or less permanent flow ; and with regard to this third requisite, I held, not upon authority, but upon what appeared to me grounds of reason, that the necessary degree of permanency in flow might exist (and in the case of the "Vance River" did exist) without the presence of springs or boggy ground as a source of supply to maintain that permanence. After having heard a further argument upon the subject, and considered the matter with great care, I have come to the conclusion that I would have done better had I confined myself to the authorities ; because the extension  
10 which I gave to the law, though at first sight reasonable, comes when carried out to its logical consequences to interfere very seriously with rights recognised in more than one case as belonging to owners on higher as against those on lower levels. I refer in particular to the right to take and consume mere surface water. Counsel for the Plaintiff himself recognised this right in a general way : had the Defendants caught the water before it got into the so-called "river" (and I think he meant to include the tributaries) in reservoirs on either bank, for example, the Plaintiff, he conceded, would have no case. But this apparent concession was really of no value in view of his  
20 natural channel—by which, he argued, must be understood not necessarily a brook or channel in which water was flowing, but it might be a mere dry depression or hollow in the ground, provided it was worn by the natural action of water—it becomes a watercourse, and the owner of the ground has no right to appropriate it to the detriment of lower owners. But as there is probably no ground in the world, or at any rate in countries in which rain falls in any considerable quantities, where the surface is not furrowed or eroded more or less by the action of water, there would practically be no place anywhere where mere rain water could be appropriated ; because  
30 *ex hypothesi*, every natural furrow or channel once made by the action of water, even though it has been dry for months or years or generations (e.g. in the case of passages through which a river flows only in the case of exceptional floods) must be respected, and left for the rain water when it comes to flow down it. To this length the contention was boldly and consistently pressed. There is no authority whatever, as I understand the reported cases, for such a doctrine ; but its being seriously advanced illustrates the danger of going beyond the authorities. The limitation which I laid down, viz. : that the flow must be more or less permanent, is based on authority ; where I laid down the law without authority was in holding that  
40 it was immaterial to what the permanency was due, *i.e.* that it was not essential that it should be due to springs, &c. But if that be conceded, what follows ? If a more or less permanently flowing surface drain of mere rain water is to be protected, must not its sources of supply be protected also ? Following the same principle, the only limitation would be that its tributaries, sub-tributaries, &c., must be more or less permanent also. At that rate an endless inquiry would open up, and it is almost inconceivable that any reliable conclusion could be reached. An inquiry as to the permanence of the main stream of the Vessigny or the Vance, is difficult and uncertain enough ; but one as to the permanence of every surface drain feeding the

RECORD.

In the  
Appeal  
Court.No. 52.  
Judgment of  
Russell J.,  
25th Jan.,  
1916

—continued.



RECORD.

In the  
Appeal  
Court.No. 52.  
Judgment of  
Russell J.,  
25th Jan.,  
1916  
—continued.

main stream, would be very much more so. If such an inquiry could be made satisfactorily, for example with the result of establishing that certain branches or sets of branches had not the requisite permanence, the Defendants would probably be satisfied; since they would then, *ex hypothesi*, be at liberty to construct reservoirs in those areas; and with the heavy tropical rains which prevail here, comparatively small areas would probably be sufficient even for their most extensive purposes. But the evidence taken makes no distinction of the sort. It may be said that the Plaintiff was not bound to prove any distinction; all he had to do was to prove that the flow was sufficiently permanent at the places where dams have been constructed. 10  
What, then, is to be the result? Are the Defendants to be enjoined from constructing dams at those places and left free to construct them elsewhere? If so, there is every prospect of a multiplicity of suits before it is decided what places are legally dammable and what are not. But all this would be most anomalous. Such things have never been heard of, and for the simple reason that a stream has always been supposed to have a source, *i.e.* a spring, or springs, or something equivalent thereto. There is perhaps no need to be rigid about limiting it to springs and boggy ground; anything fairly equivalent may be admitted, *e.g.* to take an example given in my judgment in the former case, an origin in melting snows; but in every 20  
case, to avoid the uncertainty and endless disputes which would otherwise arise, it must be a definite source, known or ascertainable. That, if one may venture again to go a little beyond the actual letter of reported cases—a thing attended with some risk, as has been seen, but hardly avoidable in certain instances—seems to me the most reasonable way to interpret the law.

The most serious point in the whole case is the encroachment on the rights of owners to use and consume mere surface rain water, if the Plaintiff's claim to an injunction were to prevail. That would undoubtedly be at variance with principles which are settled by authority. In *Broadbent v. Ramsbotham*, for example, there is the well-known passage:—"No doubt 30  
all the water falling from heaven . . . arrives at such a channel." The construction of that passage which I gave in my judgment in the former case still seems to me correct; and I fail to see how on any reasonable construction whatever it is possible to get over the plain assertion of the right of owners to appropriate mere rain water before it gets into a brook or other actual watercourse, as distinct from a mere depression which happens to have been water-formed. The safe course, I am now of opinion, is to keep the law within those limits which have hitherto been recognised; and in none of the cases brought under our notice has an injunction been granted for the appropriation of mere rain water before it got into a spring-fed or 40  
bog-fed stream. Springs and boggy ground, according to the dictum of Vice-Chancellor Stuart in *Ennor v. Barwell*, "are the ordinary sources of all streams entitled to protection"; and I think I was wrong in extending protection to what are mere great surface drains, such as the "Vance River" or the "Vessigny River" (so-called). The law seems to me to be correctly laid down in *Bevan on Negligence*, 3rd edition at p. 459, "The moment the  
"water of a spring runs into a definite channel it constitutes a watercourse"; p. 460, "A mere surface drainage over the entire face of a tract of land

“made up of unusual freshets or other extraordinary causes, is not a water-course; neither is water flowing in the hollows of ravines in land, which is mere surface water from rain or melting snow, and is discharged through hollows or ravines, at other times destitute of water, from a higher to a lower level”; and p. 463, “A river begins at its source so soon as it comes to the surface etc.”

It seems that there were some small springs in or near one branch of this so-called Vessigny River; but it is clear that they were not of such a character that they could possibly be said to be the source of the river, or to make it a spring-fed stream. This is so obvious, that it is unnecessary to quote in detail from the evidence. One passage in the Chief Justice's notes, however, having been questioned by counsel for the Plaintiff, I will give the corresponding passages in the notes taken by Counsel as taken down by me on appeal:—

O'Reilly's version:—“As to Tobago ravine there is a small spring. There is a well-defined watercourse or gully from below ran to Vessigny. Channel above dam becomes fainter and fainter. When I examined the ground two years ago from spring, it flowed over ground. Part of it got into a defined channel before it got to dam. Water leaves spring, spreads itself over ground, and some of it gets into watercourse above dam.”

Agostini, K.C.:—“There is a small spring at the Tobago. There was no channel at the spring itself. It flowed over the ground and we dug a channel and helped it. It flowed from the spring over the land and some got to a channel leading to the dam. In the dry season we dam what little water there is coming from the spring. This is taken to Brighton and none is returned.”

Blache-Wilson:—“There is a small spring at the Tobago River. This, I think, comes through the strata from the Pitch Lake. There is a small gully leading to the Vessigny below the dam. At the time I examined the spring about two years ago the water flowed over the ground before some of it got into the channel. It flows some way over the ground, and then part of it got into a channel. The defined channel of the Tobago ravine above the dam is three-eighths of a mile.”

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 Plaintiff's 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 Railway* 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. Lindley L.J.'s strong remarks seem to me to indicate very clearly how a Court of Justice ought to treat any attempt to

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Appeal  
Court.*

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Judgment of  
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—continued.

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*In the  
Appeal  
Court.*No. 52.  
Judgment of  
Russell J.,  
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1918

—continued.

abuse rules of law established for the purpose of doing justice by seeking to have them applied against a neighbour without a real cause or grievance. Lord Lindley's illustration (page 136) of a riparian proprietor near the mouth of the Mississippi complaining of somebody a thousand miles up diverting the stream, although not to his detriment and Lord Blackburn's in *Orr-Ewing v. Colquhoun* (p. 861) of a proprietor on one bank of the Amazon requiring one on the opposite shore to remove an encroachment of one or two feet into the river, are more extreme examples: but the principle is the same.

In my opinion the appeal ought to be dismissed with costs. 10

I wrote the above judgment early in July last, soon after the hearing of the appeal, and it expresses what are still my views on the legal question as to what constitutes a watercourse, and on the merits of the case. As, however, my attention has recently been called to a report of an Irish case, which may be thought to have a bearing on the main point involved here, and I have within the last few days had the advantage of reading a written judgment by my brother Wright, I desire to add one or two notes in further explanation of my views.

In *Briscoe v. Drought*, 11 Irish Ch. & C. L. Reports 259, it was held that as long as the inhabitants of a certain town permitted the water and sewage of the main street to continue to flow through a culvert, from which they flowed along the lower side of a lane, and thence into the Plaintiff's drain, and were used by him for agricultural purposes, the Defendant was not entitled to divert the water into a drain upon his own land. Now at first sight, that holding may seem to conflict with the idea that only spring-fed or bog-fed waters are entitled to protection. But a careful consideration of the facts there in question, and the grounds on which the judgments proceed will be found to dispel that impression. In the first place it is noticeable that what were there in question were not natural rights primarily but rights acquired by grant. Hughes, B. (pp. 261-2) calls attention to this point. "It appears to me to be clear that the inhabitants of the town of Banagher had acquired as against the owners of the land and of drain No. 1 a right to have the sewage of the town discharged on that lane and through that drain. This right could only have been acquired by actual grant from the owners of the land and drain No. 1, or by long user, such as would justify a jury in presuming such a grant. I think it is important, for the purpose of determining the rights, as between themselves, of the owner of the lane and the owner of drain No. 1, in respect of this water and sewage, to see what rights could be asserted against them both; and I think it clear that the inhabitants of the town had, as against both, the right I have stated. If then for a period, as long as memory can extend to, the inhabitants have exercised this right, as against the owner of the lane, on whose land the water and sewage first enters from the main street, and if, for an equally long period, the water and sewage, after having passed through the lane, have entered into and passed along the drain No. 1, it appears to me that the owner of drain No. 1 has acquired, as against the owner of the lane, a right to the continuance of the state of facts, upon the same principle of grant, or presumption of a grant, that

" the inhabitants of the town have acquired their rights as against the  
 " owners of the land and the drain unless there be something in the origin  
 " or character of the water and sewage to prevent the existence of that right ;  
 " and it is consistent with common sense that this should be so ; because if  
 " the owner of the lane and the owner of the drain are to be presumed to  
 " have been parties to a grant conferring upon the inhabitants of the town  
 " the right I have mentioned, the owner of the lane and the owner of the  
 " drain, had, as between themselves, also acquired certain rights and certain  
 " liabilities. For instance, the owner of the drain would not be at liberty  
 10 " to close up that drain, as against the owner of the lane, and thus throw  
 " back upon the lane the street water and sewage and keep it permanently  
 " there."

Then he proceeds to deal with the questions whether the water has  
 a defined flow, and was a watercourse : and finding that both must be  
 answered in the affirmative, he is yet careful to distinguish between rights  
 of lower proprietors *inter se*, and rights as against the owner of the land  
 in which such water, *i.e.* rain water and sewage originates. " I am therefore  
 " of opinion that the water had as far as the lane is concerned, a defined  
 " channel ; but whether it was artificial or natural in its origin, I am of  
 20 " opinion that as long as it continued to flow, rights might be acquired,  
 " as between themselves, by persons through whose lands it had flowed  
 " for a considerable period, although they might not have been acquired  
 " against the person who originated or gave form to its source." Only by  
 disregarding the qualifications so carefully introduced into this statement,  
 and wresting it absolutely from its true meaning can it be considered as  
 laying down as against the owner of the land where a stream of mere rain  
 water originates or takes form, that there is a natural right in the owners of  
 lands through which that rain water has in the past been in the way of  
 discharging itself, to prevent him from appropriating the water for his own  
 30 purposes and consuming it. Quite the contrary is distinctly and repeatedly  
 indicated here and in other judgments. For example Christian J. said  
 (p. 268) :—" But then arises the question, have the lower proprietors a  
 " co-relative right ? As they are bound by this obligation to receive and  
 " transmit the water, have they, on the other hand, a right so to receive it ?  
 " Now in the first place, I think, it is perfectly clear that, as against the  
 " inhabitants of the town, no such right exists. If they or any of them  
 " thought proper at any time to restore the drain water to a state of nature,  
 " to break up their system of drainage, or to divert it to another direction,  
 " no action or other proceeding would lie against them on the part of either  
 40 " Mr. Drought or Mr. Briscoe."

In this respect the case seems to me a strong one in favour of the  
 Defendants here, as showing the right of proprietors to deal as they think  
 fit with rain water on their lands.

As I have said before, it was conceded on behalf of the Plaintiff that  
 the Defendants were entitled to take and consume rain water on their lands :  
 but they could only do so, it was contended, provided that they took it  
 before it had got into any of these channels in the ground by which it has  
 hitherto run off, *i.e.*, here the main so-called " river " and its surface feeders.

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Appeal  
Court.*No. 52.  
Judgment of  
Russell J.,  
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—continued.

This proviso obviously makes the concession practically illusory. The cost of catching the rain water before it got into any of the numerous small channels by which the ground is covered, would be enormous; it would be necessary to construct reservoirs on the side of each channel all over a very extensive area. And suppose this were done, what would be the result? Surely one of the most ridiculous spectacles conceivable; a complicated set of artificial ponds, and in between each pair of ponds—a dry surface drain, absolutely without value to anyone, yet for the preservation of which all this prodigious expenditure had been incurred.

The most important point in this case, to my mind, is, not its effect upon 10 the oil industry here, for that could possibly be protected by special legislation, but its effect upon the law of England, in case it were laid down authoritatively that a proprietor is not entitled to collect or consume rain water unless he can do so without interfering with any surface channels by which mere rain water may in the past have run off. In fact, it would go farther than that: it would be difficult for a man to deal with his land in any way whatever, whether for building, draining or anything else, if any neighbour could get an injunction against him simply by shewing that he had interfered with some depression in the ground, or channel, large or small, by which rain water had occasionally run down to the latter's land. This 20 so-called Vessigny river is a set of surface channels upon a large scale, a phenomenon for which it would probably be impossible to find any parallel in England: that is just where the danger lies, the magnitude and unusual character of the thing here to be dealt with tending to obscure (it certainly did so to my mind at first) the question what the effect of a decision in favour of the Plaintiff would be under ordinary circumstances as existing in England and elsewhere.

I have said in one part of my original judgment, "the only limitation " would be that its tributaries, sub-tributaries, etc. must be more or less " permanent also:" but I have also indicated there was no qualification of 3) that sort in the argument submitted to us. It was boldly maintained to us that permanence or non-permanence was quite immaterial in that connection, and that though rain water had only run along a surface channel occasionally—even once, it might be, and that years ago, the channel must for ever remain untouched, uninterfered with, on the off chance of a great flood coming when rain water would run off through it again. The unreasonableness of such a contention is apparent, and in dealing with the main argument one is almost inevitably led to introduce into it an element of reasonableness by qualifying it in the way I have done in the passage referred to. But it is right to indicate the length to which the argument was in fact carried, 40 because it exhibits the logical consequence in all probability of this new principle as to the inviolability of mere surface channels which it is sought to have introduced into the law; for there being on that supposition no recognised criterion such as the existence of springs, etc., the law would be reduced to a state of uncertainty as to what ought to be considered permanency of flow which would make the qualification valueless, because of the impracticability of applying it. I said something to this effect elsewhere, but am anxious to make the point clear even at the risk of some repetition.

25th January, 1916.

## No. 53.

## Formal Judgment.

On the 25th day of January 1916.

Before their Honours Mr. Justice Russell LL.B. and Mr. Justice Wright LL.D.

Upon Motion by way of appeal made unto this Honourable Court on the 16th, 17th, 18th, 21st and 22nd days of June 1915, by Counsel for the Plaintiffs Upon reading the judgment herein of His Honour The Chief Justice made in this action and dated the 17th day of February 1915, whereby it was adjudged that the Plaintiffs recover nothing against the Defendants  
 10 and that the Defendants recover against the Plaintiffs their costs of defence to be taxed and paid may be reversed and that it may be adjudged that judgment be entered for the Plaintiffs in the said action in terms of the Statement of Claim And that the Defendants may be adjudged to pay to the Plaintiffs their costs of the said action to be taxed Upon reading the said Motion the judgment aforesaid, the notes of evidence, and exhibits, taken and put in evidence at the trial of the said action and upon hearing what was alleged by Counsel for the Plaintiffs and Defendants

The Court did Order that this Appeal do stand for judgment and this Appeal standing for judgment in the paper this day

20 The Court doth Order that the said Appeal be and the same is hereby dismissed with costs to be taxed and paid by the Plaintiffs to the Defendants.

T. A. THOMPSON, Registrar.

RECORD.

*In the  
Appeal  
Court.*

No. 53.  
Formal  
Judgment,  
25th Jan.,  
1916.

## No. 54.

## Affidavit in support of Petition for leave to appeal to His Majesty in Council.

I Charles Conrad Stollmeyer of the Town of Port of Spain in the Island of Trinidad Merchant make oath and say as follows :—

1. I am in charge of the lands of the Merrimac Estate as Agent of the Plaintiffs.

2. I say that the statements made in the Petition dated the 4th day of  
 30 February 1916 for leave to appeal to His Majesty in His Majesty's Privy Council against the Judgment of this Honourable Court dated the 25th day of January 1916 are true in substance and in fact.

3. The matter in issue in respect of which the said judgment is given involves a claim or question respecting the Merrimac Estate situate in the Ward of La Brea and Guapo in this Island comprising 96 acres. The said Merrimac Estate contains large deposits of asphalt of the same purity as

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Affidavit of  
Charles  
Conrad  
Stollmeyer,  
in support of  
Petition for  
leave to  
appeal to  
His Majesty  
in Council.  
Sworn 4th  
Feb. 1916.

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In the  
Appeal  
Court.

No. 54.  
Affidavit of  
Charles  
Conrad  
Stollmeyer,  
in support of  
Petition for  
leave to  
appeal to  
His Majesty  
in Council.  
Sworn 4th  
Feb., 1916  
—continued.

that which is to be found on the Pitch Lake and which are of considerable value.

4. I have had five years' experience in the management and supervision of petroleum oil wells. I verily believe that the said Merrimac Estate comprises valuable oil bearing lands. My opinion is based on the fact that there are deposits of petroleum on the Company's lands, adjacent to Merrimac, and lying between Merrimac and the Pitch Lake; and that the anticline, of which the Pitch Lake is the crest, passes through the Merrimac lands. On the said Company's lands the Defendant Company The Trinidad Lake Petroleum Company Limited have bored petroleum wells and some of the 10 best wells of this group are only 250 feet more or less from Merrimac.

5. The value of the said Merrimac Estate is not less than Twenty-five thousand pounds sterling.

6. It will be impossible to develop the lands of the said Merrimac Estate, and to win asphalt and petroleum therefrom, without a continuous supply of water and it is therefore essential to preserve the water or riparian rights appurtenant to the said lands.

7. The injury resulting from the acts complained of by the Plaintiffs herein cannot be adequately compensated by damages and without an injunction to restrain the said acts, the value of Merrimac Estate is seriously 20 depreciated and by a sum far in excess of £300 sterling.

Sworn to at No. 32 St. Vincent Street  
Port of Spain this fourth day of  
February 1916. } CH. C. STOLLMAYER.

Before me

E. C. M. STONE,  
Commissioner of Affidavits.

No. 55.  
Petition for  
leave to  
appeal to  
His Majesty  
in Council,  
4th Feb.,  
1916.

No. 55.

Petition for leave to appeal to His Majesty in Council.

To His Honour the Chief Justice and their Honours the Puisne Judges 30 of this Honourable Court.

The humble Petition of the Plaintiffs sheweth as follows:—

1. That this action was commenced in this Honourable Court on the 17th day of September 1914 whereby the Plaintiffs claimed damages for wrongfully diverting the natural flow of and abstracting water from the Vessigny River situate in the Ward of La Brea and Guapo in the Island of Trinidad and also for obstructing and polluting the same to the damage of

the Plaintiffs And for a perpetual injunction restraining the Defendants their servants agents and workmen :—

A. From damming up the waters of the said Vessigny River so as to interrupt the flow of the water through and along the land of the Plaintiffs and from erecting or constructing any dams erections or works in the bed of the said Vessigny River so as to interrupt and otherwise obstruct the natural flow of the water of the said river ;

10 B. From taking any water from the aforesaid river for the purpose of selling to or supplying the plantation Brighton and the lands of the Petroleum Development Company Limited with water ; and

C. From discharging from the Defendants' lands 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 Plaintiffs.

D. And ordering the Defendants to remove forthwith all dams erections and works in the bed of the said Vessigny river placed there by them.

2. The Defendants duly appeared on the 28th day of September 1914.

3. Your Petitioners delivered their Statement of Claim on the 9th day of October 1914 the Defendants delivered their Statement of Defence on the  
20 3rd day of November 1914 and Your Petitioners delivered their Reply on the 12th day of November 1914.

4. This action was heard before His Honour the Chief Justice on the 18th, 20th, 21st, 25th, 26th, 28th, and 29th days of January 1915.

5. On the 17th day of February 1915 His Honour The Chief Justice delivered judgment and ordered that judgment be entered for the Defendants with costs of suit to be taxed and paid.

6. On the 16th day of March 1915 your Petitioners appealed to the Full Court from the said Judgment.

7. On the 25th of January 1916 the Full Court gave final judgment  
30 herein and ordered (Wright J. dissenting) that your Petitioners' said appeal be dismissed with costs.

8. Your Petitioners crave leave to refer to the said Statement of Claim and Statement of Defence and Reply, the evidence taken in the suit at the hearing thereof and the said judgment and all other proceedings in the said suit.

9. Your Petitioners feel themselves aggrieved by the said final judgment of the Full Court and are desirous of appealing therefrom to His Majesty in His Majesty's Privy Council.

10. The said judgment involves a claim or question respecting property  
40 of the value of £300 sterling and upwards.

11. The question involved in the Appeal is one of great general importance.

Your Petitioners therefore pray :—

1. That this Honourable Court will be pleased to grant your Petitioners leave to appeal from the said judgment to His Majesty in His Privy Council and that pending the said Appeal the execution of the said judgment may be suspended and your Petitioners be allowed to have a copy under Seal of this Honourable Court of all proceedings

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In the  
Appeal  
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Petition for  
leave to  
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His Majesty  
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RECORD.

*In the  
Appeal  
Court.*No. 55.  
Petition for  
leave to  
appeal to  
His Majesty  
in Council,  
4th Feb.,  
1916  
—continued.

pleadings evidence instruments documents judgments and orders had or made in the said action.

2. That this Honourable Court will make such further or other Order in the said premises as may seem just.

Dated this 4th day of February 1916.

CHAS. LEONIDAS DAVID,

Petitioners' Solicitor.

L. A. P. O'REILLY,

Counsel for the Petitioners.

This Petition is set down for hearing at the Court House Port of Spain 10 in the Island of Trinidad on Tuesday the 15th day of February 1916.

Note:—It is intended to serve this Petition on the Defendants at Brighton, La Brea.

This Petition is presented by Mr. Charles Leonidas David of No. 32 St. Vincent Street in the Town of Port of Spain in the Island of Trinidad—Solicitor for the Plaintiffs.

No. 56.

**No. 56.**

**Notice of hearing of Petition for leave to appeal to His Majesty in Council.**

**7th February, 1916.**

*(Not printed.)*

20

No. 57.  
Order grant-  
ing condition-  
al leave to  
appeal to  
His Majesty  
in Council,  
22nd Feb.,  
1916.**No. 57.**

**Order granting conditional leave to appeal to His Majesty in Council.**

Entered the 11th day of March 1916.

On the 22nd day of February 1916.

Before their Honours The Chief Justice and Mr. Justice Russell.

Upon the petition of the above-named Plaintiffs Charles Fourier Stollmeyer, James Arthur Rex Stollmeyer and Randolph Rust, filed herein on the 4th day of February 1916 for leave to appeal to His Majesty in His Majesty's Privy Council against the judgment of this Honourable Court

pronounced herein on the 25th day of January 1916, affirming the judgment of His Honour The Chief Justice dated the 17th day of February 1915, and coming on for hearing before the said Honourable Court whereupon and upon hearing read the said Petition the notice of motion filed herein on the 7th day of February 1916 the affidavit of Charles Conrad Stollmeyer sworn to and filed herein on the said 4th day of February 1916 and upon hearing what was alleged by Emmanuel Scipio Pollard Esquire K.C. of Counsel for the said Petitioners and William Blache-Wilson Esquire of Counsel for the Defendants And it appearing to this Honourable Court that this is a  
 10 proper case in which to allow such appeal This Court doth Order that subject to the performance by the said Charles Fourier Stollmeyer, James Arthur Rex Stollmeyer and Randolph Rust of the conditions hereafter mentioned and subject also to the final order of this Honourable Court upon the due compliance of such conditions, leave to appeal to His Majesty in His Privy Council against the said Judgment be granted to the said Charles Fourier Stollmeyer, James Arthur Rex Stollmeyer and Randolph Rust. And this Court doth further order that the said Charles Fourier Stollmeyer, James Arthur Rex Stollmeyer and Randolph Rust do within the period of three months from this date either give security in a bond of Five hundred  
 20 pounds sterling with one or more securities to the satisfaction of this Honourable Court or pay into Court the sum of Five hundred pounds sterling for the due prosecution of the said Appeal and for the payment of such costs as may become payable to the Respondents in the event of the Appellants not obtaining an order granting them final leave to appeal or of the Appeal being dismissed for non-prosecution as may be awarded by His Majesty His Heirs and Successors or by the Judicial Committee of the Privy Council to the Respondents on such Appeal. And this Court doth further Order that all costs of and occasioned by the said Appeal shall abide the event of the said Appeal to His Majesty in His Privy Council if the said Appeal shall  
 30 be allowed or dismissed or shall abide the result of the said Appeal in case the said Appeal shall stand dismissed for want of prosecution.

And this Court doth further Order that the said Plaintiffs Charles Fourier Stollmeyer, James Arthur Rex Stollmeyer and Randolph Rust, be at liberty to apply within three months from this date for a final order for leave to appeal as aforesaid on the production of a certificate under the hand of the Registrar of the Supreme Court of due compliance on their part with this Order.

And this Court doth further Order that the execution of the said Judgment of the 25th day of January 1916 be suspended pending the said  
 40 Appeal.

By the Court.

T. A. THOMPSON, Registrar.

RECORD.

*In the  
Appeal  
Court.*

No. 57.  
Order grant-  
ing condition-  
al leave to  
appeal to  
His Majesty  
in Council,  
22nd Feb.,  
1916

—continued.

RECORD.

No. 58.

*In the  
Appeal  
Court.*

**Certificate of Registrar of Supreme Court.**

No. 58.  
Certificate of  
Registrar of  
Supreme  
Court,  
23rd March,  
1916.

I hereby certify that the above-named Charles Fourier Stollmeyer, James Arthur Rex Stollmeyer and Randolph Rust, the Plaintiffs in this action, have complied with the conditions imposed upon them in pursuance of the Order of the Full Court bearing date the 22nd day of February 1916 granting them leave to appeal to His Majesty in His Privy Council against the Judgment of the Court of Appeal bearing date the 25th day of January 1916.

Dated the 23rd day of March 1916.

10

T. A. THOMPSON, Registrar.

No. 59.

No. 59.

**Affidavit in support of motion for final leave to appeal to His Majesty in Council.**

**25th March, 1916.**

*(Not printed.)*

No. 60.

No. 60.

**Notice of motion for final leave to appeal to His Majesty in Council.**

**25th March, 1916.**

*(Not printed.)*

## No. 61.

**Order granting final leave to appeal to His Majesty in Council.**

On the 4th day of April 1916.

Present: Their Honours Mr. Justice Russell and Mr. Justice Wright.

Upon Motion made unto the Court this day by Counsel for the Plaintiffs Charles Fourier Stollmeyer, James Arthur Rex Stollmeyer and Randolph Rust for an Order granting them final leave to appeal to His Majesty in His Privy Council against the Judgment herein dated the 17th day of February 1915 and the Order of the Full Court dated the 25th day of January 10 1916, and upon reading the affidavit of Charles Leonidas David bearing date the 25th day of March 1916 and the certificate of the Registrar of the Supreme Court dated the 23rd day of March 1916 respectively filed herein.

The Court doth Order that final leave be granted to the said Plaintiffs herein to appeal to His Majesty in His Privy Council against the said Judgments dated the 17th day of February 1915 and the 25th day of January 1916.

T. A. THOMPSON, Registrar.

RECORD.

*In the  
Appeal  
Court.*

No. 61.  
Order grant-  
ing final  
leave to  
appeal to  
His Majesty  
in Council,  
4th April,  
1916.

## No. 62.

**Certificate of Registrar of Supreme Court verifying Transcript.**

I certify that the foregoing One hundred and forty-three pages contain 20 a true copy of the documents relating to the Appeal selected by the Legal Agents of the Plaintiffs and Defendants to be forwarded to the Clerk to the Privy Council, of the evidence of the witnesses at the trial, of the Judgments of the Courts and of the Exhibits except eight. The originals of which eight exhibits are attached as Appendices.

See Appendices "A" "B" "C" "D" "E" "F" "G" and "H" forwarded herewith in separate envelope.

Dated this 12th day of April 1916.

T. A. THOMPSON, Registrar.

No. 62.  
Certificate of  
Registrar of  
Supreme  
Court  
verifying  
Transcript,  
12th April,  
1916.

# In the Privy Council.

No. 46 of 1916.

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*On Appeal from the Supreme Court of  
Trinidad and Tobago.*

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BETWEEN

CHARLES FOURIER STOLLMAYER,  
JAMES ARTHUR REX STOLL-  
MEYER and RANDOLPH RUST  
*(Plaintiffs) Appellants,*

AND

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

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## RECORD OF PROCEEDINGS.

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MAPLES, TEESDALE & Co.,  
6, Frederick's Place,  
Old Jewry, E.C.,  
*Appellants' Solicitors.*

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

66314