

Charles Conrad Stollmeyer - - - Appellant,

v.

The Petroleum Development Company,
Limited - - - Respondents.

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL. DELIVERED THE 4TH FEBRUARY, 1918.

Present at the Hearing:

LORD PARKER OF WADDINGTON.

LORD SUMNER.

LORD WRENBURY.

[*Delivered by* LORD SUMNER.]

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

There is some evidence that, independently of any commercial working, a certain amount of petroleum oozes out of the ground and finds its way into the stream. To that extent the appellant's rights are rights in a flow of oily water, but the fact gives the respondents no right to make it more oily themselves. The only result is that they cannot be required to prevent the escape of oil into the stream, in so far as it is entirely due to natural causes.

It is also contended that volumes of salt water, which frequently escape from subjacent strata when the respondents have penetrated them with their bore holes, find their way into the stream independently of any pumping operations, which the respondents carry on, or of any constructional works which they have put up, and that for the consequent pollution by salt the respondents cannot be held responsible. In their Lordships' opinion the evidence does not establish this point. Even if it be assumed that salt water, forced to the surface by natural pressure through the respondents' bore-holes, would in any case flow down to the bottom of the ravine where the stream runs, and would not be evaporated or absorbed on the way, which is by no means clear, the fact remains that the dams and reservoirs of the respondents hold up this salt water in the bed of the stream, and then it finds its way into the appellant's part of the stream either by overflowing the top of the respondents' tank or by being liberated through sluices at the bottom. Their Lordships are satisfied that in effect the respondents do direct both oil and salt water into the lower part of the stream, and are therefore responsible for infringing the appellant's rights, and that nothing further can be necessary than to limit the injunction to restraining such pollution as is due to the respondents' acts, and is not caused independently by the natural local conditions and the natural escape of oil or brine.

The grant of an injunction is the proper remedy for a violation of right according to a current of authority, which is of many years' standing and is practically unbroken (*Imperial Gas Light and Coke Company v. Broadbent*, 7 H.L.C., at p. 610; *Pennington v. Brinsop Hall Coal Company*, 5 Ch. D., 769. In *English v. Metropolitan Water Board*, 1907, 1 K.B., at p. 603, there is a mere dictum to the contrary). The discretion of the court in the grant of such injunctions is regularly exercised in this sense. Their Lordships see no reason to depart from so uniform a practice, and although they fully appreciate the reluctance expressed by the Courts of Trinidad, in view of the special circumstances of the petroleum industry, they do not think that they differentiate the present from other cases. There must be an injunction, therefore, to restrain the respondents from pumping from their wells or suffering to escape from their impounding tanks or reservoirs or otherwise discharging oil or salt water, in such a way that they or either of them shall reach the River Vance or its tributaries, so as to pollute the water thereof to the nuisance or injury of the appellant.

Their Lordships are, however, of opinion that it would not be right to enforce the injunction at once. The loss to the respondents would be out of all proportion to the appellant's gain, and on the respondents undertaking, as they have done, to pay from time to time such pecuniary damages as their work may be found to have caused to the appellant on an inquiry before the Court of First Instance, they think that justice will be done if

the operation of the injunction be suspended for two years to give an ample opportunity to the respondents to carry out any works necessary to remove the causes of complaint, with liberty to apply to the Court of First Instance for a further suspension, if special grounds can be shown. The respondents must, of course, pay the costs here and below.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

CHARLES CONRAD STOLLMAYER

v.

THE PETROLEUM COMPANY, LIMITED.

DELIVERED BY LORD SUMNER.

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