

Carroll (1880), 95 Ill. 84; Doe dem. Commissioners of Beaufort v. Duncan (1853), 1 Jones (N.C.) 238; Cook v. McClure, 58 N.Y. 437; The Schools v. Risley, 10 Wall. S.C.U.S. 90; In re Hull and Selby Railway (1839), 5 M. & W. 327, 333; Giraud's Lessee v. Hughes (1829), 1 Gill & Johnson (14 Md. App.) 115.]

The defendants' counsel, in the course of a very elaborate and careful argument, cited numerous authorities in support of the view that the plaintiff Carr had lost the land by the encroachment of the water. . . . I do not think that there is any case in which it has been expressly held that a person in the position of this individual plaintiff loses his property because of the gradual encroachment of the water past the land in front of the road, past the road, and past the fixed boundary of the plaintiff's land. He could not have gained an inch of land by accretion, even if the lake had receded for a mile; and, therefore, it seems that the fundamental doctrine of mutuality, formulated in the civil law and adopted into the jurisprudence of many countries, cannot apply to him. . . .

[Reference to Foster v. Wright (1878), 4 C.P.D. 438; Widdicombe v. Chiles (1903), 73 S.W. Repr. 444.]

In considering authorities which are not binding upon me, and when I have to decide "upon reason untrammelled by authority" (per Werner, J., in Linehan v. Nelson, 197 N.Y. 482, at p. 485), I prefer those United States decisions which I have earlier cited. There have also been cited to me authorities which, it is contended, dispose completely of the Widdicombe case, viz.: Lopez v. Muddun Mohun Thakoor, 13 Moo. Ind. App. 467; Singh v. Ali Kahn, L.R. 2 Ind. App. 28; and Theobald on Land, p. 37. . . .

I do not see that the statute 1 Geo. V. ch. 6 has any application to this case; nor do I see that the Attorney-General ought to bring the action or is a necessary party—the plaintiffs being concerned only with the trespass upon their lands and not with any supposed public right.

The good faith, or the opposite, of the defendants, in making the trespass, is a matter of no consequence in the disposal of the action.

I find, therefore, that there has been a trespass by the defendants upon the plaintiffs' lands, and that the plaintiffs are entitled to have the injunction made perpetual, with full costs on the High Court scale, and \$10 damages.