

undermining the bank, causing it to subside, and then gradually washing it away; that, by reason of this encroachment of the lake, Talbot road, at an early period, grew dangerous and unsafe for public travel, until, about 1838, it was abandoned as a means of public travel, and a new road, which has been for many years known as the Talbot road, was opened up and dedicated to public travel; that this road still continues to be the travelled road known as Talbot road, but the original Talbot road, across the lake front, has long since been washed away by the waters of the lake, and now those waters have advanced beyond where they were at the time of the original Talbot road survey; so that they have washed away the reserve left in front of the Talbot road, also the Talbot road itself, and some rods of the front of the surveyed lots; so that now so much of the lands patented to Carr's predecessor and now owned by him as are now above the waters of Lake Erie border on the waters of the lake and not on the original Talbot road.

These statements were denied by the defendants; but I find them to have been proved, as I shall hereafter state.

On or about the 4th July, 1908, the plaintiff Carr executed and delivered to the plaintiffs the Volcanic Oil and Gas Company, a grant and demise of the exclusive right to search for, produce, and dispose of petroleum and natural gas in, under, and upon the said lands. . . .

By instrument under the Great Seal of the Province of Ontario, dated the 1st August, 1911, known as Crown lease No. 1836, the Government of the Province demised and leased unto the defendant Chaplin . . . the whole of that parcel . . . of land under the waters of Lake Erie in front of this lot, amongst others. . . .

About the month of September, 1911, the defendant Chaplin made a verbal contract with the defendant Curry for putting down a well for the production of petroleum and natural gas in and upon the lands so demised by the Crown to Chaplin; and Curry, acting under such contract, entered upon what the plaintiff Carr claims to be his land, with men and teams, and constructed a derrick and engine-house, etc.

The plaintiffs, asserting that this entry was wholly unlawful, made objection thereto; and, on the defendants persisting in their operations, the plaintiffs brought this action and obtained an interim injunction, which was continued till the trial.

The plaintiffs now ask: (1) that the injunction be made perpetual; (2) a declaration of their rights as to the ownership of the land and as to riparian rights; and (3) damages.