

HON. SIR G. FALCONBRIDGE, C.J.K.B. JULY 12TH, 1912.

VOLCANIC OIL & GAS CO. v. CHAPLIN.

3 O. W. N. 1597, O. L. R.

Water and Watercourses—Crown Grant of Land Bounded by Highway Running near Bank of Lake—Encroachment of Water upon Highway and Lands beyond—Right of Grantee to Lands Encroached upon by Water—Crown Assuming to Make Lease of same Lands—Trespass by Lessee—Action—Parties—Attorney-General—Injunction—Damages.

Action for trespass on certain lands alleged to belong to plaintiff. Plaintiff's land as described in the Crown patent to his predecessor made in 1824, was bounded on the south-west by the Talbot road. This latter road ran close to the shore of Lake Erie and the waters thereof gradually encroached thereon, so much so that in 1838 the road was abandoned and a road to the north dedicated known as the new Talbot road. The gradual erosion of the waters has by the present not only destroyed the old Talbot road but brought the shore line some rods north of the old road allowance. Plaintiff maintained that that portion of the original grant north of the original road allowance still belonged to him and that he was entitled to restrain defendants, who claimed the water lot under a Crown lease dated August 1st, 1911, from trespassing on his property.

FALCONBRIDGE, C.J.K.B., *held*, that where a parcel of land has a definite fixed boundary other than the shore line it is unaffected by the changing of the said shore line by natural causes, and the consequent erosion of part of the land composing the said parcel.

Review of authorities.

Judgment for plaintiff for injunction and \$10 damages. Costs on High Court scale.

G. F. Shepley, K.C., and J. G. Kerr, for the plaintiffs.

O. L. Lewis, K.C., for the defendant Curry.

W. Stanworth, for the defendant Chaplin.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—The plaintiffs' company carry on business in the counties of Essex and Kent in the production and sale of petroleum and natural gas. Plaintiff Carr is a farmer; defendant Chaplin is described as a wheel manufacturer; defendant Curry is an oil and gas drilling operator.

Plaintiff Carr is the owner and occupant of the westerly half of lot 178, Talbot Road Survey, in the township of Romney. It was granted by the Crown by patent dated 29th January, 1825, to Carr's predecessor. The lands are described in the patent in manner following, that is to say:

"All that parcel or tract of land situate in the township of Romney in the county of Kent in the western district in our said province containing by admeasurement one hundred acres, be the same more or less, being the south-easterly part of lot No. 178, on the north-westerly side of Talbot