

an agreement from him, and the Union National Gas Company, as their assigns, were added as co-plaintiffs. The action is really at the instance of the plaintiff companies, as the plaintiff Carr is to be indemnified against all costs.

As the defendants strongly challenge the correctness of the finding of fact that the water has encroached as far as the plaintiffs' land, it is necessary to examine the evidence closely and refer to it with some detail. . . .

[The learned Judge examined the evidence at great length.]

Quite apart from any evidence for the defence, a careful perusal and reperusal of the evidence has satisfied me that the plaintiffs have, upon their own case, failed to establish that the water has reached their original southern line, and, on the contrary, leads me to the conclusion that it has not done so. There is the outstanding fact that, wherever witnesses speak of the road at lots near to the plaintiffs' land, east or west of it, the southern edge of the clay bank is either not shewn to have been eroded as far as the north side of the road, or is shewn not to have been so; and there is no evidence that the line of the bank at the plaintiffs' land is farther north than at the neighbouring lots. I need hardly say that only the clearest conviction as to the effect of the evidence for the plaintiffs, assuming all that their witnesses said to be true, would warrant an interference with the finding of fact by the learned Chief Justice, confirmed as it was by the Divisional Court; and it is with the greatest respect that I feel bound to express a different opinion. In the examination of the witnesses at the trial, it would seem to have been largely assumed for the plaintiffs that it was sufficient to shew that the earth had broken away at the top of the bank, as if it followed that the land below had disappeared beneath the water. It is also, I think, quite probable that, if the additional extract from the field-notes had been before the Court at the trial, even less weight would have been attached to the evidence of the witness Renwick than, considering his distance from the locality, would in any event seem to be warranted.

In my view, the plaintiffs have not proved either that the defendants' works are north of the site of the old Talbot road, or that the waters of the lake have reached so far, and hence they are not riparian proprietors.

They do not shew any inconvenience or injury from the