

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

J. Bicknell, K.C., J. W. Bain, K.C., and Christopher C. Robinson, for the appellants.

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

MAGEE, J.A.:—The defendants are appealing from the decision of a Divisional Court of the High Court of Justice, which affirmed the judgment of the Chief Justice of the King's Bench, who found that the oil or gas well which was being sunk by the defendants, although on land then covered by the waters of Lake Erie, was, with its derrick, engine-house, boiler-house, and machinery, situate on what originally was, and therefore still was, the west or south-west half of lot 178 north of the Talbot road west, in the township of Romney, belonging to the plaintiff John George Carr, subject to the right of his co-plaintiffs, and enjoined the defendants from further drilling or trespassing, and assessed at \$10 the plaintiffs' damages.

The case for the plaintiffs is, that the waters of Lake Erie have gradually encroached so far to the north that they now cover, not only land which was originally south of the Talbot road, but also the site of the road itself and part of the plaintiffs' farm, which was bounded on the south by the road; but that such encroachment could not change the ownership of the soil, which, therefore, remained in the plaintiffs. In the alternative, they also claim that at least they now own the land as far as the water's edge, and that the defendants are, by the well and buildings, interfering with their rights as riparian proprietors.

The defendants deny that they have trespassed upon the land of the plaintiffs or that the water has reached the plaintiffs' land, or that, if it has, the plaintiffs' ownership would continue, or that the plaintiffs are riparian proprietors, or that they have interfered with riparian rights; and the defendants claim title in the defendant Chaplin under a lease to him from the Crown dated the 1st August, 1911, of the land under the water of Lake Erie in front of lot 178, Talbot road lot, and other Talbot road lots, for the purpose of sinking and operating petroleum and gas wells.

The plaintiffs claim title in fee simple in the plaintiff John George Carr to the west half of lot 178. The Volcanic Gas and Oil Company claim the right to gas and oil in the land, under