

**SUPREME COURT OF NIGERIA**  
FRIDAY 5TH JUNE, 2015. SC. 52/2005  
**CORAM:- J. A. FABIYI, C. B. OGUNBIYI, K. B. AKA'AH, S,**  
**K. M. O. KEKERE-EKUN, C. C. NWEZE, JJSC**

THE SHELL PETROLEUM  
DEVELOPMENT COMPANY  
OF NIGERIA LIMITED  
AND

..... APPELLANT

1. CHIEF JOEL ANARO
2. YOUNG DUPELEWEI OMODOHAYE
3. ETIMINGBA FORCADOS
4. JOE TUBOTU

..... RESPONDENTS

(For themselves and on behalf of the entire  
members of Ofogbene, Ezon Burutu  
Community) (SUIT NO.W/72/83)

AND

1. CHIEF BEBEAPRE TUAGBAYE
2. MR. JOE EBA
3. MR. OVIE EZULU

(For themselves and on behalf of the  
Obotobo Community) (SUIT NO.W/16/83)

AND

1. CHIEF TUAGHA DIRI
2. CHIEF SAMSON ALAYE
3. MR. GILBERT DOSE

(For themselves and on behalf of the entire  
Sokebolo Community) (SUIT NO.W/17/83)

AND

1. CHIEF ODALI SUBAI
2. CHIEF OLOKPA NUMUNADE
3. MR. PERE DOLOBEBIOWEI

(For themselves and on behalf of  
the members of Ekeremor, Zion, Ezon  
Ase Community)  
(SUIT NO.W/80/83)

of 1991 - State HC can by virtue of unlimited jurisdiction conferred on it by Constitution 1979 - Exercise concurrent jurisdiction in respect of matters under FHC Act s. 7 (H1)

LEGISLATIONS - Amendment - Applicable law - Where cause of action accrued prior to alteration of law governing same - Applicable law is the one in force at the time the cause of action accrued (H2)

MARITIME LAW - Fishery - Right of - Adeshina v. Lemonu - Fishing in tidal waters is a public right - Both under common law and natural law - And was not affected by Minerals Act s. 3(1) (H3)

MARITIME LAW - Oil spillage - Negligence - Rylands v. Fletcher - In respect of damages resulting from escape of oil waste - CA's affirmation of trial court on *res ipsa loquitur* - And the rule in the case law cannot be faulted (H4)

MARITIME LAW - Oil spillage - Damages - Proof - Damages awarded are not baseless - As evidence showed that some fishes died as a result of the spillage (H5)

### ***FACTS***

Plaintiffs/respondents in four suits consolidated by order of the High Court of Delta State, claimed for compensation against defendant/appellant for negligence arising from oil spillage from appellant's pipeline. The suits were instituted for and on behalf of Obotobo, Sokebolo, Ofogbene (Ezon Burutu) and Ekeremor Zion (Ezon Asa) Communities, respectively. At the trial, the parties called their respective witnesses. The trial court in its judgment found in favour of respondents and awarded various sums of money as damages. Appellant was dissatisfied.

Hence, it appealed against the judgment to the Court of Appeal Benin City Division. The court delivered its judgment dismissing the appeal. The appellant was still not satisfied and appealed to the Supreme Court, contending *inter alia* whether the trial State High Court had jurisdiction to try the consolidated suits in the light of Decree No. 59, Admiralty Jurisdiction Decree 1991, Decree No.60 Federal High Court (Amendment) Decree 1991, Decree No. 16 Federal

High Court (Amendment) Decree 1992 and/or Decree No. 107 Constitution (Suspension and Modification) Decree 1993.

**ISSUES FOR DETERMINATION**

1. Whether the State High Court had jurisdiction to try the consolidated suits herein in the light of Decree No 59, Admiralty Jurisdiction Decree 1991, Decree No. 60 Federal High Court (Amended) Decree 1991, Decree No.16 Federal High Court (Amended) Decree 1992 and/or Decree No.107 Constitution (Suspension and Modification) Decree 1993.

2. Whether the courts below erred in law in holding that the Minerals Act did not have impact on the plaintiffs' claims .

3. Whether the courts below were right in holding that the doctrine of Res Ipsa Loquitur was available to the Plaintiffs herein.

4. Whether the courts below were right in basing the damages awarded on (PW1, the Valuers Reports) Exhibits 1-4 when parts of his evidence had been adjudged to be hearsay and therefore inadmissible and worthless.

**HELD** (Unanimously dismissing the appeal per  
**AKA' AHS JSC)**

*ADMIRALTY - Jurisdiction*

***1. Thus it can be seen at a glance that the State High Court, by virtue of the unlimited jurisdiction which the 1979 Constitution conferred on it, had the competence to exercise concurrent jurisdiction with the Federal High Court in respect of the matters listed under Section 7 of the Federal High Court Act, 1976 and this was the state of affairs until the promulgation of the Admiralty Jurisdiction Decree No. 59 of 1991, the Federal High Court (Amendment) Act, 1991 and the Constitution (Suspension and Modification) Decree No.107 of 1993.***

(p. 2295 E)

*LEGISLATIONS - Amendment - Applicable law*

***2. There is a strong leaning against construing a statute so as to oust or restrict the jurisdiction of the superior courts. Where a cause of action accrued before the advent of an alteration of***

*the law governing same, the applicable law is the one which was in operation at the time when the cause of action accrued unless the subsequent legislation manifestly and unambiguously provides that the altered law takes retrospective effect.*

One of the issues considered by this Court in *Orthopedic Hospitals Management Board v. Mallam Umaru Garba and 2 Ors* (2002) 14 NWLR (Pt.788) 538 was whether the High Court of Kano State truly lacked the jurisdiction to try the case and give judgment thereon, having regard to the provisions of Decree 107 of 1993 and Decree No. 60 of 1991 vis-à-vis the subject matter of the suit; and having regard also that the action was commenced in November 1992 before promulgation and commencement of Decree No. 107 of 1993. It was held that a right in existence at the time a new law is passed transferring jurisdiction of one court to another will not be lost. Ogundare JSC stated clearly at page 565 that Decree No 107 of 1993 was not an adjectival law but one of substantive law and since it did not operate retrospectively, it would not affect pending legal proceedings so as to deprive the State Court jurisdiction to conclude such proceedings. The decision in this case has demolished the argument in the appellant's reply brief that the Admiralty Jurisdiction Decree No. 59 of 1991; the Federal High Court (Amendment) Decree No.16 of 1992 and the Constitution (Suspension and Modification) Decree No.107 of 1993 are procedural or adjectival laws which could be given retrospective interpretation. (pp. 2295 G/2296 D)

*MARITIME LAW - Fishery - Right of - Adeshina v. Lemonu*

3. On the other hand, the decision in *Adeshina v Lemonu* (supra) which followed *Braide v. Adoki* (supra) where the trial Judge held that the right of common fishery in tidal waters, declared by the Full Court in 1914 in *Amachree v. Kalio* (1914) 2 NLR 108 to be a public right both under common law and natural law, was not affected by Section 3(1) of the Minerals Act of 1916 which vested in the Crown, the property in minerals and all rivers, streams and water courses.

This latter decision will enable the plaintiffs maintain their action against the defendant for the oil spillages which devas-

**tated their flora and fauna. The respondents' right to fishing in the creeks as enumerated in paragraph 3 of the Statement of Claim in W/16/83; W/17/83; W/72/83 and W/80/83 (see pages 154, 163, 318 and 355 respectively) was affected and the payment of compensation was made to each of the various communities for loss of income suffered by the community members who have a right to fish in the creeks located in their community to the exclusion of other members who are not members of the particular community. The award is for the temporary loss of fishing caused by the oil spillages. The second issue is resolved in favour of the respondents and against the appellants on the principle that the right of common fishery in tidal waters is a public right both under common law and natural law and was not affected by Section 3(1) of the Minerals Act which was first enacted in 1916. (p. 2303 D)**

*MARITIME LAW - Oil spillage - Negligence - Rylands v. Fletcher*

**4. The case of Umudje v Shell (supra) also laid down that where respondents pleaded damage resulting from the escape of oil-waste and also charged the appellant with negligence and, in their pleadings, gave particulars therefore, and the trial Judge finds in favour of the respondents on the issue, the appellants would also be liable in negligence for damages resulting from the escape of oil waste; and it is well settled that a single act of a defendant may give rise to liability under both heads of tort i.e. (1) negligence and (2) the rule in Rylands v Fletcher. The affirmation by the court below that the learned trial Judge was right in his application of the doctrine of Res Ipsa Loquitur, the rule in Rylands v Fletcher and the law on evidential burden of proof is therefore faultless and is further affirmed by this court. (p. 2306 A)**

*MARITIME LAW - Oil spillage - Damages - Proof*

**5. In his evaluation of the evidence called by the parties, the learned trial Judge accepted the evidence of plaintiffs' witnesses and rejected the evidence of the defence because the team of experts called by the defence carried out their work three years after the spillage had occurred. There is also evi-**

***dence which the trial Judge accepted that some fishes died in the ponds and the ones trapped in the fish fences also died as a result of the spillage.***

***Aside the opinion expressed by PW1 on the ownership of the nets which goes to no issue, the valuers reports***  
B ***Exhibit 1-4 were not impugned.*** (p. 2307 A)

### **REPRESENTATION**

F. R. A. Williams Jnr. appearing with Mohammed Sallau Esq and O. E. Osumbade), for the Appellant  
C Chief Broderick Bozimo appears with Lorenzo Omo-Aligbe Esq; Joyce Bozimo (Mrs.), H. T. Aligbe (Mrs.) and Isaiah Bozimo Esq., for the Respondents

### **CASES REFERRED TO**

- Evoyoma v. Daregba (1968) 1 All NLR (Old Series) 192  
Brigbo v. Pessu (1974) 1 All NLR (Old Series) 2  
Lawani v. Lemonu (1965) 1 All NLR (Old Series) 23  
Uyovwukerhi v. Afonughe (1976) 1 NSCC 249  
E N.D.I.C. v. Okem Enterprises Ltd (2004) 10 NWLR (pt. 880) 107  
Ogamioba v. Oghene (1961) 1 All NLR 64  
Are v. A.G. Western Region (1960) SCNLR 24  
Unilorin v. Adeniran (2007) 6 NWLR (pt. 1031) 498  
Adeshina v. Lemonu (1965) All NLR 233  
F Amachree v. Kalio (1914) 2 NLR 108  
Umudje v. Shell (1975) 9-11 SC 95  
A-G v. Cory Brothers (1921) 1 AC 521  
Rylands v. Fletcher (1868) 3 HL  
G Maikyo v. Itodo (2007) All FWLR (pt. 363) 66  
Ogamioba v. Oghene (1961) 1 All NLR 64

### **STATUTES REFERRED TO**

- Admiralty Jurisdiction Decree No. 59 of 1991  
H Federal High Court (Amended) Decree No. 60 of 1991, ss. 7(6), 8(1)  
Federal High Court (Amended) Decree No. 16 of 1992  
Constitution of the Federal Republic of Nigeria (Suspension and Modification) Decree No. 107 of 1993

Minerals Act Cap 220 LFN, s. 3(1)

Constitution of the Federal Republic of Nigeria 1979, s. 236

Evidence Act, s. 57

Regional Courts (Federal Jurisdiction) Act Cap. 177 Vol. V LFN 1958, s. 3

Interpretation Act, s. 6(1)

B

### **LEAD JUDGMENT BY AKA'AHs JSC**

Four separate actions were instituted by the Plaintiffs herein seeking damages from Shell Development Company of Nigeria Limited for oil spillage. The said suits Nos. W/16/83, W/17/83, W/72/83 and W/80/83 were instituted for and on behalf of Obotobo, Sokebolo, Ofogbene (Ezon Burutu) and Ekeremor Zion (Ezon Asa) Communities respectively. The suits were consolidated by Order of the then Bendel State High Court on 21/3/85. At the end of the trial in which parties called witnesses, the trial court in a judgment delivered on 27th May, 1997 in favour of the Plaintiffs awarded damages as follows:-

1. Suit No. W/16/83 - N4,095,085.00
2. Suit No. W/17/83 - N13,278,306.00
3. Suit No. W/72/83 - N7,392,589.00
4. Suit No. W/80/83 - N5,522,701.00

E

The defendant was dissatisfied and appealed against the judgment to the Court of Appeal, Benin City in CA/8/255/97. The Court of Appeal delivered its judgment on 22nd May, 2000 dismissing the appeal. The appellant was still not satisfied and appealed to the Supreme Court. In the appellant's brief of argument, four issues were submitted for determination. The issues are as follows:-

F

1. Whether the State High Court had jurisdiction to try the consolidated suits herein in the light of Decree No 59, Admiralty Jurisdiction Decree 1991, Decree No. 60 Federal High Court (Amended) Decree 1991, Decree No.16 Federal High Court (Amended) Decree 1992 and/or Decree No.107 Constitution (Suspension and Modification) Decree 1993.

H

2. Whether the courts below erred in law in holding that the Minerals Act did not have impact on the plaintiffs' claims (Ground 2 particular 5).

3. Whether the courts below were right in holding that the

doctrine of Res Ipsa Loquitur was available to the Plaintiffs herein.

4. Whether the courts below were right in basing the damages awarded on (PW1, the Valuers Reports) Exhibits 1-4 when parts of his evidence had been adjudged to be hearsay and therefore inadmissible and worthless.

B Learned counsel for the respondents adopted issues 1 and 3 as framed by the appellant's counsel and contended that issue No.2 in the appellant's brief is incompetent and should be discountenanced on the ground that it did not arise from any grounds in the Notice of Appeal. He said that issue 4 has to be recast to reflect the complaint C in Ground 6. He therefore formulated three issues for determination.

They are:-

D 1. Whether the State High Court had jurisdiction to try the consolidated suits herein in the light of Decree No.59 Admiralty Jurisdiction Decree 1991; Decree No.60 Federal High Court (Amendment) Decree 1991; Decree No. 16 Federal High Court (Amendment) Decree 1992; and/or Decree No. 107 Constitution Suspension and Modification Decree 1993 (Ground 1)

E 2. Whether the court below was right in upholding the decision of the trial court that the doctrine of Res Ipsa Loquitur was available to the plaintiffs/Respondents.

F 3. Whether the court below was right in upholding the damages awarded by the trial court in the set of four consolidated suits when, in considering the awards, the evidence of PW1, the Valuer, was not expunged as hearsay evidence.

G Learned counsel reproduced certain sections of Decree Nos.59 and 60 of 1991, 16 of 1992 and 107 of 1993 and submitted that the combined effect of these Decrees was to deprive the State High Court the jurisdiction to determine admiralty matters concurrently with the Federal High Court, as the suits were not saved by Section 7(6) of Decree No.60 of 1991. He argued that it would be doing violence to the words of the proviso contained in Section 7(6) of Decree No. 60 H to reach any other conclusion other than the abatement of the suit and transfer to the Federal High Court. He therefore urged that the appeal should be allowed on this ground alone.

On issue 2, learned counsel argued that title to creeks or other water courses is vested in the State by virtue of Section 3(1) of the



Minerals Act Cap 220, Laws of the Federation of Nigeria which was considered by the West Africa Court of Appeal in *Bassey v Ekanem* XIV WACA 364 at 365 per Sir John Verity CJ which was followed by the Supreme Court in *Evoyoma and Ors v. Daregba and Ors* (1968) 1 All NLR (Old Series) 192 at 195 and *Brigbo and Ors v. Pessu and Ors* (1974) 1 All NLR (Old Series) 2 at 37. He said *Bairamian JSC* B took a different view of the effect of Section 3(1) of the Minerals Act in *Lawani v. Lemonu* (1965) 1 All NLR (Old Series) 23 and adopted in *Uyovwukerhi v. Afonughe* (1976) 1 NSCC 249. He said that none of the Supreme Court cases which were decided after the decision in *Lawani v. Lemonu* (supra) were cited in the *Uyovwukerhi's* case and C so invited this court to prefer and allow the line of decisions which followed *Bassey v. Ekanem* (supra). He finally submitted that the claim for damages arising from the rights of the Plaintiffs to “fresh water creek” and/or based on loss of fisheries ought not to have been D entertained as the plaintiffs have not established their legal right thereto.

On the application of the doctrine of *Res Ipsa Loquitur*, learned counsel referred to the pleadings and evidence and contended that if there is evidence of how the occurrence took place, an appeal to *Res Ipsa Loquitur* is misconceived and inappropriate and E he submitted that the doctrine was misapplied in this case.

Lastly, dealing with the damages awarded which were based on the valuers Reports, parts of which were found to be hearsay evidence and therefore inadmissible, learned counsel submitted that F they are manifestly baseless and excessive and should not have been used to complete the damages. In conclusion he urged this court to allow the appeal.

Regarding issue 1, learned counsel for the respondents referred to the Writs of Summons in the consolidated suits which were G filed at the High Court of Justice, Warri, several years before the promulgation of the Decrees alluded to by the appellant and argued that when the suits were consolidated in 1983, the Delta State High Court enjoyed concurrent jurisdiction with the Federal High Court by virtue of Section 236 of the 1979 Constitution (then in operation) H and submitted that Decrees No. 59 Admiralty Jurisdiction Decree 1991, the Federal High Court Amendment Decrees No. 66 of 1991 and 16 of 1992 and the Constitution (Suspension and Modification) Decree No.107 of 1993 were promulgated in response to the judgment of

this Court in *Western Steel Works v Iron and Steel Workers Union* (1987) 1 NWLR (Pt.49) 288 at 288 per Aniagolu JSC where he clearly stated that Section 236 conferred unlimited jurisdiction on the State High Court in Admiralty Matters thereby making that jurisdiction to be concurrent with that of the Federal High Court. He submitted that when the Admiralty Jurisdiction Act 1962 was repealed, anything done which had taken place under the Act was saved and moreover, it is a cardinal principle of law that a statute cannot apply retrospectively unless it is made to do so by clear and express terms or it is in respect of purely procedural matters.

On whether the doctrine of *Res Ipsa Loquitur* was available to the plaintiffs/respondents, learned counsel maintained that the pleadings and evidence adduced showed that the respondents did not sufficiently know how the spillages occurred nor did they give explanation as to how they occurred and it is because of the uncertainty about how the spillages occurred that made them to rely on the doctrine. Learned counsel also submitted that aside the maxim of *Res Ipsa Loquitur*, the respondents also canvassed the rule in *Rylands v. Fletcher* (1868) 3 HL in saying that there would not have been spillages if there was no negligence in the maintenance of the pipes by the appellant.

On the quantum of damages awarded, learned counsel for the respondents contended that the valuation reports confirmed the pleadings and evidence adduced on which the trial court based its finding and which were affirmed by the court below. It was further submitted that the valuer's report was expert evidence and is admissible under Section 57 of the Evidence Act.

The pivot of the appellant's appeal that the consolidated actions commenced by the respondents as plaintiffs in 1983 abated was hinged on Sections 7(6) and 8(1) of the Federal High Court Act Decree No. 60, 1991 which state: -

*"7(6) Any decision made after the commencement of this section by any court of law in any purported exercise of any power under the Constitution of the Federal Republic of Nigeria 1999 or of any Federal or State law shall, as from the date of making of the decision be null and void if it..*

*(a) has declared the decision invalid or the court incompetent to exercise exclusive jurisdiction in respect of any of the matters*

*specified under section 7(1) or (2) of this Act before it was substituted by this section; or*

*(b) has conferred or purported to confer on any other court apart from the Court, concurrent jurisdiction in respect of the matters specified under section 7 of this Act before it was substituted by this section.* B

*Provided that any decision taken by any Court other than the Court as a result of the power of the concurrent jurisdiction so conferred shall be valid but all other cases pending in the said other courts, other than the Court of Appeal, shall, at the commencement of this section, abate and the Judge before whom it is pending shall transfer them to the Registrar of the Court to be heard as new suits.* C

*8(1) In so far as jurisdiction is conferred upon the Court in respect of the causes or matters mentioned in the foregoing provisions of this part of this Act, the High Court or any other court of a State or of the Federal Capital Territory, Abuja shall, to the extent that jurisdiction is so conferred upon the Court, cease to have jurisdiction in relation to such causes or matters".* D

However this argument is punctured in the contention by learned counsel for the respondents who argued that the State High Court had jurisdiction to hear the cases to finality and he rooted this argument in Section 8(3) of Decree No. 60 of 1991 which stipulates as follows: E

*"8(3) Nothing in the foregoing provisions of this section shall affect the jurisdiction and all other powers of the High Court or any court of a State to continue to hear and determine causes and matters which are part - heard before such court at the date of the assumption of the functions of the Federal High Court or at the date when jurisdiction is otherwise conferred on the Court by the President, and any proceedings in any such causes or matters, which are still part-heard at the expiration of the period of six months beginning with the date of the assumption of the functions of the Court or the date when jurisdiction is otherwise conferred on the Court, shall abate on the expiration of that period."* F G H

To appreciate the arguments of learned counsel to the parties, it is necessary to go into the historical development of the Federal Revenue Court which has metamorphosed into the Federal High Court. The philosophy behind the creation of the Court is that under

a Federal Constitution there are items on the Exclusive and concurrent Legislative List on which the Federal Parliament exercises power to legislate. Ordinarily in a federal set up, the Federal Courts would adjudicate over matters in the exclusive legislative list such as banking. The approach of the 1960 and 1963 Constitutions of Nigeria was to empower the Federal legislature to authorize the regional courts to exercise federal judicial power. In pursuance of this authority, the federal legislature made laws conferring upon the State's Magistrate and High Courts jurisdiction to adjudicate matters arising under federal laws. There being no federal courts of first instance in the states before the promulgation of the Federal Revenue Court Decree (known as Decree No. 13 of 1973) which vested jurisdiction in the court to determine civil causes and matters connected with or pertaining to - "banking, foreign exchange, currency or other fiscal measures," the High Courts of the then regions were given authority which enabled them to adjudicate in matters within the exclusive competence of the Parliament by virtue of Section 3 of the Regional Courts (Federal Jurisdiction) Act Cap.177 Vol. V Laws of the Federation of Nigeria 1958 which provided as follows:-

*"Where by the law of a region jurisdiction is conferred upon a High Court or a Magistrate's Court for the hearing and determination of civil causes relating to matters with respect to which the Legislature of the region may make laws, and of appeals arising out of such causes, the court shall, except in so far as other provision is made by any law in force in the region, have the like jurisdiction with respect to the hearing and determination of civil causes relating to matters within the exclusive legislative competence of the Federal Legislature, and of appeals arising out of such causes."*

The intervention of Decree No. 13 of 1973 withdrew the jurisdiction permitted to Regional High Courts relating to some matters within the exclusive legislative competence of the Federal legislature and conferred it on the Federal Revenue Court. The jurisdiction of the State High Courts in the same subject of banking had been directly derived from the Regional Courts (Federal Jurisdiction) Act and it was the same Act and other specified enactments e.g. Admiralty Jurisdiction Act 1962 which allowed the Regional (State) High Courts to have jurisdiction over other Federal matters relating to revenue, taxation of companies, customs and excise, foreign exchange,

currency, copyright, patent, designs, trade mark, Admiralty etc. See: N.D.I.C. v. Okem Enterprises Ltd (2004) 10 NWLR (Pt.880) 107.

The Federal High Court Act enacted in 1976 provided in Section 7, the jurisdiction and law to be administered by the Court. The Section states:-

*“7(1) The Court shall have and exercise jurisdiction in civil causes and matters -*

*(a) relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party;*

*(b) connected with or pertaining to -*

*(i) the taxation of companies and of other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation,*

*(ii) customs and excise duties,*

*(iii) banking, foreign exchange, currency or other fiscal measures;*

*(c) arising from*

*(i) the operation of the Companies and Allied Matters Act or any other enactment regulating the operation of companies incorporated under the Companies and Allied Matters Act,*

*(ii) any enactment relating to copyright, patents, design, trade marks and merchandise marks;*

*(d) of Admiralty jurisdiction.*

*(2) The Court shall also have and exercise jurisdiction and powers in respect of criminal causes and matters arising out of or connected with any of the matters in respect of which jurisdiction is conferred by subsection (1) of this section*

*(3) The jurisdiction conferred under subsection (1) of this section in respect of criminal causes and matters shall without prejudice to the generality of that subsection and subject to Section 64(3) of this Act include original jurisdiction in respect of offences under the provision of the Criminal Code Act being offences in relation to which proceedings may be initiated at the instance of the Attorney-General of the Federation.*

*(4) The National Assembly may by an Act confer jurisdiction on the Court in respect of such other causes and matters of like nature as those set out in the foregoing subsection as it may, from time*

*to time, at its discretion specify”.*

It can be seen that the jurisdiction of the Federal High Court was being expanded to enable it handle other cases which were not included when the court was Federal Revenue Court and these included criminal matters. The Court also continued to exercise concurrent jurisdiction with the State High Court in matters as specified in Section 7 of the Federal High Court Act including Admiralty matters until the promulgation of the Constitution (Suspension and Modification) Decree No.107 of 1993. Although Section 19 of the Admiralty Jurisdiction Decree 1991 which commenced operation on 30th December, 1991 gave exclusive jurisdiction in Admiralty causes and matters, whether civil or criminal to the Federal High Court which was further confirmed by the Federal High Court (Amendment) Decree No.60 of 1991, the enactment of the Federal High Court (Amendment) Decree No.16 of 1992 on 11th May, 1992 (but made to take retroactive effect on 1st January, 1992) suspended the operation of Decree No.60 of 1991 until 26th August, 1993 when the appropriate Order was published in the Federal Gazette for the coming into operation of the said Decree. It is the Constitution (Suspension and Modification) Decree No.107 of 1993 (now incorporated into the 1999 Constitution as Section 251) that has empowered the Federal High Court to have and exercise exclusive jurisdiction in Admiralty matters which include claims for liability incurred for oil pollution damage affecting fresh water creeks and fisheries.

The 1979 Constitution was in operation when the consolidated suits were instituted in 1983. Section 230 and 236 of the said Constitution provided for the jurisdiction to be exercised by the Federal and State High Courts respectively. The sections are reproduced as follows:-

*“230(1) Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have jurisdiction -*

*(a) in such matters connected with or pertaining to the revenue of the Government of the Federation as may be prescribed by the National Assembly; and*

*(b) in such other matters as may be prescribed as respects which the National Assembly has power to make laws.*

*(2) Notwithstanding subsection (1) of this section, where by law any court established before the date when this section comes into force is empowered to exercise jurisdiction for the hearing and determination of any of the matters to which subsection (1) of this section relates, such court shall as from the date when this section comes into force be restyled “Federal High Court”, and shall continue to have all the powers and exercise the jurisdiction conferred upon it by any law.*

*236(1) Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.*

*(2) The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a State and those which are brought before the High Court to be dealt with by the court in exercise of its appellate or supervisory jurisdiction”*

***Thus it can be seen at a glance that the State High Court, by virtue of the unlimited jurisdiction which the 1979 Constitution conferred on it, had the competence to exercise concurrent jurisdiction with the Federal High Court in respect of the matters listed under Section 7 of the Federal High Court Act, 1976 and this was the state of affairs until the promulgation of the Admiralty Jurisdiction Decree No. 59 of 1991, the Federal High Court (Amendment) Act, 1991 and the Constitution (Suspension and Modification) Decree No.107 of 1993.***

***There is a strong leaning against construing a statute so as to oust or restrict the jurisdiction of the superior courts. Where a cause of action accrued before the advent of an alteration of the law governing same, the applicable law is the one which was in operation at the time when the cause of action accrued unless the subsequent legislation manifestly and unambiguously provides that the altered law takes retrospective effect.***

Section 6(1) of the Interpretation Act clearly deals with such a situation. It provides:

*“6(1) The repeal of an enactment shall not-*

*(a) affect anything not in force or existing at the time when the repeal takes place;*

B *(b) affect the previous operation of the enactment or anything done or suffered under the enactment”.*

This principle of interpretation was applied by Taylor F.J. in *Ogamioba v. Oghene* (1961) 1 All NLR 64 at 66 where he said-

C *“It is a well known rule of construction that unless the contrary appears, the rights of the parties in a pending proceeding are not affected by the alteration of law during such pendency”.* See also: *Are v. A.G. Western Region* (1960) SCNLR 24; *Unilorin v. Adeniran* (2007) 6 NWLR (Pt.1031) 498

D ***One of the issues considered by this Court in Orthopaedic Hospitals Management Board v. Mallam Umaru Garba and 2 Ors (2002) 14 NWLR (Pt.788) 538 was whether the High Court of Kano State truly lacked the jurisdiction to try the case and give judgment thereon, having regard to the provisions of Decree 107 of 1993 and Decree No. 60 of 1991 vis-à-vis the subject matter of the suit; and having regard also that the action was commenced in November 1992 before promulgation and commencement of Decree No. 107 of 1993.***

F ***It was held that a right in existence at the time a new law is passed transferring jurisdiction of one court to another will not be lost. Ogundare JSC stated clearly at page 565 that Decree No 107 of 1993 was not an adjectival law but one of substantive law and since it did not operate retrospectively, it would not affect pending legal proceedings so as to deprive the State Court jurisdiction to conclude such proceedings.***

G ***The decision in this case has demolished the argument in the appellant’s reply brief that the Admiralty Jurisdiction Decree No. 59 of 1991; the Federal High Court (Amendment) Decree***

H ***No.16 of 1992 and the Constitution (Suspension and Modification) Decree No.107 of 1993 are procedural or adjectival laws which could be given retrospective interpretation.*** The *Orthopaedic Hospital Management Board v. Garba and ors* (supra) also decided that the abatement provision in the Federal High Court



(Amendment) Decree No. 60 of 1991 was impliedly repealed by the Constitution (Suspension and Modification) Decree No. 107 of 1993. This was clearly stated in the leading judgment of Mohammed JSC where he said at page 553-554:

*"I agree with the submission of the learned counsel that Decree No. 107 of 1993 which further amended the jurisdiction of the Federal High Court did not contain any abatement provision. That being so I am of the opinion that the argument of the learned counsel that the abatement provision is impliedly repealed is based on sound reasoning. Decree No. 107 of 1993 was the Constitution (Suspension and Modification) Decree 1993. It was enacted with the sole purpose of restoring and suspending of some and modification of other provisions of the 1979 Constitution. Section 230 of Decree 107 of 1993 provided for detailed jurisdiction of the Federal High Court. There is no provision for cases which are pending in the State High Courts to have abated and I agree that it could be implied that the provision of abatement in Decree 60 of 1991 had been repealed".*

This being the case, since the State High Court had jurisdiction to entertain admiralty cases begun in 1983, it was right to proceed with the trial leading to the judgment in 1995 after the promulgation of Decree No. 107 of 1993. The decision in *Olutola v University of Ilorin* (2004) 18 NWLR (Pt.905) 416 is not in conflict with *Orthopedic Hospital Management Board v. Garba and Ors* (supra) because of the cause of action in which the plaintiff sought for a declaration that the decision which the University took in finding him guilty of plagiarism and removing him from the office of Dean of Education, Management and Planning was ultra vires the powers of the University, illegal, arbitrary, unconstitutional, null and void. The plaintiff also sought for an injunction. The action was filed on 13/1/1993 and trial in the suit continued until 1996 when judgment was entered in favour of the plaintiff. On appeal, the Court of Appeal directed the attention of counsel to the question touching upon the jurisdiction of the trial court to determine the matter in the first case in view of Section 230(1)(s) of Decree No. 107 of 1993. The appeal was allowed and this prompted the further appeal to the Supreme Court. In dismissing the appeal, the Supreme Court considered Section 230(1)(s) of Decree No.107 of 1993 which provides-

*"230(1) Notwithstanding anything to the contrary contained*

*in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from -*

*(q) the administration of the management and control of the*  
 B *Federal Government or any of its agencies;*

*(r) subject to the provision of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies; and*

*(s) any action or proceeding for a declaration of injunction*  
 C *affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.*

*Provided that nothing in the provision of paragraphs (q), (r) and (s) of this subsection shall prevent a person from seeking redress*  
 D *against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity”.*

Since the University of Ilorin is an agency of the Federal government and the reliefs sought were to declare the action of the University as illegal, arbitrary, unconstitutional, null and void coupled with injunction, the action though begun in the Kwara State High Court before the promulgation of Decree 107 of 1993 had to be transferred to the Federal High Court and since this was not done,  
 E  
 F the appeal had to be allowed in the Court of Appeal and affirmed in the Supreme Court.

The arguments on jurisdiction therefore fail since the appellant in this appeal has not been shown to be an agent of the Federal Government and the claims of the Plaintiffs/Respondents were clearly  
 G not for declaratory reliefs and injunction. The issue on jurisdiction as raised in issue 1 in the appellant's brief is resolved against the appellant.

Learned counsel for the appellant maintained that the claim for damages arising from the rights of the plaintiffs to fresh water  
 H creek and or based on loss of fisheries ought not to have been entertained as the plaintiffs have not established their legal right thereto. Learned counsel based his arguments on Section 3(1) of the Minerals Act Cap 220, Laws of the Federation of Nigeria which was considered in *Bassey v Ekanem* 14 WACA 364 and applied in *Evoyoma*

and Ors v. Daregba and Ors (1968) 1 All NLR 192 and Brigbo and Ors v. Pessu and Ors (1974) All NLR 575. He said that Bairamian JSC took a different view of the effect of Section 3(1) of the Minerals Act in Adeshina v. Lemonu (1965) All NLR 233 which was followed in Uyovwukerhi v. Afonughe and Anor (1976) Vol.10 NSCC 249. He invited this Court to prefer and follow the reasoning in Bassey v Ekanem (supra) or distinguish Adeshina v. Lemonu (supra). B

Learned counsel for the respondent contended that issue No 2 is incompetent and should be discountenanced on the ground that it did not arise from any of the grounds of appeal. The objection was not addressed in the Reply Brief. C

I have perused the grounds of appeal contained on pages 758-764 of the records. The complaint being made in ground 2 is that -

The Honourable Court of Appeal, Benin erred in law and on the facts in resolving appellant's Issue No. 2 which embraced Grounds 1, 2 and 3 in that Court against the appellant. D

In the particulars of error, particular 5 contains the following:-

*"5. The impact of the Minerals Act and/or Land Use Act on the representative claim was devastating". E*

I am satisfied that issue 2 arose from ground 2 and the said issue is not incompetent.

Section 3(1) of the Minerals Act Cap 121 Vol. 4 Laws of the Federation Nigeria which provides:- F

*"(1) The entire property in and control of all minerals and mineral oils in, under or upon lands in Nigeria, and of all rivers, streams and water courses throughout Nigeria, is and shall be vested in the State, save in so far as such rights may in any case been limited by any express grant made before the commencement of these Ordinances", all property in and control of the streams and creeks over which the plaintiffs claimed fishing rights would appear to be vested in the Crown; and the claims for damages arising from the rights of the plaintiffs to fresh water creek and or based on loss of fisheries cannot be entertained since the plaintiffs cannot establish their legal right thereto". G H*

In Bassey v Ekanem (supra) the judgment of the Supreme Court was set aside and a non-suit entered because there was no

evidence on whether or not the waters in which rights of fishing were claimed were a part of tidal waters. In his judgment, Verity CJ said at pages 364-365:-

*“Neither the claim nor the terms of the judgment are precise as to the nature of the title held to be vested in the respondents but it was stated in the course of argument by counsel that they claim exclusive fishing rights over the stretch of water described as the fishing pond known as Inyang Asinyang.*

*It appears from the evidence that this water is not strictly speaking a pond although so described but it is in fact part of a series of creeks or streams linked with the No creek or river and eventually, it would appear with the Cross River”.*

When dealing with Minerals Ordinance which was not being considered he said:-

*“It was therefore a matter for consideration whether or not either party is by law entitled to any fishing rights therein”.*

This reasoning prevailed in *Evoyoma v. Daregba* (1968) 1 All NLR 192 where earlier decisions of *Braide v. Adoki* 10 NLR 15, *Bassey v. Ekanem* (supra) and *Adeshina v. Lemonu* (1965) 1 All NLR 233 on the effect of Section 3(1) of the Minerals Act on fishing rights were considered. The essence of the dispute in *Evoyoma v. Daregba* (supra) was that the appellants, the plaintiffs (the Olota people) and the defendants (the Ogada People) were each claiming a declaration of title in respect of a riverine area called *Ugborevborevbo* which the defendants described as a “fishing pond” whilst the plaintiffs describe it as a “fishing stream”. The exact area claimed by each party was not identical as the plaintiffs claimed a larger area of *Ugborevborevbo* than the defendants, but each alleged the other side trespassed in the area which they claimed and each sought an injunction to prevent further trespassing as well as damages for the past trespass. The plaintiffs had also claimed a declaration of title to land on either side of “*Ugborevborevbo*” fishing stream, but the learned trial Judge dismissed that claim but learned counsel for the appellants, Chief Rotimi Williams argued that the effect of Section 3(1) of the Minerals Act was not considered at all in the trial either by the parties or by the learned trial Judge. In allowing the appeal and setting aside the judgment of the High Court and non-suiting the plaintiffs, Lewis JSC held that the Common Law of England recognises

no rights of ownership in running water, and if a declaration of title to a river, stream or watercourse is sought then it will be necessary not only to have evidence of any rights recognised by the customary law of the area but also to consider the exact meaning to be given to Section 3(1) of the Minerals Act and in so doing to determine whether the word “property in and control of” in that subsection govern the words “rivers streams and watercourses” as well as “minerals and mineral oils” or whether only the words “control of” govern the words “rivers, streams and water courses”. In the appeal, it did not appear that it was ever properly established before the trial Judge whether what each side sought was a declaration of title to the stream or ponds, as they respectively referred to the area, or a declaration of title to fishing rights within that stream or pond.

However in *Adeshina v. Lemonu* (1965) 1 All NLR 233 where the trial Judge granted the plaintiff, whose nets had been seized by the defendant, while fishing in the stretch of tidal waters near Apapa, an injunction to restrain the defendant from molesting him in his fishing in that stretch and the defendant appealed against the grant of injunction contending that the public rights of fishing were taken away by Section 3 of the Minerals Act, that the decision in *Braide v Adoki* was wrong, and that it was not competent for the plaintiff to sue, as the Crown was the real owner, the appeal was dismissed. *Bairamian JSC* in delivering the judgment said:-

*“The argument for the appellant is that those public rights of fishing were taken away by Section 3, which vested the rivers, streams and water-courses in the Crown (now in the State)”.*

This argument overlooks the presumption against implicit alteration of the law: see *Maxwell on the Interpretation of Statutes* (10th ed.) p.81, and *Craies on Statute Law* (5th ed.) p. 310. *Maxwell* puts it as follows:-

*“One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits, the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible*

*clearness and to give any such effect to general words, simply because they have a meaning that would lead thereto when used in either their widest, their usual, or their natural sense, would be to give them a meaning other than that which was actually intended, General words and phrases, therefore, however, wide and comprehensive they may be in their literal sense must usually be construed as being limited to the actual objects of the Act. It would be perfectly monstrous to construe the general words of the Act so as to alter the previous policy of the law. In construing the words of an Act of Parliament we are justified in assuming the legislature did not intend to go against the ordinary rules of law, unless the language they have used obliges the court to come to the conclusion that they did so intend."*

In *Brigbo v Pessu* (1974) All NLR 574, the plaintiffs' claim against the defendants jointly and severally for

D *"(a) a declaration of title to the Creek known as Arotaghan lying and situate at Korokoto in the Warri Division.*

*(b) and against the 1st to 7th defendants the 1st and 2nd plaintiffs claim jointly and severally the sum of 300 Euro being damages for trespass that on or about the month of May 1956, without*  
 E *plaintiffs' consent first obtained, the 1st to 7th defendants entered the plaintiffs' creek Arotaghan and there fished the same and continue to fish the same."*

After the parties had filed their first set of pleadings, the main  
 F defence was that the plaintiffs were asking for a declaration over creeks, the ownership of which by statute was vested in the State. The plaintiffs then sought leave to amend their writ and their statement of claim. When the application to amend the writ was granted, the second set of defendants appealed against the order to the Federal Supreme Court but the appeal was struck out and the matter proceeded  
 G up to judgment. The trial court gave judgment for them and awarded them a possessory title on the basis that they had no absolute interest in the land concerned, but merely held it as subjects of the Olu of Warri. On appeal to the Supreme Court, the appeal was dismissed  
 H and the nature of the title was altered.

Lastly in *Uyovwukerhi v. Afonughe and Anor* (1976) Vol. 10 NSCC 249 one of the issues considered in the case was the effect of Section 3(1) of the Minerals Act on the right of fishing generally. The matter was determined by the Olomu/Effuruntor Customary Court

which granted a declaration of title and injunction in favour of the plaintiffs. An appeal by the defendants to the Chief Magistrate Court was dismissed except the award made on special damages. A further appeal to the High Court was allowed. The plaintiff/respondent appealed finally to the Supreme Court. It was held that although the Minerals Act vested the rivers creeks etc in the State, there is nothing in it point to an intention to affect existing rights of fishing. The rule of presumption against implicit alteration of law applied. The court followed the decision in *Adeshina v Lemonu* (supra).

Learned counsel for the appellant has urged on this court to either follow the decision in *Bassey v Ekanem* (supra) or distinguish this case from the decision in *Adeshina v. Lemonu* (supra) and *Ugovwukerhi v Afonughe* (supra). The preference shown by learned counsel to *Bassey v Ekanem* (supra) instead of *Adeshina v Lemonu* (supra) is in support of the view that once the claim relates to fishing in rivers, streams and water courses (which includes creeks) it is not maintainable because Section 3(1) of the Minerals Act vests the property in them in the State.

***On the other hand, the decision in Adeshina v Lemonu (supra) which followed Braide v. Adoki (supra) where the trial Judge held that the right of common fishery in tidal waters, declared by the Full Court in 1914 in Amachree v. Kalio (1914) 2 NLR 108 to be a public right both under common law and natural law, was not affected by Section 3(1) of the Minerals Act of 1916 which vested in the Crown, the property in minerals and all rivers, streams and water courses.***

***This latter decision will enable the plaintiffs maintain their action against the defendant for the oil spillages which devastated their flora and fauna. The respondents' right to fishing in the creeks as enumerated in paragraph 3 of the Statement of Claim in W/16/83; W/17/83; W/72/83 and W/80/83 (see pages 154, 163, 318 and 355 respectively) was affected and the payment of compensation was made to each of the various communities for loss of income suffered by the community members who have a right to fish in the creeks located in their community to the exclusion of other members who are not members of the particular community. The award is for the temporary loss of fishing caused by the oil spillages. The sec-***

***and issue is resolved in favour of the respondents and against the appellants on the principle that the right of common fishery in tidal waters is a public right both under common law and natural law and was not affected by Section 3(1) of the Minerals Act which was first enacted in 1916.***

- B Learned counsel for the appellant submitted on issue 3 that the doctrine of *res ipsa loquitur* is applicable to actions for injury by negligence where no proof of such injury is required beyond the injury itself. Reliance on the doctrine of *res ipsa loquitur* argued by  
 C learned counsel is a confession by the plaintiff that he has no direct and affirmative evidence of the negligence complained of against the defendant, but that the surrounding circumstances apply to establish such negligence; and so if the facts are sufficiently known or where the plaintiff gave explanation, the doctrine will no longer apply.  
 D Learned counsel submitted that the doctrine was misapplied in this action since the plaintiffs effusively demonstrated in their pleadings and evidence that they knew the cause of the spillages on 25/1/82 and 14/12/82 respectively.

- Learned counsel for the respondents referred to paragraphs  
 E 21, 22 and 23 of the 2nd Further Amended Statement of Claim and submitted that the pleaded facts and evidence adduced in support of same do not show that the respondents knew the cause of the spillages but they merely described the physical state of the damaged  
 F and or ruptured manifold/pipeline as physically observed by the respondents and their witnesses. It is therefore contended that the maxim is clearly applicable in this instance since it is a fact that if the appellant's pipelines were well maintained and fault-free they would not ordinarily burst, crack or rupture and spill their contents. He therefore  
 G submitted that the two lower Courts were right to hold that the doctrine of *res ipsa loquitur* was available to the respondents. Learned counsel further argued that aside the maxim of *res ipsa loquitur* prayed in aid of their cases, the appellant's culpability was canvassed on other grounds, namely the reliance on the Rule of *Rylands v. Fletcher* (supra) and the point was noted, considered and accepted by the court  
 H below.

Considering the plea of *Res Ipsa Loquitur* and the reliance on the Rule of *Rylands v Fletcher* which the respondents as plaintiffs made in the alternative, Rowland JCA (of blessed memory) said at



pages 729-730:-

*“At page 26 of the appellant’s brief, the case of Chanchangi v. N.R.C. (1996) 5 NWLR (Pt.446) 58 is relied upon in aid of appellant’s contention that the doctrine of Res Ipsa Loquitur does not avail the respondents. It seems to me that the case of Chanchangi (supra) supports the respondents in the contention that the doctrine is applicable because the respondents in the case in hand do not know how the pipeline got ruptured, cracked or broken (sic) as borne by the totality of the evidence contained in the record. I therefore hold that the doctrine of Res Ipsa Loquitur is clearly applicable in these consolidated cases on appeal. It should be noted that pipelines that are well maintained and fault free do not ordinarily burst crack and rupture spilling their contents. (See evidence of DW4)... the fact that the respondents particularized items of negligence in their pleadings cannot constitute a bar to respondents raising the maxim or doctrine of Res Ipsa Loquitur against the appellant. The learned trial Judge was therefore right in his decision that the maxim of Res Ipsa Loquitur availed the respondents in the present consolidated cases on appeal”*

I hasten to add also that the learned trial Judge was also right in his application of the Rule in *Rylands v Fletcher*. In *Machine Umudje and Anor v. Shell* (1975) 9-11 SC 95 at 106: the Supreme Court said:-

*“With reference to the escape of oil waste which the respondents claimed had damaged their ponds and lakes, the findings of the learned trial Judge were that crude-oil wastes previously collected in a pit burrowed by and in control of the appellants, escaped into the adjoining lands of the respondents where it damaged the ponds and lakes in Unenurhie land and killed the fishes therein. As already explained, liability on the part of an owner or the person in control of an oil-waste pit, such as the one located at Location E in the case in hand, exists under the rule in *Rylands v Fletcher* although the escape has not occurred as a result of negligence on his part. There is no evidence of any novus actus interveniens in regard to the escape of the crude oil - waste, nor is there any evidence that respondents either consented to, or in any way, contributed to the allocation of the crude oil - waste in location E: nor is there any evidence of justification, under any statutory provisions, for collection of the same by*

*the appellants who cannot, therefore avail themselves of any of the exceptions to the rule aforesaid (Rylands v Fletcher). The appellants are therefore liable under the rule in Rylands v Fletcher, for damages arising from the escape of oil-waste from the pit..."*

**The case of Umudje v Shell (supra) also laid down that**  
 B **where respondents pleaded damage resulting from the escape of oil-waste and also charged the appellant with negligence and, in their pleadings, gave particulars therefore, and the trial Judge finds in favour of the respondents on the issue, the ap-**  
 C **pellants would also be liable in negligence for damages resulting from the escape of oil waste; and it is well settled that a single act of a defendant may give rise to liability under both heads of tort i.e. (1) negligence and (2) the rule in Rylands v Fletcher.** See: Attorney-General and Ors v Cory Brothers (1921) 1  
 D AC 521 per Viscount Haldane. **The affirmation by the court below that the learned trial Judge was right in his application of the doctrine of Res Ipsa Loquitur, the rule in Rylands v Fletcher and the law on evidential burden of proof is therefore faultless and is further affirmed by this court.**

E On the issue of damages, learned senior counsel contended that the lower Courts accepted the evidence of PW1 and the damages awarded were based on his Valuation Reports, Exhibits 1-4. He said that the trial court found part of the evidence of PW1 to be  
 F hearsay and discountenanced it since it went to no issue. He therefore submitted that having found portions of PW1's valuers data figures and information to be hearsay and therefore inadmissible, the Valuers Reports Exhibits 1-4 on which the learned trial Judge anchored his awards was clearly not reliable and the entire evidence of  
 G PW1 ought to have been disregarded and the said valuation reports should not have been used to compute damages.

Learned counsel for the respondents submitted that the damages awarded were founded on findings of fact by the trial court which were upheld by the court below. He said that apart from the  
 H valuation reports, the respondents pleaded and led copious and direct evidence as witnesses outside the valuation reports on the nature and quantum of damages suffered by them and submitted that in the face of the astronomical inflation suffered by the Nigerian economy, the award of damages claimed by the respondents in 1983, a quar-

ter of a century ago cannot reasonably be described as excessive even as at the time the cases were instituted in 1983.

***In his evaluation of the evidence called by the parties, the learned trial Judge accepted the evidence of plaintiffs' witnesses and rejected the evidence of the defence because the team of experts called by the defence carried out their work three years after the spillage had occurred. There is also evidence which the trial Judge accepted that some fishes died in the ponds and the ones trapped in the fish fences also died as a result of the spillage.***

***Aside the opinion expressed by PW1 on the ownership of the nets which goes to no issue, the valuers reports Exhibit 1-4 were not impugned.***

The lower Court reviewed the evidence on which the learned trial Judge based his awards in the consolidated cases and arrived at the following conclusion on page 737:-

*"Apart from the evidence of the Valuer - PW1 and Exhibit 4, the respondents as represented by the plaintiffs on record and their witnesses gave direct evidence of the special and general damages suffered by them as result of the spillages. Evidence which the learned trial Judge accepted.*

*In view of the direct compelling and largely uncontradicted evidence available to the learned trial Judge, I am convinced that the damages awarded by the learned trial judge are not baseless or erroneous or in any event offensive as the awards are amply supported by evidence."*

The concurrent findings of fact made by the two lower Courts are not perverse. I find that the appeal totally lacks merit. It was fought principally on the assumption that Admiralty jurisdiction is exclusively vested on the Federal High Court and the consolidated suits which were commenced in 1983 before the then Bendel State High Court ought to have abated after the promulgation of the Admiralty Jurisdiction Decree No. 59 of 1991, the Federal High Court (Amendment) Decrees No. 60 of 1991 and 16 of 1992 and the Constitution (Suspension and Modification) Decree No.107 of 1993. The appeal is therefore dismissed in its entirety and I award costs of N500,000.00 to each set of respondents in the consolidated suits against the appellant.

**FABIYI JSC**

I have had a preview of the judgment just delivered by my learned brother - Aka'ahs, JSC. I agree with the reason therein advanced to arrive at the conclusion that the appeal is devoid of merit and should be dismissed.

The facts of the matter leading to this appeal have been set out in the lead judgment. Put briefly, four (4) suits were filed before the then Bendel State High Court, Warri wherein, the respondents, as plaintiffs claimed for damages from the appellant for oil spillages; inter alia. The suits were consolidated on 21/3/85.

The learned trial judge heard the matter and in his considered judgment delivered on 27th May, 1997, he found in favour of the plaintiffs and awarded them various sums as damages.

The defendant felt unhappy with the position taken by the trial judge and appealed to the Court of Appeal (the court below). On 22nd May, 2000, the court below delivered its own judgment in which the appeal was dismissed.

The appellant still felt unhappy with the positions taken by the two lower Courts and has decided to further appeal to this court.

In the appellant's brief of argument, four (4) issues were decoded for a due determination of the appeal. I take leave to comment briefly on issues (1) and (3) which read as follows:-

*"1. Whether the State High Court had jurisdiction to try the consolidated suits herein in the light of Decree No.59, Admiralty Jurisdiction Decree 1991; Decree No.60 Federal High Court (Amendment) Decree 1991: Decree No.16, Federal High Court (Amendment) Decree 1992 and/or Decree No.107 Constitution (Suspension and Modification) Decree 1993.*

*3. Whether the courts below were right in holding that the doctrine of Res Ipsa Loquitur was available to the plaintiffs herein."*

With respect to issue 1, it is not in dispute that the suits were all filed at the trial State High Court in 1983. As stated earlier on, they were consolidated by court order of 21st March, 1985. And, as extant in the record of appeal, trial commenced in October, 1989. It goes without saying therefore, that all the statutes relied upon by the appellant came into operation years after October, 1989 when trial commenced before the State High Court. As at then, the State High

Court enjoyed concurrent jurisdiction with the Federal High Court by virtue of Section 236 of the 1979 Constitution (then operative) which bestowed unlimited jurisdiction on State High Courts.

It occurs to me, that the issue of jurisdiction of the State High Court, thrown up by the appellant, was highlighted by this court in *Western Steel Works vs. Iron and Steel Works* (1987) 1 NWLR (Pt.49) B 284 at 288. Therein, Aniagolu, JSC pronounced as follows:-

*“The issue of jurisdiction raised has now been largely settled by the latest decision of this court in SC.139/1985 Savanna Bank of Nigeria vs. Pan Atlantic Shipping and Transport Agencies Ltd. and Nicannah Food Company Ltd. delivered on 30th January, 1987 in which this court held that with the inception of the 1979 Constitution of the Federal Republic of Nigeria, Section 236 thereof, which gave unlimited jurisdiction to the State High Courts has conferred jurisdiction to the State High Court thereby making jurisdiction in Admiralty concurrent in the Federal High Court and the State High Courts.”* C D

Let me further reiterate the settled position of the law that where a cause of action accrues before the advent of an alteration of the law governing same, the applicable law is that which was operative at the time of the accrual of the right of action unless subsequent legislation manifestly and unambiguously states that such alteration is retrospective. *Adegbenro vs. Akintola* (1963) All NLR 305 at 308. E

There is no atom of doubt about it, that courts of record jealously protect and guard against laws that tend to remove jurisdiction from them. *Maikyo vs. Itodo* (2007) All FWLR (Pt. 363) 66 at 77. Further, unless it affects purely procedural matters, a statute cannot apply retrospectively unless it is made to do so by clear and express terms. See *Orthopedic Hospital Management Board vs. Garba & Ors.* (2002) FWLR (Pt.123) 213. F G

In *Otuguor Ogamioba & Ors. vs. Chief D.O. Oghene & Ors.* (1961) I All NLR 64 at 66, this court per, Taylor, FJ stated, inter alia, as follows:-

*“It is a well known rule of construction that unless the contrary appears, the rights of the parties in pending proceedings are not affected by the alteration of the law during such pendency.”* H

With the above position of things as discussed above, it appears incontestable that the State High Court had jurisdiction to entertain the matter. I agree with the well researched position taken by

the respondent's counsel; in the main. The issue has not been made out by the appellant. The issue is resolved in favour of the respondents and against the appellant.

Issue (3) is whether the courts below were right in holding that the doctrine of *Res Ipsa Loquitur* was available to the plaintiffs herein.

Let me observe it here that the maxim - *res ipsa loquitur* provides that in some circumstances, the mere fact of an accident's occurrence raises an inference of negligence so as to establish a *prima facie* case. The defendant is left to give an explanation that is satisfactory to the contrary. This court had cause to apply the maxim - *res ipsa loquitur* in the cases of *C. Duclaud vs. R. A. Ginoux & Anr.* (1969) 1 ALL NLR 25 and *Machine Umudje vs. Shell B.P. Petroleum Dev. Co. Nig. Ltd. & Anr.* (1975) 9-11 S.C.155 at 172-173 which is similar to the situation of things herein.

The respondents, who did not sufficiently know how the spillages occurred, cannot be barred from relying upon or taking umbrage under the maxim of *Res Ipsa Loquitur*. The respondents, in paragraph 9 of their amended Statement of Claim pleaded, *inter alia*, that 'Defendant's Pipeline suffered breakage, rupture or crack'. As stated by the learned counsel to the respondents, it is one thing to observe by sense of sight that an object is broken, ruptured or cracked without knowing what caused the object to break, rupture or crack or how it broke, ruptured or cracked.

The court below rightly upheld the respondents' submission that the maxim is clearly applicable in this instance. If the appellant's pipeline were well maintained and fault-free, they would not ordinarily burst, crack or rupture, spilling their contents to cause havoc to the respondents' creeks and fishes, etcetera.

This issue is also resolved against the appellant and in favour of the respondents without any shred of hesitation.

For the above reasons and of course the fuller ones carefully adumbrated in the lead judgment which I hereby adopt, I too, feel that the appeal lacks merit and it is hereby dismissed by me. I endorse all consequential orders contained in the lead judgment; inclusive of that relating to costs.

**OGUNBIYI JSC**

I have had the privilege of reading in draft the lead judgment of my learned brother Aka'ahs, JSC and I agree that the appeal is devoid of any merit and should be dismissed.

The facts giving rise to this appeal are well explained in the lead judgment. The issues raised by the parties are also explicit. The appellant's 1st issue was adopted by the respondents and the reproduction reads as follows:-

Whether the State High Court had jurisdiction to try the consolidated suits herein, in the light of Decree No. 59, Admiralty jurisdiction Decree 1991, Decree No. 60 Federal High Court (Amended) Decree 1991, Decree No. 16 Federal High Court (Amended) Decree 1992 and/or Decree No. 107 Constitution (Suspension and Modification) Decree 1993.

Briefly, as an introduction, the appeal is in respect of four consolidated actions filed at Warri High Court now in Delta State in 1983 as Suits Nos. W/72/83; W/16/83; W/17/83 and W/80/83. The plaintiffs claim in each of the four cases was, inter alia for compensation for damages done to their farm lands, crops and rivers amongst others, by reason of oil spillage (pollution) levied against the defendant. The suits were consolidated and tried together. The learned trial judge had in his reserved judgment delivered on 27/5/97 entered judgment for the plaintiffs in each of the four consolidated suits for various sums. The crucial jurisdictional point of contention canvassed by the appellant's counsel is premised on the contention that by virtue of the provisions of the Admiralty Jurisdiction Decree No. 59 of 1991; the Federal High Court (Amendment) Decree No. 60 of 1992 and the Constitution (suspension) and modification) Decree 1993, the jurisdiction of the State High Court to entertain claims "*for liability, incurred for oil pollution damages*" no longer exist. This, counsel submits, is as a result of the amendments made in Decree No. 60 of 1992 and Decree No. 59 of 1991 by which the admiralty jurisdiction of the Federal High Court was extended to include "*any claim for liability incurred for oil pollution damages*".

The question whether the amendments are applicable to the present action is a matter which should be determined having regard to the critical analysis of the consolidated suits in question. It is pertinent to restate however that all the four suits in the present matter

were filed in 1983 and the earliest of the 3 Decrees which produced the amendments now being considered is the Admiralty Jurisdiction Decree No. 59 of 1991. The second is the Federal High Court (Amendment) Decree 1992; while the third is the Constitution (Suspension and Modification) Decree 1993. It is obvious and apparent that the first of the three Decrees (i.e. the one promulgated in 1991) came into effect more than seven years after each of the four consolidated cases was filed in court. In otherwords, as at the time of filing the suits, and for more than seven years after each of the cases had been pending in the trial court, there was no law to support the contention that the trial court had no jurisdiction to try the cases. The intention of the appellant on his submission is that a legislation which was introduced over seven years after a case had been filed in the court should oust the court's jurisdiction, and in this case, it should hold effect even without specifically saying so and or being retrospective. The inference in my view is far fetched and cannot be reasonable to sustain. The law is well settled and holds good that it is incumbent on every court to strictly guard its jurisdiction which should be cherished without emphasis. It follows therefore that any legislation that purports to take away or in any form tamper with the jurisdiction of a court must be specific and unambiguous on the point. It must leave no room for speculation.

The violence done to the proviso contained in Section 7(6) of Decree 60 as submitted by the appellant did not take into consideration the time of the institution of the cases as against the date the said Decree 60 came into effect. In the case of *Orthopedic Hospital Management Board V. Garba* 2002 FWLR Part 123 at 215 a case on all fours with the case in issue, after careful consideration of the Interpretation Act and the provision of Decree No. 60 of 1991, this court held that jurisdiction continued to reside in the Kano High Court. This was because the abatement provisions in Decree No. 60 of 1991 had been repealed by Decree No.107 of 1993 which came into operation on 17/11/93. Hence, they were therefore not applicable when the Kano State High Court delivered its judgment on the 28th April, 1995. Analogically and also, the judgment at the trial court in the consolidated cases on appeal before us was delivered on 27/5/97 after Decree No. 107 of 1993 had repealed Decree No.60 of 1991. The learned jurist Ogunbare JSC of blessed memory in his concur-



rent judgment in the case in reference supra, held and said:-

*“On Decree No. 107 of 1993 there is no doubt that the Decree had no retrospective effect as it was a Constitutional Amendment which was not declared to take effect retrospectively. The court below held that the High Court lost its jurisdiction over the proceedings on 17th November 1993 with respect to their Lordship’s of the court below, they are wrong...”*

The two lower Courts in the case at hand rightly decided in line with the decision of this court as pronounced by his Lordship Ogundare, JSC, supra. They were concurrent in their decisions and I also endorse same and resolve the issue against the appellant.

To be taken together are the two other issues which I will consider briefly, that is to say: Res ipsa loquitur which raises the question whether the ancient rules laid down in Rylands V. Fletcher (1868) L R.3 H.L 330 are applicable to the case at hand. The other issue is whether the awards made by the learned trial judge could be allowed to stand.

The maxim res ipsa loquitur applies whenever it is so probable that such an accident would not have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused. The question that must exist before the principle could be applied was stated by Sir William Erle C. J. in Scott v. London and St Katherine Docks Co. (1865) 3 H.L. & C. 596 at 601 as follows:-

*“There must be reasonable evidence of negligence but where the thing is shown to be under the management of the defendant or servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendant, that the accident arose from want of care.”* See also Boe V. Minister of Health (1954) 2 Q.B.66 at 78.

The effect of the application of the maxim is that the onus of proof of negligence, normally placed on the plaintiff, shifts. The defendant is therefore required to establish that there was in fact no negligence on his part. The maxim per se need not necessarily be pleaded in the exact language. In other words, it is sufficient if the particulars of negligence given show that the plaintiff is relying on the doctrine. See the case of Kuti v. Tugbogbo (1967) NMLR 419 and

Okeke V. Obidife (1965) 1 All NLR 50.

The principle laid down in *Rylands V. Fletcher* (supra) is to the effect that an occupier of land who brings and keeps upon it anything likely to do damage if it escapes is bound to take responsibility and prevent its escape. In the event of escape however, the occupier will be liable for all the direct consequences of its escape, even if he has been guilty of no negligence. See again the English case of *Hale V. Jennings Bros.* (1938) 1 All ER 579 at 582 and 584. The English authorities as ancient as they may be are good and applicable in our courts.

In applying the English principle of negligence to the situation at hand therefore, the question is, whether from the pleaded facts and evidence led in the consolidated cases, the court was right in holding that the ancient rule and maxim are in fact applicable.

It is pertinent to state that the facts simply put are that the appellant as an oil prospecting company laid its pipes carrying crude oil across the land occupied by the respondents. It was not in dispute that the oil spilled on the land which was capable of causing severe damages to crops and other vegetation including fish and all other living creatures in the rivers. There were such oil spillages which resulted in damages to the crops and vegetation. The onus would not be on the plaintiffs (now respondents) to prove that the escape was due to negligence on the part of the appellant.

On the pleadings, the plaintiffs at paragraphs 21, 22 and 23 of their 2nd further amended statement of claim relied on the Rule in *Rylands V. Fletcher* and the maxim *Res Ipsa loquitur*. It is possible that the defendant/appellant might not have known sufficiently how the spillages occurred nor could they give explanation as to how they arose or came about. However and that notwithstanding, the application of the maxim *res ipsa loquitur* requires no proof of negligence. Paragraph 9 of the amended claim for instance averred specifically that Defendant's Pipelines suffered Breakage, Rupture or crack. It is one thing to observe the damage done to the pipeline without knowing what actually caused the destruction of the objects.

In my view therefore, the rule *res ipsa loquitur* was applicable to the situation at hand. This is more so with the appellant knowing fully well that it was keeping materials - i.e. the crude oil, which could be regarded as dangerous to the environment if allowed to spill and

there was in fact a spillage. The Rule in *Rylands V. Fletcher*, supra, was squarely applicable as rightly held by the lower Court in affirming the finding by the trial court.

Lastly on the award of damages, the appellant challenges vehemently the evidence of P.W.1 which it characterises as a hearsay. On the totality of the evidence before the trial court, even without taking into consideration the testimony by P.W.1 and P.W.2, the plaintiffs themselves all gave copious and detailed direct and first hand evidence as witnesses outside the valuation report on the nature and quantum of the damages suffered by them. Pages 424, 425A, 425C, and 428-429 of the record of appeal are all in reference. Consequently, the figures given by the valuer, an expert, in his report are an expert's confirmation of the direct evidence given by the respondents' witnesses.

On the concurrent findings of the two lower Courts, the appellant has not made out any case to warrant interfering with the awards made in each of the consolidated cases. In the result, I agree with the reasoning and conclusion arrived at in the lead judgment of my learned brother, Aka'ahs, JSC that there is no merit in the totality of this appeal which I will dismiss same also in like terms of the lead judgment of my brother inclusive of the order made as to costs.

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### **KEKERE-EKUN JSC**

I have had the benefit of reading in draft the lead judgment of my learned brother, K.B. AKA'AHs, JSC just delivered. I agree with the reasoning and conclusion that the appeal lacks merit and deserves to be dismissed.

The plaintiffs' (respondents' herein) claims in the consolidated suits before the High Court of Delta State sitting at Ughelli were for compensation for negligence arising from oil spillage from the appellant's pipeline. The trial court on 27/5/1997 granted the respondents' reliefs and awarded various sums of money in their favour as damages.

The appellant was dissatisfied with the judgment and appealed to the Court of Appeal, Benin Division, which dismissed the appeal on 22/5/2000. Still dissatisfied, the appellant has appealed to this court. Four issues have been formulated for the determination of the appeal.

My learned brother has dwelt extensively with the issues in contention in this appeal. In support of the judgment, I shall comment briefly on the issue of jurisdiction argued by the appellant under Issue 1. The said issue reads:

Whether the State High Court had jurisdiction to try the consolidated suits herein in the light of Decree No. 59, Admiralty Jurisdiction Decree 1991, Decree No.60 Federal High Court (Amendment) Decree 1991, Decree No.16 Federal High Court (Amendment) Decree 1992 and/or Decree No. 107 Constitution (Suspension and Modification) Decree 1993.

The issue of jurisdiction is the lifeblood of any adjudication, It is so fundamental that it must be resolved before any other step is taken in the proceedings. Jurisdiction goes to the competence of the court or tribunal to entertain a cause or matter. Any proceedings conducted without jurisdiction would amount to a nullity and any decision reached therein is liable to be set aside.

Courts are creations of statute and it is well settled that it is the statute creating the court that specifies its jurisdiction. The court's jurisdiction may also be limited or expanded by statute. For a suit to be competent, the plaintiff's claims must fall within the jurisdiction conferred on the court by the relevant statute. It is equally well settled that the law applicable in respect of a cause of action is the law in force at the time the cause of action arose. However, the law in force at the time the cause of action arose does not necessarily determine the jurisdiction of the court at the time that its jurisdiction is invoked. In other words, the State High Court may have jurisdiction to entertain the suit at the time the cause of action arose and yet it might be divested of such jurisdiction at the time of the actual trial. See: *Olutola Vs. University of Ilorin* (2005) ALL FWLR (Pt.245) 1151 @ 1189 E; *Obiweubi Vs CBN* (2011) 7 NWLR (1247) 465 @ 495 C-D; *Goldmark (Nig) Ltd. Vs Ibafo Co. Ltd.* (2012) 10 NWLR (Pt.1308) 291 @ 358 D-E.

There is a general presumption against retrospective legislation. It is presumed that the legislature does not intend injustice or absurdity. Courts therefore lean against giving certain statutes retrospective operation. Generally, statutes are construed as operating only in cases or on facts, which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It was held

inter alia, in: *Ojokolobo Vs Alamu* (1987) 3 NWLR (Pt.61) 377 @ 402 F-H that it is a fundamental rule of Nigerian law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or Law; or arises by necessary and distinct implication. See also: *Udoh Vs O.H.M.B.* (1993) 7 NWLR (Pt.304) 39 @ 149 F - G; *Adegbenro Vs Akintola* (1963) All NLR 305 @ 308. It was held in: *Ogamioba & Ors. Vs Oghene & Ors.* (1961) 1 All NLR 64 @ 66 per Taylor, FJ:

*"It is a well known rule of construction that unless the contrary appears, the rights of the parties in pending proceedings are not affected by the alteration of the law during such pendency."*

As rightly observed in the lead judgment, at the time the writs of summons in the consolidated suits were filed in 1983, both the State High Court and the Federal High Court exercised concurrent jurisdiction in admiralty matters by virtue of Section 236 of the 1979 Constitution, which conferred unlimited jurisdiction on State High Courts. It is also on record that trial in the suits commenced in October 1989, well before the decrees, which conferred exclusive jurisdiction on the Federal High Court in respect of admiralty and other matters came into effect. It is the appellant's contention that by the combined effect of Decrees Nos. 59 and 60 of 1991 and Decree 107 of 1993, the State High Court is deprived of jurisdiction to determine admiralty matters concurrently with the Federal High court, Reliance was placed on the abatement provisions contained in Section 7(6) of Decree No. 60. It is however important to note that by Decree No. 16 of 1992, the operation of Decree No. 60 was suspended. It only came into force on 26th August, 1993. Therefore the concurrent jurisdiction of the two courts during the pendency of the trial was unaffected.

With regard to Decree No. 107 of 1993, which came into force on 17th November 1993, as held by this court in *Goldmark (Nig.) Ltd. Vs Ibafo Co. Ltd.* (supra) at 358 H-A, being a substantive law, it has no retrospective effect and therefore could not affect proceedings that were ongoing before 17th November 1993, I am in complete agreement with the lower Court that in the absence of express provisions ousting the concurrent jurisdiction of the State High Court and the Federal High Court in relation to admiralty matters, the words of the decrees should not be interpreted in such a way as

to imbue them with retrospective effect and thereby deprive the respondents of their vested rights.

I agree with the reasoning and conclusions reached by my learned brother, Aka'ahs, JSC in the resolution of the other issues in this appeal.

B For the above-stated reasons and for the more detailed reasons advanced in the lead judgment, I also find that the appeal is unmeritorious. I dismiss it accordingly and abide by the consequential orders contained in the lead judgment including the order on costs.

C

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### **NWEZE JSC**

I had the advantage of reading the draft of the leading judgment which my Lord, Aka'ahs, JSC, just delivered now. I endorse the conclusion that this appeal is unmeritorious and should be dismissed.

D

In our adversarial jurisprudence, statutes operate prospectively and not retrospectively, except where the Law maker, demonstrably, evinces a contrary intention, *Udoh v. O.H.M.B.* [1993] 7 NWLR (Pt 304) 39, 149; *Adegbenro v. Akintola* (1963) All NLR 305, 308; *Ogamioba and Ors v. Oghene and Ors* (1961) All NLR 64, 66; *Maikyo v. Itodo* [2007] All FWLR (Pt.363) 66, 77; *Ojokolobo v. Alamu* [1987] 3 NWLR (Pt.61) 377, 402; *Are v AG, WR* [1960] SCNLR 24; *UNILORIN v. Adeniran* [2007] 6 NWLR (Pt.1031) 498.

F

Against this background, an alteration to a statute, except where the altered statute, expressly, so indicates, does not affect a cause of action that had accrued to a litigant before the said alteration, Section 6(1) of the Interpretation Act; *Ogamioba and Ors v. Oghene and Ors* (supra); *Are v AG, WR* (supra); *UNILORIN v Adeniran* (supra). In effect, the proceedings at the State High Court, which culminated into its judgment in 1995, two years post-Decree No. 107 of 1993, are unimpeachable on the ground of the amendment introduced in the 1993 Decree.

G

H It is for these, and the more detailed, reasons in the leading judgment that I shall dismiss this appeal as being, wholly, unmeritorious. I abide by the consequential orders in the leading judgment.