

LENNOX, J., IN CHAMBERS.

APRIL 12TH, 1916.

TAYLOR v. MULLEN COAL CO.

Contempt of Court—Disobedience of Judgment—Nuisance—Operation of Works—Punishment — Fines—Company—Agents.

Motion by the plaintiffs for an order directing the issue of a writ of attachment against John Mullen and Norval Mullen, directors and president and superintendent respectively of the defendant company, and Milton Hutton, manager of the company, and for an order for a writ of sequestration, for contempt of Court by the defendant company and its servants, agents, and workmen, in disobedience of the judgment of the Court (7 O.W.N. 764), affirmed by a Divisional Court of the Appellate Division (8 O.W.N. 445), whereby the defendant company and its servants, agents, and workmen, were enjoined from so operating its plant and works as to cause a nuisance to the plaintiffs or any of them by reason of smoke, dust, cinders, noise, etc.

The motion was heard in Chambers, no objection being made as to the forum.

T. Mercer Morton, for the plaintiffs.

A. R. Bartlet, for the respondents.

LENNOX, J., in a written judgment, referred to the evidence given by affidavits and orally, which, he said, was conflicting. His conclusion was, that the judgment of the Court had not been obeyed; that, notwithstanding alterations effected in machinery, plant, and operation, the defendant company had continued so to operate its plant and works as to cause a nuisance to the plaintiffs or to many of them. It was not enough for the company to do all it could to avoid a nuisance; it must so work its plant as not to continue the nuisance enjoined; or else not carry on its operations at that place at all.

Rule 554 authorising the imposition of a fine either in lieu of or in addition to punishment by attachment, committal, or sequestration, the learned Judge imposes a fine of \$335 each on John Mullen and Norval Mullen and a fine of \$30 on Milton Hutton, and requires the first two named to pay the costs of the application.

The order is not to issue for one month; and if, in the meantime, some satisfactory arrangement is come to between the parties, a reduction or remission of the fines will be considered.

If all parties agree, a fine of \$700 upon the company will be imposed in lieu of the three fines.