

Hon. Mr. Justice Magee says:

I agree.

Hon. Mr. Justice MacLaren says:

This is an appeal from a judgment of Mulock, C.J., Ex., rendered on the 29th of January, 1918, whereby he held that the City of Toronto had created a nuisance by the establishment and operation of a sewage plant in the vicinity of Ashbridge's Bay near the property of the plaintiffs, and condemned the city to pay the plaintiff \$600, or such other sum as might be ordered in case of a reference; the city to have until May 1st, 1918, to abate the nuisance.

I quite agree with the findings of the learned Chief Justice upon the mass of evidence brought before him, and I do not see how he could have found otherwise. The neglect of the city in not repairing the broken waste pipe and in allowing the enormous escape of fetid sewage seems to be inexplicable.

There is in addition what I consider to be even a stronger ground, and which does not appear to have been brought to the attention of the learned Chief Justice. Such a work comes under the provisions of section 94 of the Public Health Act, R.S.O. Ch. 248. It has not been shown that the provisions of this Act were complied with, and no by-law of the City Council ordering it has been produced.

I am consequently of opinion that the appeal should be dismissed.

The time for the abatement of the nuisance should be extended to the 1st of March, 1919.