

FALCONBRIDGE, C.J.K.B., in a written judgment, said that offensive odours from the defendants' glue factory were the subject of the plaintiffs' complaint; and the evidence established beyond peradventure or doubt the existence of bad smells, before and after the commencement of the action, sometimes to an intolerable degree and generally noticeable even to passers-by in Danforth avenue. He preferred the demeanour of the plaintiffs' witnesses; and the positive testimony of apparently respectable and credible witnesses, who said that they smelt the odours, was *prima facie* preferable to that of persons who did not notice them.

The defendants' contentions as to the plaintiff company coming to the nuisance and as to the alleged easement, if indeed an easement could be acquired as to offensive smells, must be overruled.

There must be an injunction. All the plaintiffs suffered direct, individual, special, and peculiar damage, apart from the rest of the community, and there was no necessity for the intervention of the Attorney-General.

"Where the injury is caused by a nuisance . . . damages cannot be given in respect of the depreciation of the selling value of the land, but only in respect of the loss or inconvenience . . . actually suffered, for the continuance of the nuisance constitutes a fresh cause of action for which damages may be recovered." Halsbury's Laws of England, vol. 10, p. 341, citing *Battishill v. Reed* (1856), 18 C.B. 696.

But there had been an invasion of the rights of the plaintiff company for which they were entitled to nominal damages, at least; and they had given evidence of actual loss of 7 or 8 sales and contracts which would have gone through but for the existence of this nuisance; this was matter of special and particular damage altogether apart from general depreciation in value of property, and therefore not covered by the rule laid down in *Halsbury*, for it was loss and damage which they had already suffered. For these reasons the plaintiff company's damages should be assessed at \$2,000.

The judgment should be as follows:—

1. Declaring that the business and operations of the defendants carried on upon their premises constituted a nuisance interfering with the comfort and enjoyment by the plaintiffs of their several properties and causing them damage.
2. Injunction as prayed, with a stay of the operation thereof until the 15th May, 1919.
3. Damages as above.
4. Costs of the action.