

injunction instead of giving time to see if some remedy could not be devised.

As to the 7th paragraph of the notice of motion, I agree that paragraph 6 is irrelevant and should be struck out. It was said by Jessel, M.R., in *Pender v. Lushington* (1877), 6 Ch. D. 70, at p. 75: "In all cases where men exercise their rights of property, they exercise their rights from some motive adequate or inadequate, and I have always considered the law to be that those who have the rights of property are entitled to exercise them whatever their motives may be for such exercise."

Here the only question is whether the defendants are violating the maxim "*sic utere tuo ut alienum non laedas.*" If it is held that they are acting within their rights their motives cannot be enquired into. Otherwise an enquiry might be necessary as to the value and sales of all the adjacent property. The inconvenience of such an addition to the present enquiry with its scores of affidavits on both sides is sufficiently obvious. The 8th paragraph of the notice of motion asks to have paragraph 9 of the statement of claim struck out or that the action be stayed until the Attorney-General of the province has been made a party plaintiff.

This is based on the statement that the defendants by their operations "are continuing to inflict the wrongs complained of herein upon the neighbourhood in general and the plaintiffs in particular."

These last words seem to render any decision on this point unnecessary. Where a nuisance which is a public nuisance "inflicts on an individual some special or particular damage, he has a private remedy, he can claim damage, and an injunction in a civil action in the High Court of Justice. But "It is only where he sustains some special damage differing in kind from that which others suffer that he has a personal remedy."

*Odgers v. Broom*, C.L. 232. This is sufficiently alleged for the present. If it afterwards appears that the Attorney-General should have instituted an information this objection can be raised and given effect to at the trial or even later as in *Johnston v. Consumers' Gas Co.*, 23 A. R. 566, where it was so held in the Court of Appeal.

The order will, therefore, be that paragraph 6 of the statement of claim be struck out, and that defendants do plead this week—so that the order of October 15th, which