

But His Honour (p. 98), upon certain evidence being given, says: "What has all this to do with this case?"

Thereupon Mr. Henderson, counsel for the defendant Weighart, said: "One of the questions, I submit, your Honour, is, whether this is a manufacturing district?"

The Court: "It does not make any difference whether it is a manufacturing district or not."

We find nothing in the case indicating that the learned Judge withdrew from this position; and it would appear that he considered the question whether or not there was a nuisance independently of the locus. It is not denied by the plaintiff—and, in view of the law, it could not be successfully denied—that the same facts would in some localities constitute a nuisance which in other localities would not. All the circumstances of the property must be taken into consideration—amongst them the notorious fact that manufactures cannot be carried on without noise and vibration, and that one in a manufacturing district cannot expect to have the same freedom from annoyance of that kind which he would have a right to look for in a residential quarter. As all parties agree on the law, it is unnecessary to cite authorities. *St. Helens Smelting Co. v. Tipping*, 11 H.L.C. 642, 35 L.J. Q.B. 66, *Wood on Nuisances*, sec. 17, may be looked at for the principles.

Upon the evidence, I am unable to say that the County Court Judge must needs find a nuisance in view of the nature of the locality—and I think that all the facts should be developed fully, and the learned Judge, taking all circumstances of locality, etc., into consideration, should then find nuisance or no nuisance.

I think there should be a new trial as against the co-tenant. Costs of the last trial and of this appeal should be in the discretion of the trial Judge upon the new trial.

DIVISIONAL COURT.

NOVEMBER 9TH, 1911.

MEIKLE v. McRAE.

*Principal and Agent—Agent's Commission on Sale of Land—
"Securing a Customer" within Limited Time—Option Given
but not Accepted within Time—Letter from Agent to Prin-
cipal—Inference of Acquiescence from Silence.*

Appeal by the defendant from the judgment of the Junior Judge of the District Court of the District of Thunder Bay in