

fere by injunction if the damage is slight or the nuisance is merely of a temporary or occasional character.

It is, of course, the intention of the defendant, unless restrained, to continue carrying on his business as heretofore.

Reference to Attorney-General v. Cole & Son, [1901] 1 Ch. 205, at p. 206; Appleby v. Erie Tobacco Co. (1910), 22 O.L.R. 533, 2 O.W.N. 449.

Upon the evidence, the conclusion must be that the smoke and odours from the premises of the defendant cause material discomfort and annoyance and render the plaintiff's premises less fit for the ordinary purposes of life, making all possible allowance for the local standard of the neighbourhood: Kerr on Injunctions, 5th ed. (1914), pp. 154, 155, 200, 203, 207; Ball v. Ray (1873), L.R. 8 Ch. 467; Pwllbach Colliery Co. Limited v. Woodman, [1915] A.C. 634, 638, 641.

Judgment restraining the defendant from so operating his blacksmith shop as to cause a nuisance to the plaintiff by reason of the offensive odours, smoke, and noise complained of, and for payment by the defendant of \$25 damages, with costs.

Counterclaim by defendant for damages for "boycotting" dismissed without costs.

SUTHERLAND, J.

NOVEMBER 20TH, 1915.

LAMPHIER v. BROWN.

Will—Proof in Solemn Form—Due Execution—Testamentary Capacity—Costs.

Action to establish as the last will and testament of Jane Lamphier, who died on the 30th September, 1913, an instrument dated the 22nd July, 1911.

The action was brought in the Surrogate Court of the County of Peel, and was transferred to the Supreme Court of Ontario by order of a Judge in Chambers.

A later testamentary instrument, bearing date the 25th May, 1912, was propounded in Murphy v. Lamphier (1914), 31 O.L.R. 287, 32 O.L.R. 19, but was not established.

The executors named in the instrument of the 22nd July, 1911, now offered it for proof in solemn form.

J. W. Bain, K.C., for the plaintiffs, the executors.

A. Ogden, for the defendant Woerz.

D. C. Ross, for the other defendants.