

E. D. Armour, K.C., and A. E. Knox, for the plaintiffs.
Gideon Grant and D. Inglis Grant, for the defendants.

FALCONBRIDGE, C.J.K.B.:—The facts are little, if at all, in dispute. . . .

It is quite evident, and it is practically admitted, that the plaintiffs' building was erected before the defendants.'

I am of opinion that the defendants have failed to establish that the plaintiffs' south wall is a party wall.

1. The title-deeds, lease, etc., favour the plaintiffs' contention, reserving nothing to the defendants.
2. So does the general appearance of the buildings and of the wall in question.
3. So also does the construction of the wall.

Mr. C. J. Gibson, architect, called by the defendants, could not recall a case of a party wall being built like this one. It is plumb on the south (i.e., the far) side, with steps or jogs on the Home Bank side. The base is about 22 in. thick, the first floor 18 in., the second floor 14 in. and above that there is a parapet of 9 in. If then this were a party wall and the line in the centre thereof at the base, the bank would own less and less of the wall as it goes up until the parapet would be entirely on the defendants' land.

The only matter which has given me any trouble is the fact that there are openings in the south side of the wall for the insertion of joists and timbers from the other building, and into these openings joists and timbers have been inserted. There are also spaces for fire-places leading to chimneys in two places—in one of these the fire-place has been used by the defendants or their predecessors. The other fire-place looks out into empty space, being above the level of the defendants' building.

There being nothing of record shewing a grant or reservation to the defendants' predecessors of any right to use the wall, it may be the case that the owner and builder thereof had in his mind the event of another building being erected to the south, the owner of which might pay for the privilege of using these appliances.

No doubt, the defendants have acquired an easement for the support of their joists, etc., and for their smoke, as matters stood when they began to erect their present structure; and the injunction, which I now make perpetual, does not affect this.

Judgment for the plaintiffs with \$5 damages and costs.