The
Ontario Weekly Notes

VOL. XVI. TORONTO, MARCH 28, 1919. No. 3

APPELLATE DIVISION.

SECOND DIVISIONAL COURT. MARCH 19TH, 1919.

DANFORTH GLEBE ESTATES LIMITED v. W. HARRIS & CO. LIMITED.

Nuisance—Offensive Odours—Evidence—Proof of Existence of Nuisance—Action for Injunction and Damages—Defences—Prescription—Vacant Land—Implied Grant of Easement—Right to Operate Factory with Rendering Plant—Registry Laws—Nuisance—Quantum of Damages—Appeal—Leave to Adduce Further Evidence—Terms.

Appeals by both the plaintiffs and defendants from the judgment of FALCONBRIDGE, C.J.K.B., 15 O.W.N. 21.

The appeals were heard by BRITTON, RIDDELL, and LATCHFORD, JJ., and FERGUSON, J.A.

W. E. Raney, K.C., and Fraser Raney, for the plaintiffs.

W. N. Tilley, K.C., and A. C. Heighington, for the defendants.

RIDDELL, J., read a judgment in which, after stating the facts, he said that the plaintiffs appealed on the quantum of damages; the defendants appealed both as to liability and quantum.

The appeal of the defendants could not succeed on the ground of the absence of nuisance. That there was an offensive odour from the defendants' factory was found by the Chief Justice on perfectly satisfactory evidence.

The plaintiffs were a land company and six private landowners, of whom one—Orford—was a purchaser from the plaintiff company.

The defendants claimed a right under two heads, prescription and implied grant from the Synod of the (Anglican) Diocese of Toronto, the defendants' grantor. Prescription was set up against all the plaintiffs; implied grant against the plaintiff company and Orford.