

motions were reserved to be disposed of at the trial or other final disposition of this action. The defendant then proceeded with the building, and, with the exception of that part of the northern foundation wall, called the footings, erected it wholly upon his own land. There is now no claim for injunction.

At the opening of the trial before me, counsel for plaintiffs stated that the action was to fix the boundary between these properties of plaintiffs' and defendant, and the plaintiffs asked for a declaration as to the true boundary line.

During the trial counsel for plaintiffs frankly stated that although the encroachment by the footings is something to complain of, that is a comparatively trifling matter, and the action was not brought in reference to these. As to these footings the defendant also alleges that the matter was of trifling character, and he has paid into Court \$25 alleging that sum to be sufficient compensation to plaintiffs if entitled to anything.

The defendant claims large damages consequent upon the injunction, and asks for a reference as to these.

I am of the opinion that the plaintiffs were not entitled to proceed by injunction. They acted hastily because they did not want an apartment house close to their southern boundary. They thought defendant intended to act in a high-handed and arbitrary manner and they looked with alarm upon every movement the defendant made. The plaintiffs had the right of course to watch and protect even an inch of their territory, but in a matter of boundary, pending negotiations, proceeding by injunction was not the authorised way.

On the 22nd May, 1912, the plaintiff Woods, and defendant's solicitor Standish, had an interview in which the situation was discussed. What took place is set out in a letter of Mr. Standish to Mr. Woods of 23rd May. The material thing was the discussion about the boundary. Mr. Woods gave Mr. Standish to understand that he, Mr. Woods, had under consideration the erection of buildings on lease of plaintiffs' lands, and the plaintiffs proposition is that if the defendant would build up to the line, the plaintiff would do the same, or that the plaintiffs would build as far north of the line as defendant would build south of it. In that letter of 23rd May Mr. Standish said that it would be more profitable and in Mr. Bullen's interest to build on the boundary