

MARCH 15TH, 1915.

WILSON v. SMITH.

Easement—Right to Drainage and Water Supply through Adjoining Tenement—Use of Unlawful Means—Municipal By-laws.

Appeal by the plaintiff from the judgment of the Senior Judge of the County Court of the County of Wentworth dismissing an action brought in that Court and tried by him without a jury.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

J. L. Schelter, for the appellant.

H. Carpenter, for the defendant, respondent.

The judgment of the Court was delivered by MEREDITH, C.J.O.:—The action is brought to recover damages for the stopping up by the respondent of a drain for carrying off the refuse water and sewage from number 261 Wellington street, in the city of Hamilton, and for his stopping up the water pipe by which the house was supplied with city water; for a declaration that this house "might enjoy the easements of drainage and water supply," by means of this drain and water pipe, through the adjoining property of the respondent, number 263, to the main sewer and water main; and for an injunction restraining the respondent from interfering with these alleged easements.

The respondent was the owner of 50 feet of lot No. 179 on the west side of Wellington street, in John Ferguson's survey of the block bounded by Wellington, Barton, Cathcart, and Robert streets, and on the 20th March, 1913, conveyed to the appellant the southerly 25 feet of the lot, which is further described as "being the lands occupied by and used with the premises known as city number 261 Wellington street north;" and the remainder of the lot is known as city number 263, and is still owned by the respondent.

This conveyance is made in pursuance of the Short Forms of Conveyances Act, and it contains no habendum, but does contain covenants and bar of dower in the statutory form.

Both 261 and 263 were, at the time of the sale to the appellant, occupied as "one dwelling-house and one 'lean-to,'" and they were all under one roof. As I understand the evidence, the