

MASTER IN CHAMBERS.

OCTOBER 24TH, 1912.

## SMYTH v. HARRIS.

4 O. W. N. 168.

*Pleading—Statement of Claim—Nuisance — Action to Restrain — Joinder of Plaintiffs—Joinder of Causes of Action—Election.*

Motion by defendants to strike out the names of two real estate firms as plaintiffs and certain paragraphs of the statement of claim in an action by certain property-owners to abate a nuisance.

MASTER-IN-CHAMBERS *held* that as the firms in question alleged an interest in certain lands alleged to be affected by the alleged nuisance and were willing to give particulars of such interest they should be allowed to continue as plaintiffs on the record.

*Warnik v. Queen's College*, L. R. 6 Ch. 716, referred to

That the various plaintiffs having a common right alleged to be violated by defendants were entitled to proceed in the one action.

*Bedford v. Ellis*, [1910] A. C. 1, 12, followed.

*Mason v. Grand Trunk Rw. Co.*, 8 O. L. R. 28 distinguished.

That an allegation that defendants "are continuing to inflict the wrongs complained of herein upon the neighborhood in general and the plaintiffs in particular" could be sustained even though the Attorney-General were not added as a party plaintiff.

Paragraph 6 of statement of claim struck out, and, save as above motion dismissed. Costs to plaintiffs in cause.

On the 15th October inst. on motion for interim injunction an order was made by HON. MR. JUSTICE RIDDELL, directing *inter alia* that the action be set down for trial before him at the non-jury sittings here on 4th November, and enlarging the motion to same place and date.

Defendants have appealed against this order. Their appeal has been set down and will probably be heard on 29th inst.

Defendants have meantime moved before the MASTER-IN-CHAMBERS for an order as follows:—

1. Striking out the names of Robins Limited and F. W. Tanner and F. W. Gates as party plaintiffs.

2. Compelling plaintiffs to amend by electing in which plaintiff's name the action will proceed and striking out the other name or names and staying the action meanwhile.

3. Striking out from paragraph one of the plaintiffs statement of claim the clauses beginning "The plaintiffs Robins Limited, etc.," "The plaintiffs Tanner & Gates, etc.," or compelling plaintiffs to amend by disclosing what interest Robins Limited, and Tanner & Gates respectively have whether as owner, tenant, etc.

4. Striking out from paragraph four, that part of the paragraph beginning "on the last occasion, etc.," as being