

HON. SIR JOHN BOYD, C.

DECEMBER 1ST, 1913.

CAIRNS v. CANADA REFINING & SMELTING CO.

5 O. W. N. 423.

Nuisance—Smelter—Noxious Fumes and Vapours—Special Damage to Plaintiff—Death of Cow—Public Nuisance—Attorney-General—Voluntary Abatement of Nuisance by Defendants—Evidence—Damages—Refusal of Injunction.

BOYD, C., refused to grant plaintiff, a resident near a smelter, alleged to be a nuisance, an injunction, as the nuisance had been abated by the defendants prior to the issuance of the writ and in any case the nuisance was a public one and the plaintiff suffered no special and peculiar inconvenience therefrom, but allowed plaintiff \$80 damages in respect of the death of a cow occasioned through defendant's operations.

Soltan v. De Held, 2 Sim. N. S. 133, referred to.

Action for an injunction and damages in respect of an alleged nuisance caused by the operation of a smelter.

A. E. H. Creswicke, K.C., for plaintiff.

M. B. Tudhope, for defendants.

HON. SIR JOHN BOYD, C.:—A public nuisance is distinguishable from a private nuisance only in this, that the latter is an injury to the property of an individual, while a public nuisance is an injury to the property of all persons who come within the sphere of its operation; though it may be injurious to a greater or lesser degree as to different people within the area effected. The case is put by way of illustration (and pertinent to the present controversy) by Kindersley, V.C., in *Soltan v. De Held* (1851), 2 Sim. N. S. 133, 142: "Take the case of the operating of a manufactory in the course of which volumes of noxious smoke or of poisonous effluvia are emitted. To all persons who are at all within the reach of these operations it is more or less objectionable, more or less a nuisance in the proper sense of the term . . . to those who are nearer it may be a greater inconvenience that it is to those who are more remote from it; but still, to all who are within the reach of it, it is more or less a nuisance."

Such is the present case as to the operation of this smelter for silver ore in the town of Orillia; its operations in the way of emitting or exhaling smoking vapour and fumes are liable to affect more or less prejudicially all persons living or owning property in that neighbourhood.