

HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B.

FEBRUARY 11TH, 1918.

STEVENSON v. COLVIN.

Nuisance—Smoke and Odour—Injunction and Damages—Opportunity to Abate Nuisance.

ACTION for an injunction and damages in respect of a nuisance.

The action was tried without a jury at Hamilton.

C. W. Bell, for the plaintiffs.

G. S. Kerr, K.C., for the defendant.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that the plaintiffs presented an overwhelming mass of uncontradicted testimony proving the existence of an intolerable nuisance, both as to emitting smoke and burning garbage.

The negative testimony adduced by the defendant was that of people outside or too far inside of the baleful zone of smoke and odour.

The defendant had not adopted the simplest device to minimise either form of nuisance. He took the defiant stand, by conduct and in the witness-box, that he "didn't have to."

Sometimes very independent gentlemen of this type find out that they must have some regard for the rights, feelings, and comfort of other people.

Appleby v. Erie Tobacco Co. (1910), 22 O.L.R. 533, shews that the reasonableness of the defendant's user of his own premises does not affect the plaintiffs' rights.

There will be judgment for the plaintiffs with damages \$1 each, an injunction, and costs on the Supreme Court scale. In view of the conditions as to coal &c., the operation of the injunction will be stayed for 20 days to enable the defendant to abate or minimise the nuisance.

Should the defendant shew honest and substantial progress in this direction within the 20 days, he may apply to a Judge in Chambers to extend the time.

The plaintiff's statement of claim should be amended as per the paper-writing annexed to the record; and judgment should be entered in terms of the substituted paragraph (a).