

DIVISIONAL COURT:

DECEMBER 23RD, 1910.

## \*APPLEBY v. ERIE TOBACCO CO.

*Nuisance—Odour from Tobacco Factory—Local Standard—Evidence—Injunction—Suspension—Opportunity to Abate Nuisance—Costs.*

Appeal by the plaintiff from the judgment of BOYD, C., at the trial, dismissing an action brought to restrain the defendants from continuing a nuisance.

The appeal was heard by MEREDITH, C.J.C.P., SUTHERLAND and MIDDLETON, JJ.

J. H. Rodd, for the plaintiff.

A. H. Clarke, K.C., for the defendants.

The judgment of the Court was delivered by MIDDLETON, J. :—  
The nuisance complained of is the odour arising from the manufacture of tobacco in the defendants' premises. At the trial two other matters were complained of—dust arising from the alley and interference with certain shutters. The dust from the alley was described as "the important part of this action." Upon the hearing we expressed our agreement with the learned trial Judge in dismissing the action as to these two claims.

The odour from the tobacco arises chiefly from the processes of steaming, steeping, and stewing which it undergoes, and the boiling of sugar, licorice, and other ingredients with which it is mixed before it is reduced to "plug tobacco" ready for the market. These odours cannot be prevented if the manufacture is to go on; and, upon the evidence, the defendants appear to be doing their best to prevent injury to their neighbours.

Many witnesses were called for the plaintiff, who describe the odour as a "most sickening smell," "a very bad smell," "very, very offensive," "very nauseating." Some say that it produces vertigo and dizziness; others, nausea and headache. Some do not find any evil result beyond that incident to the disagreeable nature of the odour.

The defendants produce a number of witnesses, many of whom say the odour is "not unhealthy;" others say that it "does not affect" them; and one enthusiastic lover of the weed describes it as "just splendid."

\*This case will be reported in the Ontario Law Reports.