

HON. MR. JUSTICE CLUTE says (Continued)

unbearable nuisance, and Ashbridge's Bay there, where it is used, a seething cesspool and menace to public health, and they want proceedings taken to abate the nuisance or indict the city for creating it. "Before taking steps we would like to ask you to visit the place."

The Provincial Inspector of Health, Dr. R. M. Bell, was sent to examine, and made a report, in which he said: "I have no hesitation in pronouncing the complaints as well founded, as the pollution of the atmosphere by this plant cannot help but be a nuisance and menace to the health of the nearby residents who are compelled to breathe it. Undoubtedly some different method of treating and disposing of the sludge is required and should be insisted upon without unnecessary delay." Inspector Bell fully confirmed this report in his evidence at the trial. This report was brought to the attention of the City authorities, and after delay for one cause or another and further deputations of ratepayers had visited the Council, the City Health Officer and Commissioner of Works made their report on the 21st July, 1915, in which they state:—

"The sewage tanks were not designed for the storage of sludge, the intention being to discharge the accumulation of fresh sludge into Ashbridge's Bay for reclamation purposes. If this method had been adopted, serious consequences would have followed."

Upon the completion of the plant it was deemed advisable to "confine the sludge within a definite area, contiguous thereto, and for the purpose a portion of Ashbridge's Bay immediately to the south was enclosed. After considerable sludge had been deposited in this area the ebullition of gases caused odor. In order to minimize this, about eighteen months ago, we split the aforementioned area into comparatively small pockets which virtually act as separate digesting lagoons. Sludge was deposited in each of these until filled—in this way, the sludge depth was increased and the superficial area exposed to the atmosphere reduced, thereby retarding the rate of gas ebullition. Immediately upon the discharge of fresh sludge, the deposit is covered with shavings, and lime or bleach spread thereon. This method has proved quite effective, and is being continued."

It will be observed that the principal causes referred to by the Trial Judge as creating the nuisance, namely, not sufficiently protecting and covering the piles of screenings, the overflow of the effluent into the bay caused by breaks in the outfall pipe, and the plant not being sufficiently large to carry off the increased amount of sewage, and other matters referred to in the evidence and by the Trial Judge, are not mentioned in this Report.

Upon receipt of this Report the Board of Control passed an order asking the Commissioner of Works "what should be done to remedy matters at the ----- plant?"

The matter was taken up from time to time by the Council, and by the Board, but nothing has been done, the breakage has not been repaired, the overflow continues to the extent of half a million gallons per day, and the evidence is overwhelming that the operation of the plant creates an intolerable nuisance.

It is quite clear that the Board of Health never approved of the plant as it has been operated. It thus appears upon the evidence and findings that the defendants, without the authority of a by-law and without the approval of the Board of Health, have constructed, maintained and operated a plant causing a nuisance and thereby causing damage to the plaintiff's land. Having taken the advice of experts, the defendants did not