

Sir William Mulock, Chief Justice, says:

This is an action to restrain the defendants from maintaining a nuisance and for damages. The defences are:—Denial of the nuisance and statutory authority to do what is complained of.

At the opening of the case the plaintiffs, Martin and Fazackerley, were added as co-plaintiffs.

The circumstances giving rise to the plaintiffs' complaints are as follows:

The defendants in professed exercise of the powers conferred on municipal corporations by the Municipal Act, established a sewage disposal plant in the vicinity of Ashbridge's Bay, within the city limits, and the plaintiffs contend that the plant when in operation has given off odors so offensive as to injure the properties of the plaintiffs Fieldhouse and Fazackerley, to interfere with the reasonable enjoyment of the properties of the plaintiffs, and to be injurious to the health of themselves and of their families.

The following is a brief description of the plant and of its operation:

Trunk sewers convey large quantities of sewage to the plant. This sewage first passes through screens which intercept solids too large to pass through the meshes of the screens, and these solids are then thrown out on the ground in heaps and are intended to be covered with chloride of lime, hay and shavings in order to prevent offensive odors escaping. The sewage then passes into large settling tanks where much fecal matter settles to the bottom of the tanks. This concentrated sewage is called "sludge," and each night this sludge, by the opening of valves in the bottom of these tanks, flows by gravitation through a pipe into a settling area. In all, the defendants have about 19 acres for settling areas, and this acreage is divided into areas 80 feet x 250 feet in size and about 5 feet or 6 feet in depth. The acreage was part of Ashbridge's Bay, and after the piling was completed, each area remained full of water. The pipe carrying the sludge into the area discharged it under water, until the area is nearly full of sludge. Then the mouth of the pipe is suspended above the surface and the sludge falls into the area. The process of filling of the areas occupies about four or five weeks. During that period, for about five hours each night, sludge at the rate of 1,000 gallons a minute is discharged with considerable force into the area. During this discharge the contents of the area are in a violent state of agitation, "boiling" up to the surface and giving off offensive odors. The sludge entering the area causes the water in it to overflow into the adjoining area, and such overflow continues for about four or five weeks. By this time the contents of the area being full of the sludge, the sludge becomes semi-fluid. Then it is covered more or less effectually with chloride of lime, hay, shavings, etc., in order to prevent the escape of offensive odors. But, notwithstanding these measures, the mass for three or four months continues to give off odors.

When one area is thus filled, the sludge in like manner is discharged into the area which has already received the overflow. It was said that a scum would form on such second area, and that it assists in preventing the escape of gases whilst the area is being filled with sludge. But this scum is a very ineffective preventive to gases escaping. At times the wind breaks up the scum and drives it to the side; heavy rains also cause it to sink. Such conditions must have always been more or less present. As one area becomes filled, the sludge is discharged into area after area continuously; the filling never ceasing.