

the section applies where the damage or injury "arises from the execution or neglect in the execution of the powers given to or assumed by the company for enabling them to construct and maintain their railway:" per Osler, J.A., in *Ryckman v. Hamilton Grimsby and Beamsville Electric R.W. Co.*, 10 O.L.R. at p. 427.

I would dismiss the appeal with costs.

NOVEMBER 13TH, 1914.

*CHADWICK v. CITY OF TORONTO.

Nuisance — Noise and Vibration from Operation of Electric Pumps—Depreciation in Value of Neighbouring House—Evidence — Possibility of Operation of Municipal Waterworks by Steam Power—Statutory Authority—Injunction —Damages—Reference—Scope.

Appeal by the Corporation of the City of Toronto, the defendant, from the judgment of MIDDLETON, J., 6 O.W.N. 167.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

G. R. Geary, K.C., and Irving S. Fairty, for the appellant corporation.

H. E. Rose, K.C., for the plaintiffs, respondents.

The judgment of the Court was delivered by MEREDITH, C.J.O.:— . . . The use of electrically-driven machinery, the operation of which occasions the nuisance of which the respondents complain, is not expressly authorised by the legislation under the authority of which the appellant corporation has constructed and is operating its waterworks system. The evidence establishes, no doubt, that for the supplying of water to consumers in the northern part of the city a high level pumping station is essential; and, if it had been shewn that the machinery for pumping could not be operated unless driven by electrical power, I should hold that the use of that mode of operating the machinery at the appellant corporation's pumping station was authorised by the legislation to which I have referred, and that no action lay for such injury as that of which the respondents

*To be reported in the Ontario Law Reports.