

ORDE, J.

SEPTEMBER 10TH, 1920.

HYDRO-ELECTRIC POWER COMMISSION OF WELLAND  
v. HILL.

*Nuisance—Flats in Building Leased to Several Tenants—Public Billiard-room above Store and Office—Noise from Billiard-room Disturbing and Annoying Tenants of Store and Office—Interference with Reasonable Enjoyment of Premises—Ceiling so Constructed as to Accentuate Sound—Upper Floor not Constructed so as to Deaden Sound—Duty of Tenant to Minimise Annoyance—Injunction—Stay to Enable Application of Remedy.*

An appeal by the defendant from the report of the Judge of the County Court of the County of Welland, upon a reference to him for trial of the action, which was brought to recover damages for an alleged nuisance and for an injunction. The learned County Court Judge reported in favour of the plaintiffs' claim. The plaintiffs moved for judgment upon the report.

The appeal and motion were heard in the Weekly Court, Toronto.

L. B. Spencer, for the defendant.

H. S. White, for the plaintiffs.

ORDE, J., in a written judgment, said that the plaintiffs were tenants of the ground floor and basement of a building in the city of Welland. The premises were used by the plaintiffs as a store and office. The defendant was the tenant of the first floor of the building, the floor above the ground floor, which he used as a public billiard-room, with 6 tables.

The plaintiffs complained that the noises from the billiard-room constituted a nuisance, and interfered with the work and efficiency of their office staff. Three specific things were complained of: (1) the noise made by billiard-balls dropping from the tables upon the floor; (2) the noise made by the pounding on the floor of the butt-ends of the billiard-cues; and (3) the noise caused by the walking about the floor of the frequenters of the billiard-room and the creaking of the boards in a portion of the floor.

The learned Judge, after stating the facts, referred to Halsbury's Laws of England, vol. 21, p. 531, for the principles applicable to cases of alleged injury to health and comfort; also to Kerr on Injunctions, 5th ed., p. 203; Ball v. Ray (1873), L.R. 8 Ch. 467, 469; Christie v. Davey, [1893] 1 Ch. 316; Sanders-Clark v. Grosvenor Mansions Co., [1900] 2 Ch. 373; Pope v. Peate (1904), 7 O.L.R. 207.