

The word "such" in this phrase is, I think, intended to qualify "trade, business, or manufacture;" and, therefore, in my opinion, the legislature intended to embrace any trade, business, or manufacture whatsoever, whether or not analogous to any of these previously mentioned as noxious or offensive trades, which may become offensive, unless in such cases as the carrying on of the business of a hospital for consumptives or persons suffering from other infectious diseases, to which other specific provisions of the Act are applicable, and from which an intention to exclude that business from the operation of sec. 72 is manifest. . . .

[Reference to *Hawke v. Dunn*, [1897] 1 Q.B. 579, at p. 586, *per Hawkins, J.*]

I am of opinion in this case that, by adding these words to the section, the legislature was seeking to avoid the application of the *eiusdem generis* rule to the case of any trade, business, or manufacture which, in the usual and necessary course of its operation, might become offensive, and as to which no other specific provision was made in the Act.

Motion dismissed with costs.

TEETZEL, J.

MARCH 1ST, 1911.

*FOXWELL v. KENNEDY.

Will—Appointment of Executors and Trustees—Renunciation of Executorship—Right to Exercise Office of Trustee—Duties of Offices not Separable—Powers with Reference to Residuary Estate—Jurisdiction of High Court to Set aside Renunciation—Surrogate Courts Act—Judicature Act—Interest in Residuary Estate.

Motion by the defendant James H. Kennedy for judgment dismissing the action, except as to the claims set forth in paragraphs 15 to 23, inclusive, of the statement of claim, upon questions of law raised in his statement of defence, an order having been obtained, under Con. Rule 259, for the hearing and disposition of the questions of law in the Weekly Court.

The questions for determination were:—

(1) Is the plaintiff entitled to the rights of a trustee under the will of the late David Kennedy?

(2) Has this Court jurisdiction to try and determine in this action the question whether the plaintiff is entitled and should

*To be reported in the Ontario Law Reports.