

Hardy was for payment by them out of the estate of Cumberland of \$11,825.26, said to have been paid by him out of the corpus, and that his interest as a beneficiary under the trust indenture should be charged with the payment of that sum. The learned Master, in a written judgment, said that so many collateral issues were involved in the main issue that a great deal of latitude should be allowed the defendants in framing a defence. An additional fact which rendered it very difficult to confine the defendants to the strict rules of pleading was the existence of a very serious contest between the defendant company and the defendant Hardy on the one side and the remaining defendants on the other side. In this contest the plaintiff could take no part, except in so far as his duty as trustee was involved. The action would fail in its purpose if the pleadings did not contain the issues arising between the defendants. The plaintiff could not be embarrassed by the portions of the pleading complained of. Motion refused. Time for reply extended for 10 days. Costs of the application to be costs to the defendant company and the defendant Hardy in the cause, unless the trial Judge should otherwise order. Donald Macdonald, for the plaintiff. H. S. White, for the defendant company and the defendant Hardy.

TORONTO LOCAL BOARD OF HEALTH V. SWIFT CANADIAN CO.
LIMITED.—FALCONBRIDGE, C.J.K.B.—JAN. 12.

Nuisance—Injunction — Issue Directed to be Tried.—Motion by the plaintiffs for an injunction restraining the defendants from using their plant until they have abated a nuisance. The motion was heard in the Weekly Court at Toronto. FALCONBRIDGE, C.J.K.B., in a written judgment, said that he was not disposed to hamper or interfere with the operations of a company which is engaged in putting up provisions for our armies in the field. And on this ground alone he had felt inclined to dismiss the motion. He had, however, come to the conclusion that he should direct an issue to determine whether there was any nuisance cognizable in law caused by the operating of the defendants' plant—nuisance cognizable in law because it would be open to the defendants to argue that, assuming that they were exercising statutory powers and using up-to-date appliances, they were not liable even though there might be emanation of offensive odours. Judgment accordingly. Costs of the motion to be costs in the proceedings. C. M. Colquhoun, for the plaintiffs. Gideon Grant, for the defendants.