

Meredith, C.J., Sutherland, J., Middleton, J.] [Dec. 23, 1910.

APPLEBY v. ERIE TOBACCO CO.

*Nuisance—Tobacco factory—Injunction.*

Appeal by plaintiff from judgment of Boyd, C., dismissing an action to restrain defendants from continuing a nuisance.

The nuisance complained of arose from the manufacture of tobacco, the important objection was the odour arising from the steaming and stewing of the tobacco leaves, other articles being mixed with it, such as sugar and liquorice. These odours could not be prevented. The evidence was conflicting, but it was clear that there was a strong odour that to most neighbours was extremely disagreeable.

*Held*, 1. That in view of all the surrounding circumstances (which must always be taken into consideration) the defendants' manufactory constituted a nuisance.

2. As to whether an injunction should be granted, MIDDLETON, J., who delivered the judgment, said:—

Nuisances fall into two classes—those which interfere with the comfort and enjoyment of the property, and those which interfere with the value of the property. The occupant may sue in respect of the former. In such suit an injunction may well be awarded, as damages cannot be an adequate remedy: *Jones v. Chappell*, L.R. 20 Eq. 539. The working rule stated by A. L. Smith, L.J., in *Sheefer v. City of London Electric Co.*, [1894] 1 Ch., at p. 332, as defining the cases in which damages may be given in lieu of an injunction, shews that here an injunction is the proper remedy. No one should be called upon to submit to the inconvenience and annoyance arising from a noxious and sickening odour for a 'small money payment,' and the inconvenience and annoyance cannot be adequately 'estimated in money.' The cases in which damages can be substituted for an injunction sought to abate a nuisance of the first class must be exceedingly rare. The injunction should, therefore, go, restraining the defendants from so operating their works as to cause a nuisance to the plaintiff by reason of the offensive odours arising from the manufacture of tobacco; the operation of the injunction to be stayed for six months to allow the defendants to abate the nuisance, if they can do so, or to make arrangements for the removal of that part of the business causing the odour.

*Rodd*, for plaintiff. *Clarke*, K.C., for defendant.