The plaintiffs complained that the factory, by reason of offensive odours therefrom, was a public nuisance, and rendered the lands of the plaintiffs and other lands in the neighbourhood unfit for residential purposes. By the 22nd paragraph of the statement of claim the plaintiffs alleged that the defendants were negligent in the operation of their plant and factory, and that by reason of the defendants' negligence the nuisance was greater than it would be if the defendants' operations were conducted with reasonable care and with the most approved machinery and methods. The plaintiffs sought an injunction and damages. The defendants denied the plaintiffs' allegations, except as admitted; claimed an easement by user; said that the nuisance, if any, had been abated; and denied negligence.

Upon this appeal the plaintiffs contended that an inspection of the factory was necessary and material for the proper determination of the questions arising in the action.

W. E. Raney, K.C., for the plaintiffs.
W. N. Tilley, K.C., for the defendants.

CLUTE, J., in a written judgment, after stating the pleadings and the contentions of counsel, and referring to Barlow v. Bailey (1870), 18 W.R. 783, McAlpine & Co. v. Calder & Co., [1893] 1 Q.B. 545, and the English Rule 659, pointed out the difference between that Rule and the Ontario Rules 266 and 370, and said that he did not regard the case of Barlow v. Bailey as controlling the question here involved, which must be determined by the language of the Rules. Under our Rules, the inspection asked for is permissible because it comes within the wording of the Rules, the inspection being necessary for the proper determination of the question in dispute, and necessary or expedient for the purpose of obtaining full information or evidence. He could see no possible objection to inspection by a witness or expert; on the contrary, he thought it was expedient and necessary for the obtaining of full information in reference to the questions at issue. The Rules should receive a liberal construction.

The plaintiffs were entitled to the inspection asked, and the appeal should be allowed. As the question was now apparently up for the first time for decision, the costs of the motion and appeal should be costs in the cause.