

FALCONBRIDGE, C.J.K.B.

JULY 9TH, 1918.

## WILKINSON v. STRAUS LAND CORPORATION LIMITED.

*Nuisance—Water Conveyed to Plaintiff's Premises from Defendants' by Reason of Defective Conduit-pipes—Injury to Stock of Goods—Damages—Measure of—Indemnity—Lessor—Third Party.*

Action for damages for injury to the plaintiff's stock of goods by water alleged to come from the near-by premises of the defendants.

The action was tried without a jury at Sandwich.

E. S. Wigle, K.C., for the plaintiff.

O. E. Fleming, K.C., and A. H. Foster, for the defendants.

T. G. McHugh, for a third party brought in by the defendants.

FALCONBRIDGE, C.J.K.B., in a written judgment, found that the damage to the plaintiff's stock was caused by water coming from the buildings erected on the defendants' property. By reason of defective conduit-pipes, this water was not conveyed to the sewers, as it should have been, but was diverted so as to flow in upon the plaintiff's premises.

Neither under the terms of the lease nor otherwise was the third party liable to indemnify the defendants in respect of such damage.

The plaintiff had undoubtedly sustained substantial injury, but he had assumed to fix his own measure of damage in a manner unknown in the learned Chief Justice's experience, and, he considered, unwarranted by the authorities. Instead of using every effort to remove, dry, and make saleable as possible the damp and soiled stock, he went on selling it at a depreciated price, and only bringing up the damaged goods from the basement as fast as his clerks could sell it.

And so he now sought to have his damage assessed as on a percentage basis of his stock, which could not be done.

The expenses incurred by him in endeavouring to make the stock as presentable as possible would have of course been an element of damage if he had adopted the obvious and usual way of dealing with the goods.

Selling (vice-president of the defendant company) and the plaintiff arrived, at one time, at a basis of settlement—\$500 for this item and \$1,000 for half a party-wall. That went off because the plaintiff's mortgagee wanted too large a share of the money. The sum of \$500 seemed, therefore, a fair amount to award.