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APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

OCTOBER 7TH, 1918.

*FIELDHOUSE v. CITY OF TORONTO.

Municipal Corporations—Plant for Disposal of Sewage—Erection and Operation—Negligence in Operation—Nuisance to Neighbours—Offensive Odours—Special Damage—Statutory Authority—Municipal Act, sec. 398 (7)—Absence of By-law—Failure to Obtain Approval of Board of Health—Public Health Act, sec. 94 (1).

Appeal by the Corporation of the City of Toronto, the defendants, from the judgment of MULOCK, C.J.Ex., in favour of the plaintiffs, in an action for damages and an injunction in respect of the negligent installation and maintenance of a system of sewerage in the city and the negligent, defective, and inadequate disposal thereof, whereby the plaintiffs suffered special injury.

The defendants denied that they were guilty of negligence and pleaded statutory authority for doing what was complained of.

The appeal was heard by MACLAREN, MAGEE, and HODGINS, JJ.A., and CLUTE, J.

Irving S. Fairty and C. M. Colquhoun, for the appellants.

T. R. Ferguson, for the plaintiffs, respondents.

CLUTE, J., read a judgment in which he said that, in order to take care of the effluent of the sewage from the settling tanks, an outfall-pipe was laid from the plant across the marsh to Lake Ontario, a distance of about a mile. This pipe, except in case of emergency, was expected to take care of all the effluent from the tanks; but the trial Judge found that it was of insufficient capacity,

* This case and all others so marked to be reported in the Ontario Law Reports.