

Court, Toronto. LENNOX, J., in a written judgment, said that the proper construction of the writings between the parties could be determined with reasonable certainty only after all the local conditions and surrounding circumstances had been put in evidence at the trial. For the infringement of any right the plaintiffs might have they could be adequately compensated in damages, and there was no doubt that they would be able to recover any damages which might be awarded to them. On the other hand, loss by delay during the building season, for which there could be no adequate recovery, might be occasioned by continuing the injunction; and it was in the public interest, too, that building operations should not be unnecessarily arrested. The injunction should be dissolved, and the motion to continue it dismissed; costs reserved to be disposed of by the Judge at the trial. A. St. G. Ellis, for the plaintiffs. G. A. Urquhart, for the defendants.

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RE W.—ORDE, J., IN CHAMBERS—SEPT. 7.

*Infant—Custody—Right of Father—Misconduct—Welfare of Infant—Custody of Maternal Grandfather.*—Motion by Walter W. for an order awarding him the custody of his infant son, aged 7, at present living with his maternal grandfather. The boy's mother died in October, 1918; the applicant had married again. ORDE, J., in a written judgment, said that in ordinary circumstances the father's right to the custody of his own son would be paramount; but the circumstances here were not ordinary. The grandfather resisted the application on the ground that the father and his second wife were not fit persons to have the custody of the boy, and that it would be in the interest of the boy to leave him with his grandparents. After reviewing the evidence, the learned Judge said that he was satisfied that neither the father nor his present wife ought to be entrusted with the care of the boy. There was abundant evidence that the boy was happy with his maternal grandparents and would be well-cared for upon their farm. He had been with them now nearly two years. To take him from these surroundings and restore him to his father would, in all the circumstances, be taking a great risk, and would be an act of heartless cruelty to the boy. The father had, by his misconduct, forfeited the right to the custody and care of his son. The application should be dismissed with costs. The order should contain a provision enabling the father, under proper safeguards, to see the boy at intervals, if the father so desired. J. R. Roaf, for the father. C. A. Thomson, for the grandfather.