CANADA PAPER COMPANY.... (DEFENDANT)..... } APPELLANT;

1921 Nov. 21.

1922 Feb. 7.

AND

A. J. BROWN (PLAINTIFF) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Injunction—Offensive odors and fumes—Residential neighbourhood—Proper remedy— Damages— Municipal control—Enforcement of injunction—Arts. 541, 957, 968, 971 C. C. P.—Arts. 5639 (14) and 5683 R. S. Q. (1909)—Art. 5991 R. S. Q. (1888)—41 V.c. 14, s. 12.

Nauseous and offensive odors and fumes emitted by a pulp mill to the detriment of a neighbouring property, causing to its occupants intolerable inconvenience and rendering it, at times, uninhabitable, are a proper subject of restraint; and, in such a case, the courts are not restricted to awarding relief by way of damages but may grant a perpetual injunction to restrain the manufacturer from continuation or repetition of the nuisance.

Although the entire neighbouring population is affected by such nuisance and the municipal authorities have not thought proper to interfere on its behalf, even if the respondent is the only person objecting he is entitled to maintain a demand for injunction, if the injury suffered by him is sufficiently distinct in character from that common to the inhabitants at large.

Per Davies C.J. and Anglin and Brodeur JJ.—When such an injunction is granted "under the pains and penalties provided by law", it is susceptible of enforcement under the provisions of Article 971 C.C.P. which gives power to the courts to punish for contempt by way of fine or imprisonment.

Per Davies C.J. and Anglin J.—The jurisdiction and practice of the Quebec courts in regard to the remedy of injunction would seem to resemble the jurisdiction and practice of English courts rather than of the courts of France. *Lombard v. Varennes* (Q.R. 32 K. B. 164) considered.

Judgment of the Court of King's Bench (Q.R. 31 K.B. 507) affirmed.

PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin and Brodeur JJ.

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APPEAL from the judgment of the Court of King's Bench, Appeal side, Province of Quebec (1), affirming the judgment of the trial court and maintaining the respondent's action.

The material facts of the case and the questions at issue are fully stated in the judgments now reported.

D. L. McCarthy K.C., *J. L. Perron K.C.* and *A. W. P. Buchanan K.C.*, for the appellant. If the odours complained of constitute a nuisance, it is a public and not a private nuisance, and consequently respondent is not entitled to an injunction: *Soltau* v. *de Held* (2); *Benjamin* v. *Storr* (3); *Bourdon* v. *Bénard* (4); *Senécal* v. *Edison Electric Co.* (5); *Bélair v. La Ville de Maisonneuve* (6); *Bird* v. *Merchants Telephone Co.* (7); *Adami v. City of Montreal* (8).

Adjacent proprietors are obliged to suffer the reasonable inconveniences which result from neighbourhood; Laurent, Droit civil français, vol. 6 p. 195; Macarel, Ateliers Dangereux, p. 16; Sirey, 1864-257 note: *Crawford v. Protestant Hospital for the Insane* (9); *Carpentier v. La Ville de Maisonneuve* (10); *Robins v. Dominion Coal Co.* (11); *Cusson v. Galibert* (12); *Bricault v. Masson* (13); *Black v. Canadian Copper Co.* (14).

In determining whether a lawful trade amounts to a nuisance, the court will consider the customs of the people, the characteristics of their business, the common

(1) Q. R. 31 K. B. 507.
(2) [1851] 21 L. J. Ch. 153.
(3) [1874] L.R. 9 C.P. 400.
(4) [1870] 15 L.C. Jur. 60.
(5) [1892] Q.R. 2 S.C. 299.
(6) [1892] Q.R. 1 S.C. 181.
(7) [1894] Q.R. 5 S.C. 445.
(8) [1904] Q.R. 25 S.C. 1.
(9) [1889] M.L.R. 5 S.C. 70.
(10) [1897] Q.R. 11 S.C. 242.
(11) [1899] Q.R. 16 S.C. 195.
(12) [1902] Q.R. 22 S.C. 493.
(13) [1911] Q.R. 40 S.C. 346.
(14) [1917] 13 Ont W.N. 255.

uses of property and the particular circumstances of the place: *St. Helens Smelting Co. v. Tipping* (1); *Hole v. Barlow* (2); *Sturges v. Bridgman* (3); *Drysdale v. Dugas* (4).

Private convenience must yield to public necessity; Revue Etrangère et Française de Legislation, 1843, pp. 425, 427, 428, 435, 438; Massè, Droit Commercial, vol. 2, p. 115, No. 889; High on Injunctions, 4th ed., pp. 707, 752; *Claude v. Weir* (5).

The courts will not interfere as against a trade on the mere ground of personal discomfort and inconvenience of a private individual: Garrett on Nuisances p. 172; *St. Helens Smelting Co. v. Tipping* (1); Spelling on Injunctions, ss. 394, 411, 417, 428; High on Injunctions, 4th ed. p. 716.

The courts will not destroy an industry when compensation ought to be awarded: *Black v. Canadian Copper Co.* (6); *Ware v. Regent's Canal Co.* (7).

Aimé Geoffrion K.C. and *G. H. Montgomery K.C.* for the respondent:—There is an obligation on the part of every owner to use his property in such a way as not to interfere with the enjoyment of other property by neighbours: Arts. 406, 1053, 1065, 1066 C.C.; *Carpentier v. Ville de Maisonneuve* (8) *Decarie v. Lyall* (9); *The Queen v. Moss* (10); *Drysdale v. Dugas* (4); *Adami v. City of Montreal* (11); *Lachance v. Cauchon* (12);

(1) [1865] 35 L.J. Q.B. 66.
(2) [1858] 4 C.B.N.S. 334.
(3) [1879] 48 L.J. Ch. 785.
(4) [1895] 26 Can. S.C.R. 20.
(5) [1888] M.L.R. 4 Q.B. 197; 16 Can. S.C.R. 575.
(6) 13 Ont. W.N. 255.
(7) [1858] 44 Eng. Rep. 1250 at p. 1256.
(8) Q.R. 11 S.C. 242.
(9) [1911] 17 Rev. de Jur. 299.
(10) [1896] 26 Can. S.C.R. 322.
(11) Q.R. 25 S.C. 1.
(12) [1915] Q.R. 24 K.B. 421.

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Gravel v. Gervais (1); *La Compagnie de Pulpe des Laurentides v. Clément* (2); *Montreal Water & Power Co. v. Davie* (3); *Ville de Sorel v. Vincent* (4); *Beamish v. Glenn* (5); *Francklyn v. People's Heat and Light Co.* (6).

THE CHIEF JUSTICE.—For the reasons stated by my brother Anglin, I am of the opinion that this appeal should be dismissed with costs.

IDINGTON J.—The respondent as the owner of property acquired some years before the appellant, in conducting its business as the manufacturers of pulp and paper, had ventured upon methods complained of herein, and had built thereon for himself an expensive home and surrounded it with everything to make that home comfortable and enjoyable.

Such a venture was prompted no doubt by the sentimental reasons that the property had been the home of his father and ancestors for a hundred years or more and was suitable for a summer residence.

No matter, however, what his reasons were, as a matter of law he was entitled to reside there in comfort when and as he saw fit.

The appellant for mere commercial reasons, disregarding the rights of respondent and all others, saw fit to introduce, in the conduct of its business, a process in the use of sulphate which produced malodorous fumes which polluted the air, which the respondent was as owner for himself and his family and guests fully entitled to enjoy in said home and on said property, to such an extent as to render them all exceedingly uncomfortable.

(1) [1891] M.L.R. 7 S.C. 326.
(2) [1893] Q.R. 2 Q.B. 260.
(3) [1904] 35 Can. S.C.R. 255.
(4) [1889] 32 L.C. Jur. 314
(5) [1915] 9 Ont. W.N. 199.
(6) [1889] 32 N.S. Rep. 44.

The learned trial judge granted a perpetual injunction restraining the appellant from the use of such material in such a way as to produce such results.

Upon appeal to the Court of King's Bench in Quebec that court maintained said judgment and dismissed the appeal, the learned Chief Justice and Mr. Justice Guerin dissenting. (1)

I cannot agree with the entire reasoning of those so dissenting.

I agree with the learned Chief Justice when he seems to recognize that in principle the relevant law of England and Quebec are hardly distinguishable, but with great respect, I cannot follow his reasoning, much less that of his learned colleague, Mr. Justice Guerin, when attempting to give reasons which do not agree yet seem to me each to fall far short of protecting efficiently the rights of such an owner of property as appellant.

The discomforts arising from the operation of a business such as a railway duly authorized by law must be endured. The discomforts arising from the mass of impurities that city smoke produces must also, often being long established conditions of such life, be endured.

The legislative provisions made in France far in advance of anything we have in Canada dealing directly or indirectly with such a problem as presented herein and the opinion of commentators in light thereof and largely founded upon such light, cannot help us.

Nor, I submit, can the very minor modifications thereof, relegating to the municipal authorities the power to prohibit, be held as at all effective.

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I cannot see why the power of a municipality to act, but which yet fails to act, can at all interfere with the rights of an owner to enjoy his property in the full sense thereof.

The municipality is not given and, I respectfully submit, should not be given power to take away unless upon due compensation the rights of the owner to enjoy his property which carries with it pure air, light and pure water.

The argument, that because the exercise by appellant of powers it arrogates to itself but are non-existent in law, may conduce to the prosperity of the little town or village in which the appellants' works are situated, seems to have led to a mass of irrelevant evidence being adduced, and as a result thereof the confusion of thought that produces the remarkable conclusion that because the prosperity of said town or village would be enhanced by the use of the new process therefore the respondent has no rights upon which to rest his rights of property.

I cannot assent to any such mode of reasoning or that there exists in law any such basis for taking from any man his property and all or any part of what is implied therein.

Yet upon some such possible basis the mass of evidence before us seems to have been presented.

The invasion of rights incidental to the ownership of property, or the confiscation thereof, may suit the grasping tendencies of some and incidentally the needs or desires of the majority in any community benefiting thereby; yet such a basis or principle of action should be stoutly resisted by our courts, in answer to any such like demands or assertions of social right unless and until due compensation made by due process of law.

Progress may be legislatively made in that direction by many means offering due compensation to the owners, but we must abide by the fundamental law as we find it until changed.

And I cannot find that in France or Quebec any such legal theory as that argument rests upon has any foundation.

In looking up authorities upon the question of injunction, such as this, I find in Kerr's Law of Injunctions, 4th edition, at middle of page 155 and following, what I think expresses the right of the owner to an injunction such as in question.

The history of that mode of remedy might require a volume, which I have no intention of writing, but to the curious I would commend the perusal of Story on Equity Jurisprudence, section 865 and following sections, as instructive of how in all probability the history of Quebec law, as also English equity jurisprudence, had its origin in regard to the assertion of a remedy by way of injunction.

It is a most beneficial remedy and should not be weakened or emaciated merely because of preference of its development in one jurisdiction over that of another.

I was, indeed, in considering this case and trying to find the relevant law, somewhat struck with a remark of V.C. Sir W. Page Wood, in the beginning of his judgment in the case of *Dent* v. *Auction Mart Co.* (1) and other cases, that though the doctrine invoked had been established by Lord Eldon in *Attorney General* v. *Nichol*, (2) and never had been departed from, that it was remarkable how few instances had occurred until ten or twelve years before 1866, when he was speaking, and within that short period how the number had increased.

(1) [1866] L.R. 2 Eq. 238, at p. 245. (2) [1809] 16 Ves. 338.

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The wave, if I may so speak of progress, in way of applying any legal doctrine thus varies very much, but I must be permitted to think that the courts should be tenacious in the way of abiding by such a beneficient remedy as that by way of injunction.

The case of *The Directors of St. Helen's Smelting Co.* v. *Tipping*, in the House of Lords, (1) is one of the landmarks, as it were in the modern English law on the subject, and the case of *Crossley & Sons, Ltd.* v. *Lightowler*, (2) and cases cited therein, and the more recent case of *Shelfer* v. *City of London Electric Lighting Co.* (3) may be found instructive as to the later development.

I have not heard or read in factums presented here anything cited in conflict with the principles therein proceeded upon.

Many early cases, and even late cases, can be found if one fails to take the principle of law involved as his guide rather than many decisions going off on special grounds which seem to conflict with said leading authorities.

The subject is a very wide one and in many phases of its historical development do we find much that may not be worth considering because of the peculiar facts involved.

And, I respectfully submit, that as long as we keep in view the essential merits of the remedy in the way of protecting the rights of property and preventing them from being invaded by mere autocratic assertions of what will be more conducive to the prosperity of the local community by disregarding such rights, we will not go far astray in taking as our guide the reasoning of any jurisprudence which recognizes the identical aim of protecting people in their rights of property when employing their remedy of perpetual injunction.

I think this appeal should be dismissed with costs.

(1) 35 L.J.Q.B. 66. (2) [1867] 16 L.T. 438.
(3) [1895] 1 Ch. D. 287.

Nevertheless whilst strongly holding that, in cases such as this, the remedy by way of damages being inefficient and hence a basis for a perpetual injunction, yet, inasmuch as there may ere long be discovered by science or mechanical device, or both combined, a means of using sulphates in the process of manufacturing such as in question herein, there should have perhaps been expressed in the formal judgment a reservation entitling the appellant to apply to the court below for relief in such event, if meantime it has observed the injunction.

Let us hope that such an inducement may lead to resorting to science in a way that is not obvious in the evidence to which we were referred in argument.

DUFF J.—The respondent has established that the enjoyment of his property as a dwelling house is prejudicially affected in a substantial degree and in a degree which entitles him to invoke the protection of the court against the injurious consequences of the manufacturing operations of the appellant company who are clearly chargeable as for a *quasi-delit* within Art. 1053 of the Civil Code.

The substantial question for consideration is whether or not the respondent is entitled to the injunction which has been awarded him. There appear to be good reasons for thinking that the discontinuance of the appellant company's operations would result in material loss and inconvenience to their employees and their families who would probably be obliged to leave the locality in which they live at present in order to find means of livelihood elsewhere. But I am not satisfied that this will be the necessary result of the relief granted to the respondent. Indeed my con-

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clusion, after a perusal of the whole evidence, is that the cessation of the appellant company's operations would be neither the necessary nor the probable result of that relief.

I am far from accepting the contention put forward on behalf of the respondent that considerations touching the effect of granting the injunction upon the residents of the neighbourhood and indeed upon the interests of the appellant company itself are not considerations properly to be taken into account in deciding the question whether or not the remedy by injunction should be accorded the plaintiff under the law of Quebec. The court in granting that remedy exercises a judicial discretion not, that is to say, an arbitrary choice or a choice based upon the personal views of the judge, but a discretion regulated in accordance with judicial principles as illustrated by the practice of the courts in giving and withholding the remedy. An injunction will not be granted where, having regard to all the circumstances, to grant it would be unjust; and the disparity between the advantage to the plaintiff to be gained by the granting of that remedy and the inconvenience and disadvantage which the defendant and others would suffer in consequence thereof may be a sufficient ground for refusing it. Where the injury to the plaintiff's legal rights is small and is capable of being estimated in money, and can be adequately compensated by a money payment, and where on the other hand the restraining or mandatory order of the court, if made, would bear oppressively upon the defendant and upon innocent persons, then although the plaintiff has suffered and is suffering an injury in his legal rights the court may find and properly find in these circumstances a reason for declining to interfere by exercising its

powers *in personam*. This is not, as was suggested in argument, equivalent to subjecting the plaintiff to a process of expropriation, it is merely applying the limitations and restrictions which the law imposes in relation to the pursuit of this particular form of remedy in order to prevent it becoming an instrument of injustice and oppression.

These last mentioned considerations, however, are not those which govern the disposition of the present appeal; the respondent's injury is substantial, is continuing, and there is no satisfactory ground for thinking that any kind of disproportionate injury to the appellant company or to others will ensue from putting into execution the remedy granted by the court below.

ANGLIN J.—My impression at the close of the argument was that the findings of the learned trial judge,—affirmed in appeal,—that the odours and gases emitted from the defendant's sulphate plant were so extremely offensive to the senses that they "caused sensible discomfort and annoyance" to the plaintiff and his family, diminished the comfort and value of the plaintiff's property and "materially interfered with the ordinary comfort of existence in the plaintiff's said home"; and that

> the plaintiff cannot be adequately compensated in damages for the deprivation of the useful enjoyment of his property by the nuisance created and maintained by the said defendant—

were well warranted. Subsequent consideration of the evidence has only served to convert that impression into a firm conviction. To these findings, moreover, I would add another. The evidence has also satisfied me that sulphate soda pulp can readily be purchased by the defendants, or, if they should prefer to take that course, can be made by them at some other place,—

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for instance at or near to their pulpwood limits—where its production will be innocuous. The manufacture of sulphate pulp at Windsor Mills is not at all essential to the defendants' continuing to produce there the classes and grades of paper for the making of which they now use such pulp prepared by a process in which sulphate of soda, salt or nitrate cake is an important ingredient.

As Mr. Justice Flynn points out, it is common ground that science has been unable to indicate any means whereby the emanation and diffusion of these highly objectionable gases and odours in the manufacture of sulphate pulp can be obviated.

The proposition that the existence of the state of affairs so found by the trial judge implies an invasion by the defendants of the plaintiff's right of enjoyment of his property, likely to be persistent, far in excess of anything justifiable under *les droits de voisinage*, and amounting to an actionable wrong entitling him to relief in a court of law and justice scarcely calls for the citation of authority. But, if authority be required, it may be found in abundance in the able judgment delivered by Mr. Justice Flynn and in the factum and memorandum of authorities filed by the respondent.

The power to grant an injunction is broad. Arts. 957, 968, C.P.C. I cannot think that, under such circumstances as the evidence here discloses, the court is restricted to giving such inadequate and unsatisfactory relief as the awarding of damages. Baudry-Lacantinerie, Des Biens, Nos. 215-225, notably 224; 2 Aubry et Rau (5 ed.) p. 305. See too *Wood v. Conway* (1); *Adams v. Ursell* (2).

(1) [1914] 83 L.J. Ch. 498, at p.502. (2) [1913] 82 L.J. Ch. 157.

Subject, therefore, to consideration of the several objections to that course taken in the dissenting opinions of the Chief Justice of Quebec and Mr. Justice Guerin, I should be disposed to agree with the learned judges who composed the majority of the Court of King's Bench (Flynn, Tellier and Howard JJ.) that the injunction granted in the Superior Court should be upheld.

Three difficulties are suggested by the learned Chief Justice: (1) The nuisance created is public and the right to suppress it belongs to the municipal authority under the R.S.Q. Arts. 5639 (14) and 5683 and not to the courts at the instance of a private property owner affected thereby: (2) It is in the interest of the great majority of the inhabitants of Windsor Mills that the operations of the defendant should not be interfered with; balance of convenience therefore requires that the injunction should be dissolved: (3) The injunction sought is not susceptible of enforcement without personal constraint of the defendants' officials.

Mr. Justice Guerin's view is that the injunction is

too radical and too heroic a remedy under the circumstances,

viz. the impossibility of operating the sulphate process without emitting the odors and gases complained of, and the non-interference of the municipal authorities—and that damages would be the appropriate legal remedy.

The nuisance caused by the defendants no doubt affects the entire neighbouring population and other persons who have occasion to come within the sphere of its annoyance. But the injury to the plaintiff's property is different in kind from the inconvenience

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suffered by the inhabitants at large—most of whom, moreover, are so dependent upon the operation of the defendants' mills for their support that they are quite prepared to submit to some personal annoyance rather than jeopardize their means of livelihood. The inaction of the municipal authorities is no doubt ascribable to similar influences. By the nuisance of which he complains the plaintiff's property is practically rendered uninhabitable and useless for the purposes for which he holds it. In my opinion he suffers an injury sufficiently distinct in character from that common to the inhabitants at large to warrant his maintaining this action. *Adami* v. *City of Montreal* (1); *Barthélémy* c. *Sénès* (2); *Derosne* c. *Puzin et al* (3); *Polsue & Alfieri, Ltd.* v *Rushmer* (4); *Francklyn* v. *Peoples Heat & Light Co.* (5); Joyce on Nuisances s. 14. The fact that the making of soda-sulphate pulp at Windsor Mills is not essential to the manufacture of the products which the defendant's mills turn out is an answer to the objection based on balance of convenience—if indeed mere balance of convenience would be a sufficient ground under the civil law of Quebec for refusing to enjoin the use of a process which necessarily entails an unjustifiable invasion of the plaintiff's legal right to the enjoyment of his property. Art. 1065 C.C.; Fuz. Herman, Code Annoté, Art. 544, Nos. 3 & 39; ibid. Arts. 1382-3, Nos. 105, 109, 244 bis; 16 Laurent, No. 199; 24 Demolombe, Nos. 503-5; *Décarie et vir* v. *Lyall & Sons.*(6).

(1) Q.R. 25 S.C. I.
(2) S. 1858 1, 305.
(3) S. 1844 1, 811, at p. 813.
(4) [1907], A.C. 121; [1906] I Ch. 234.
(5) 32 N.S.R. 44.
(6) 17 Rev. de Jur. 299.

I am of the opinion that the power of the Quebec Courts to punish for contempt (Art. 971 C.P.C.) affords a means of enforcing their orders which sufficiently answers the suggestion that the injunction granted cannot be executed and is therefore obnoxious to Art. 541 C.P.C. In France while the court will enjoin the defendant from doing that which he is under obligation not to do, it has not the means of enforcement of the order available under English law and in Quebec by process of punishment for contempt (Art. 971 C.P.C.; See Art. 1033m. added to old Code of Procedure by 41 V. c. 14 s. 12; Art. 5991, R.S.Q. 1888). In France, the court can award damages in advance for refusal to obey, either in a lump sum or *toties quoties*, but not as a means of constraint or of indirect compulsion. D. 82, 2, 81; S. 1897. 2. 9, 12; 3 Garsonnet, Procédure, No. 528; 24 Demolombe No. 491; Baudry-Lacantinerie, Des Biens No. 224, n. 3. France has no provision similar to Art. 971 C.C.P. and the Art. 1142 C.N. is more restrictive than the initial clause of Art. 1065 C.C. Whatever they may have been theretofore, since the changes made in 1878, by 41 V. c. 14, the jurisdiction and practice of the Quebec courts in regard to the remedy of injunction would seem to resemble the jurisdiction and practice of English courts rather than of the courts of France. *Wills* v. *Central Ry. Co.*(1). I cannot assent to the third holding in *Lombard* v. *Varennes* (2) as indicated in the head note. The arm of injunction would fail in one of its most useful applications if it should, on this ground, be held not to be available in a case such as that at bar. I am, with respect, satisfied that this objection rests on a mistaken conception of Art. 541 C.P.C.

(1) [1914] Q.R. 24 K.B. 102.
(2) [1921] Q.R. 32 K.B. 164.

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Nor is it possible to maintain that damages will afford an adequate remedy to the plaintiff. If he were confined to this method of redress he would, in effect, be forced to submit to partial expropriation of his property, as Mr. Justice Tellier suggests, without statutory authority for such an exercise of eminent domain.

No delay was established such as might debar the plaintiff from a right to relief. *Francklyn* v *People's Heat & Light Co.* (1)

In my opinion the difficulties suggested to granting the plaintiff's prayer for an injunction are more imaginary than real. I should be sorry indeed to think that this branch of the jurisdiction of the courts of Quebec is as restricted as counsel for the defendants contends.

To confine the operation of the injunction to the periods of the year during which the plaintiff, his family or friends occupy the residence at Windsor Mills seems to be scarcely practicable. But there is no reason why liberty should not be reserved to the defendants to apply to be relieved from the inhibition if they can satisfy the Court that owing to scientific discovery sulphate pulp can and will be manufactured by them without interference with the plaintiff's right to the enjoyment of his property.

I would dismiss the appeal.

BRODEUR J.—Cette cause nous amène à considérer les limites dans lesquelles se trouve circonscrit l'exercice du droit de propriété pour l'intérêt réciproque des fonds voisins.

(1) 32 N.S. Rep. 44.

L'appelante est une compagnie manufacturière qui fabrique du papier et dont les usines constituent l'industrie la plus importante de la ville de Windsor Mills qui est une ville d'environ deux mille âmes.

Le demandeur-intimé est propriétaire d'une superbe maison de campagne dans le voisinage de ces usines. C'est une propriété qui depuis plusieurs générations appartient à sa famille et qu'il a embellie depuis qu'il s'en est porté acquéreur en 1905. Il se pourvoit en dommages contre la compagnie appellante parce que l'une des usines de cette dernière transmet des odeurs fétides dont l'effet est de rendre inhabitable à certains temps sa maison et ses dépendances, et il demande à ce qu'il soit interdit à la compagnie de se servir, dans sa fabrication, du sulfate de soda qui cause ces odeurs fétides.

A l'époque où le demandeur a acheté cet établissement, la compagnie appellante, la Canada Paper Company, exploitait ses fabriques, mais cette exploitation ne causait aucun inconvénient; on s'y servait alors de matériaux et de produits chimiques qui n'avaient pas le désavantage d'incommoder les voisins. Dans ces dernières années, pour des raisons qui ne sont pas bien clairement déterminées, la Canada Paper Company a jugé à propos de faire usage de sulfate de soda et d'autres produits chimiques qui, sous certaines conditions climatériques, incommodaient gravement les voisins et notamment le demandeur Brown par leurs évaporations désagréables et insalubres.

Monsieur Brown en a alors causé avec les autorités de la compagnie, a eu la promesse qu'on remédierait à ce qu'il considérait être un exercice abusif de propriété; mais malgré ces entrevues et ces promesses rien de tangible n'a été accompli de sorte qu'il s'est

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vu dans l'obligation de recourir aux tribunaux. Il a eu gain de cause en Cour Supérieure et en Cour de Banc du Roi. Les tribunaux inférieurs cependant ne lui ont pas accordé de dommages, mais ils ont formellement ordonné à la compagnie de cesser de faire usage des produits chimiques qui causaient ces odeurs.

Quelles sont les conséquences de cet abus au point de vu légal?

Il ne peut pas y avoir de doute, vu les faits prouvés dans la cause, que ces odeurs étaient absolument insupportables et qu'elles constituaient de la part de la compagnie un exercice abusif de sa propriété au détriment de ses voisins et notamment du demandeur. Tous les juges sont unanimes sur ce point.

Fournel, dans son *Traité du voisinage*, 4ème édition, p. 336, dit:—

> Une des premières lois du voisinage est de ne laisser au dehors aucune odeur qui soit de nature à infecter l'air et à compromettre la santé de ceux qui le respirent.

Il nous cite un édit de François 1er en date du mois de novembre 1539 qui faisait les défenses les plus rigoureuses contre les causes d'infection. Cet édit est devenu en force dans la province de Québec lorsque les lois générales du royaume de France y ont été introduites en 1663.

Fournel nous cite également (loc. cit. p. 337) le cas du nommé Collin Gosselin qui au 15ème siècle veut établir un atelier de potier de terre. Les voisins ne tardèrent pas à ressentir l'inconvénient d'un pareil voisinage par l'infection qui résultait et obtinrent du Châtelet la cessation des opérations.

En 1661, une ordonnance a été rendue au même effet contre certains habitants de la Villette qui se servaient de certains abattis de boucheries pour fumer leurs terres.

Les lois modernes françaises ont donné à l'administration certains pouvoirs qui naturellement n'ont pas force de loi ici. Je crains cependant que cette législation moderne ait donné lieu à une certaine confusion dans la considération de cette cause.

La loi générale des villes donne bien aux conseils municipaux le pouvoir de légiférer contre les nuisances créées par l'industrie et de réglementer l'endroit, la construction et l'usage des établissements insalubres: (art. 5639-5683 S.R.P.Q.)

Dans notre cas, la ville de Windsor Mills n'a pas jugé à propos de faire aucun règlement au sujet des usines en question. Mais cette absence de réglementation ne saurait être considérée comme une approbation d'une nuisance.

La législature pouvait donner aux corporations municipales le pouvoir de faire des règlements qui seraient contraires à la loi générale de la province (Tiedman, par. 146). Mais aussi longtemps que cette corporation municipale n'exerce pas ce pouvoir, la loi générale s'applique à tous les habitants de cette municipalité. En France, au contraire, il faut un permis de l'autorité administrative pour établir certaines industries dans un endroit quelconque. Et si le permis est accordé, alors tous les voisins sont tenus de respecter la décision de l'autorité administrative. C'est cette différence dans la législation des deux pays qui a donné lieu à la confusion dont j'ai parlé. Ici, du moment qu'il n'y a pas de règlementation municipale, toute industrie peut s'établir dans un endroit quelconque, mais pourvu cependant que les lois générales du voisinage soient rigoureusement suivies et pourvu que cette manufacture ne transmette pas aux maisons voisines des odeurs fétides. (Aubry & Rau, 5ème éd. p. 304)

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Brodeur J.

Il n'y a pas lieu de faire la distinction dans le cas actuel entre les nuisances d'une nature privée et celles d'une nature publique. On refuse à un particulier le droit de poursuivre dans un cas où il tente d'exercer des droits appartenant au public concernant une propriété publique. Mais dans le cas où une nuisance affecte non seulement les droits privés d'une seule personne mais d'un grand nombre de citoyens, tous ces citoyens ont le droit de se pourvoir devant les tribunaux pour faire disparaître cette nuisance. Ce n'est pas le fait qu'un grand nombre de personnes souffrent qui exclut le droit de l'une d'entre elles de se pourvoir en justice. (Joyce, Law of Nuisances, sec. 14).

L'honorable juge-en-chef de la Cour du Banc du Roi est d'opinion que le jugement qui a été rendu prohibant l'usage de sulfate n'est pas susceptible d'exécution. Comme nous l'avons vu par les citations prises dans Fournel, l'ancien droit francais reconnaissait le droit aux tribunaux de faire mettre fin à des opérations qui étaient insalubres. Du moment que cette ordonnance peut être faite par un tribunal, alors si elle est violée elle donne lieu aux pénalités imposées par l'article 971 du code de procédure.

D'ailleurs les tribunaux dans les actions négatoires et possessoires émettent tous les jours des ordonnances ordonnant aux défendeurs de ne plus exercer telle servitude, de cesser de troubler un propriétaire dans la possession paisible de son héritage.

Pour ces raisons je considère que l'appel doit être renvoyé avec dépens.

Appeal dismissed with costs.

Solicitors for the appellant: *White & Buchanan.*

Solicitor for the respondent: *W. R. L. Shanks.*