

Shelfer v City of London Electrical

Lighting Co, [1895] 1 Ch 287

[*The defendant in this case, the City of London Electric Lighting Company, operated large engines and other heavy machinery that caused damage to the foundations of a pub (the Waterman's Arms) leased by the plaintiff, Shelfer, as well as a lot of noise and other "annoyances". There was no issue of existence of the nuisance—the only issue before the court was what type of remedy should be available to the plaintiff.*]

A. L. Smith LJ —

[1] I now come to the question whether, in a case like the present, to award damages in substitution for an injunction is, or is not, an altogether erroneous exercise of the jurisdiction given by the section. Mr. Justice Kekewich has found, and these findings are unappealed against, that the Defendants were, at the date of action brought, creating a continuing nuisance by means of vibration, noise, and steam which were produced by the working of their plant and machinery, whereby not only annoyance, in convenience, and personal discomfort were occasioned to the Plaintiff, his wife and daughter in the occupancy of their house, but the two latter had been, by the nuisance, made actually ill. There was also evidence that the Defendants, by the erection of their works, had let down the buildings of the Plaintiffs, which consequently cracked, and that the continuous vibration which subsequently arose from the user of their plant and machinery was constantly increasing and aggravating these cracks.

[2] It was proved that the Defendants were producing electricity by means of engines of from 4000 to 5000 horse-power, and that unless stopped by injunction they were about to increase their engine power to not less than at least 20,000 horse power.

[3] It appears to me, to use the words in the judgment of the Court in *Martin v. Price* (1), to which I was a party, that "the plaintiff's legal right, and its infringement already, and threatened further infringement, to a material extent," has been established, and that "the plaintiff is entitled to an injunction according to the ordinary principles upon which the Court is in the habit of acting in these cases."

[4] Then what is there in this case to take it out of the ordinary rule?

[5] There is no suggestion of any conduct on the Plaintiff's part depriving him of his prima facie right to an injunction.

[6] Then why is it that Mr. Justice Kekewich awarded damages in the place of an injunction?

[7] The learned Judge appears to have thought that, because the Defendants at the trial had consented to abate the nuisance caused by steam, though not that

caused by vibration and noise, damages were the proper remedy and adequate to compensate the Plaintiff. But I would point out that the learned Judge himself stated in his judgment that he was unable to allot to the different matters complained of the part each took in creating the undoubted nuisance proved to exist, and the reasons he gives for awarding damages are as follows: "Having regard to the occupation not having been as a matter of money interfered with, having regard also to this, that the inconvenience is felt very much more at one part of the house than the other, almost exclusively as regards a great part of the complaint in the upper floors, and having regard at any rate to the possibility of some inconvenience and probably some loss of accommodation, of making sleeping arrangements elsewhere, which I suppose is possible, having regard also to the large inconvenience to say no more of stopping a business such as carried on by the Defendants, I think this is a case in which damages are a very fair compensation."

[8] It is here that I cannot agree with the learned Judge. Because the Plaintiff does not suffer a money loss, and is only driven out of his upper floors, and has only to make arrangements for sleeping elsewhere, he, according to the Judge, is not entitled to stop the continuance of the nuisance, but damages are a very fair compensation.

[9] Many Judges have stated, and I emphatically agree with them, that a person committing a wrongful act (whether it be a public company for public purposes or a private individual) is not thereby entitled to ask the Court to sanction his doing so by purchasing his neighbour's rights, by assessing damages in that behalf, leaving his neighbour with the nuisance, or his lights dimmed, as the case may be.

[10] In such cases the well-known rule is not to accede to the application, but to grant the injunction sought, for the plaintiff's legal right has been invaded, and he is *prima facie* entitled to an injunction.

[11] There are, however, cases in which this rule may be relaxed, and in which damages may be awarded in substitution for an injunction as authorized by this section.

[12] In any instance in which a case for an injunction has been made out, if the plaintiff by his acts or laches has disentitled himself to an injunction the Court may award damages in its place. So again, whether the case be for a mandatory injunction or to restrain a continuing nuisance, the appropriate remedy may be damages in lieu of an injunction, assuming a case for an injunction to be made out.

[13] In my opinion, it may be stated as a good working rule that —

1. If the injury to the plaintiff's legal rights is small,
2. And is one which is capable of being estimated in money,

3. And is one which can be adequately compensated by a small money payment,
4. And the case is one in which it would be oppressive to the defendant to grant an injunction :—

then damages in substitution for an injunction may be given.

[14] There may also be cases in which, though the four above-mentioned requirements exist, the defendant by his conduct, as, for instance, hurrying up his buildings so as if possible to avoid an injunction, or otherwise acting with a reckless disregard to the plaintiff's rights, has disentitled himself from asking that damages may be assessed in substitution for an injunction.

[15] It is impossible to lay down any rule as to what, under the differing circumstances of each case, constitutes either a small injury, or one that can be estimated in money, or what is a small money payment, or an adequate compensation, or what would be oppressive to the defendant. This must be left to the good sense of the tribunal which deals with each case as it comes up for adjudication. For instance, an injury to the plaintiff's legal right to light to a window in a cottage represented by £15 might well be held to be not small but considerable; whereas a similar injury to a warehouse or other large building represented by ten times that amount might be held to be inconsiderable. Each case must be decided upon its own facts; but to escape the rule it must be brought within the exception. In the present case it appears to me that the injury to the Plaintiff is certainly not small, nor is it in my judgment capable of being estimated in money, or of being adequately compensated by a small money payment.

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