Lincoln Hunt Australia Pty Ltd v Willesee

Foundations of Private Law (Bond University)

Lincoln Hunt Australia Pty Ltd v Willesee

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Court:	Supreme Court of New South Wales
Judges:	Young J
Judgment Date:	1/1/1986
Jurisdiction:	Australia (New South Wales)
Citations:	(1986) 4 NSWLR 457
Legal Representatives:	E A Cohen, for the plaintiff; M B Turnbull (solicitor), for the defendants,
Classification:	» Equity > Equitable remedies > Injunctions > Injunctions for particular purposes > Other cases » Torts > Trespass > Trespass to land and rights of real property > What constitutes trespass and defences thereto > Defences > Justification > Leave and licence » Torts > Trespass > Trespass to land and rights of real property > Remedies > Injunction

Headnote

Equity Division

LINCOLNHUNT AUSTRALIA PTY LTD V WILLESEE AND OTHERS

12,
13 February 1986

Trespass — What constitutes — Defences — Licence — TV media — Commercial premises

Trespass — Remedies — Injunction — Principles applicable — TV media — Film taken whilst trespassing — No breach of confidentiality involved — Whether publication unconscionable — Damages adequate remedy

Injunctions — Restraint of publication of film — Film obtained by trespasser — No breach of confidentiality — Whether publication unconscionable — TV media — Damages sufficient remedy

Held: (1) Entry on to premises by the TV media with cameras rolling will constitute trespass where there is no licence express or implied to enter.

(2) Whether a licence to enter exists will depend upon an analysis of any invitation, expressed or implied, given by the occupier in each case. (460D)

Halliday v Nevill (1984) 155 CLR 1 at 7-8 and *Barker v The Queen* (1983) 153 CLR 338 at 349, *followed*.

(3) Accordingly entry on to commercial premises by TV media with cameras rolling other than for the purpose of bona fide seeking information or business with the occupier of the premises or as a client of the business constituted actionable trespass.

(4) The Court has power to grant an injunction to prevent publication of a videotape or photograph taken by a trespasser even though no breach of confidentiality is involved, but the Court will only intervene if the circumstances are such as to make publication unconscionable. (463G)

(5) To obtain such an injunction a plaintiff must show not only a strong prima facie case of trespass and that it is the sort of case where the Court may grant an injunction, but must also show that irreparable damage may be suffered if an injunction is not granted (as, for example, where damages are virtually impossible to quantify) and also that the balance of convenience favours the grant of an injunction. (464C)

(6) In the circumstances exemplary damages for trespass being available damages was an adequate remedy and an injunction should not be granted. (464F-465C)

CASES CITED

The following cases are cited in the judgment:

Albert (Prince) v Strange (1849) 2 De G & Sm 65264 ER 293

Ann-Margret v High Society Magazine Inc 498 F Supp 401 (1980)
Barker v The Queen (1983) 153 CLR 338
Bathurst City Council v Saban (1985) 2 NSWLR 704
Beaudesert Shire Council v Smith (1966) 120 CLR 145
Belluomo v Kake TV & Radio Inc 596 P 2d 832 (1979)
Byrne v Kinematograph Renters Society Ltd [1958] 1 WLR 762 ; [1958] 2 All ER 579
Carmyllie Pty Ltd v Mudgee Shire Council (Lusher J, 15 November 1984, unreported)
Commonwealth v Wiseman 249 NE 2d 610 (1969)
Dietemann v Time Inc 449 F 2d 245 (1971)
Edelsten v Australian Broadcasting Commission (Hunt J, 14 September 1984, unreported)
Edelsten v John Fairfax & Sons Ltd [1978] 1 NSWLR 685
Entick v Carrington (1765) 19 Howell State Tr 1029
Farrington v Thomson [1959] VR 286
Francome v Mirror Group Newspapers Ltd [1984] 1 WLR 892 ; [1984] 2 All ER 408
Galella v Onassis 28 ALR Fed 879 (1973)
Halliday v Nevill (1984) 155 CLR 1
Hickman v Maisey [1900] 1 QB 752
Le Mistral Inc v Columbia Broadcasting System 402 NYS 2d 815 (1978)
Lipman v Clendinnen (1932) 46 CLR 550
McCorquodale v Shell Oil Co Australia Ltd (1932) 33 SR (NSW) 151 ; (1932) 50 WN (NSW) 77
Merkur Island Shipping Corporation v Laughton [1983] 2 AC 570
Muhammad Ali v Playgirl Inc 447 F Supp 723 (1978)
Never-Stop Railway (Wembley) Ltd v British Empire Exhibition (1924) Inc [1926] Ch 877
New York Times Co v United States 403 US 713 (1971)
Pearson v Dodd 410 F 2d 701 (1969)
Quinn v Johnson 381 NYS 2d 875 (1976)
R v Pratt (1855) 4 El & Bl 860119 ER 319
Sid Ross Agency Pty Ltd v Actors and Announcers Equity Association of Australia (1970) 90 WN (Pt 1) (NSW) 743[1970] 2 NSWR 47
Sports and General Press Agency Ltd v "Our Dogs" Publishing Co Ltd [1916] 2 KB 880 ; [1917] 2 KB 125
Strang v Russell (1905) 24 NZLR 916
Swimsure (Laboratories) Pty Ltd v McDonald [1979] 2 NSWLR 796
Van Camp Chocolates Ltd v Aulsebrooks Ltd [1984] 1 NZLR 354
Victoria Park Racing and Recreation Grounds Co Ltd v Taylor (1937) 58 CLR 479
Wood v Tirrell (1577) Cary 5921 ER 32
No additional cases were cited in argument.

SUMMONS

This was a summons for an injunction to restrain the televising of a videotape allegedly obtained in the course of a trespass on the plaintiff's place of business.

E A Cohen, for the plaintiff
M B Turnbull (solicitor), for the defendants,

Judgment

Cur adv vult

13 February 1986

YOUNG J.

At the end of the hearing yesterday I said that I was of the view that by entering the premises of the plaintiff with TV cameras the defendants, prima facie, committed a trespass, but that I was also of the view that damages were an adequate remedy and accordingly declined to grant an injunction and stood the matter over until this morning to give my reasons.

In many ways this is a most important piece of litigation to citizens at large and thus in many respects it is a pity that it is being dealt with very summarily on an application for interlocutory injunction, which had to be concluded within a limited time.

The factual material is relatively brief. For some time the plaintiff has been carrying on an investment scheme which would appear has attracted some dissatisfied customers. One of these customers had been in contact with the plaintiff and arrangements had

been made for her to pick up a cheque at about 2.15 pm on the afternoon of 11 February. At 3 pm this lady called, together with other persons, some of whom were holding television equipment and one, a female, appeared to be a reporter. According to the evidence, which is not contradicted, the reporter continually harassed the persons who were on the premises and the cameramen not only took video tape of the lobby of the plaintiff's office, but also opened interior doors. The plaintiff says that it fears that if this video tape is shown on television it will be severely prejudiced in the goodwill of its business. The plaintiff has asked the defendants not to show the tape. The defendants have refused to undertake not to show it, hence this application for injunction.

The evidence is a bit sketchy because I have not been shown either the raw or edited video tape, so I am not in a position to be able to say anything more about its content than what is in the affidavit material, which I have summarised above. It may be that some of the material which was filmed by persons moving into the offices leading onto the lobby may not be shown. All I think I can do is to assume that the bulk of the material was taped in the lobby, but there may be some which was taken inside offices as well.

The plaintiff seeks to restrain the publication of the tape on four bases. One, that the tape was taken whilst the defendant was trespassing. Two, that it was taken while the defendants were conducting themselves unlawfully on the plaintiff's premises. Three, that it was defamatory and four, that to screen it would constitute an element in the tort of injurious falsehood.

I do not need to spend much time on the third and fourth heads of claim as the evidence without the video tape, in my view, is just not there to support a finding of a strongly arguable case under either head. It may be that when all the evidence is in it may be possible to have a judge leave to the jury a question as to whether there was a defamation, but it does not seem to me that this case gets anywhere near the exceptional circumstances that must exist before this Court will exercise its power to grant an injunction to restrain the defamation: see eg *Edelsten v John Fairfax & Sons Ltd* [1978] 1 NSWLR 685 at 690 and *Swimsure (Laboratories) Pty Ltd v McDonald* [1979] 2 NSWLR 796 at 802.

The defendant says that I should read what Hunt J said in the *Swimsure* and again in *Edelsten v Australian Broadcasting Commission* (Hunt J 14 September 1984, unreported) that the plaintiff cannot get around the special rules of defamation cases by framing his case in some other way as precluding any plaintiff from obtaining an injunction according to the ordinary rules where the defendant's alleged conduct and the plaintiff's alleged claim include defamatory matters. I disagree. I do not so read those passages as meaning anything more than a special rule for defamation cases cannot be circumvented by casting what is really a defamation action in some other form. The results of the two cases before Hunt J, I think, bear this out. In the present case it cannot be said that the cause of action in trespass or in the innominate action on the case are mere substitutes for a defamation action because the plaintiff could well succeed in trespass and yet fail in defamation and still be entitled to substantial damages.

I thus turn to the trespass case. It is a case of trespass because even though the defendants have acted by agents the evidence at this stage shows that the defendants commanded their agents to act in the way they did so that the matter is one of trespass and not just an action on the case: see *McCorquodale v Shell Oil Co of Australia Ltd* (1932) 33 SR (NSW) 15150 WN 77.

Trespass to land is committed whenever a person without excuse and without consent or invitation of a land holder enters that holder's property. In the instant case entry is not denied, at least at this stage, but it is said that such entry was by licence. The licence is said to have arisen because the plaintiff is a person carrying on a business in the city seeking customers, who is quite content for any member of the public to call on it during business hours to discuss business. It is said that the plaintiff would have welcomed the defendant's reporter or cameramen had they come in and asked to speak to one of its representatives about investment and it is asked why are things any different if those persons come with TV camera and lights and a vocally dissatisfied customer.

The answer to this is found in recent decisions of the High Court of Australia as well as other cases of respectable pedigree. The High Court reviewed the authorities in *Halliday v Nevill* (1984) 155 CLR 1 at 7-8 and indicated that in this law of licence the law must not be seen to be an ass so as to make people first go to a householder to ask for permission to enter his or her land to retrieve a hat which had blown over a fence from a public street. Thus a commonsense attitude to entry on to private premises without explicit permission was adopted by the Court. However, it must also be remembered that the previous year in *Barker v The Queen* (1983) 153 CLR 338 at 344 the High Court made it quite clear, if it were not clear before that, that one must analyse the invitation, expressed or implied, given by the occupier in each case. It may be that circumstances show that there is an implied general invitation, in which case anybody may enter. An illustration is *Byrne v Kinematograph Renters Society Ltd* [1958] 1 WLR 762 ; [1958] 2 All ER 579, and if it is, then the motives of the defendants in entering are irrelevant. However, most implied invitations will be held to be for limited purposes and in such cases an entry unrelated to those purposes will be a trespass right from the moment of entry: see eg *Strang v Russell* (1905) 24 NZLR 916; *Farrington v Thomson* [1959] VR 286 at 297 and see also the old poaching cases, such as *R v Pratt* (1855) 4 El & Bl 860 at 864119 ER 319 at 321; see also *Lipman v Clendinnen* (1932) 46 CLR 550 at 557.

The evidence before me suggests that the implied invitation by the plaintiff for the public to visit its premises was limited to

members of the public bona fide seeking information or business with it or to clients of the firm, but not to people, for instance, who wished to enter to hold up the premises and rob them or even to people whose motives were to go onto the premises with video cameras and associated equipment or a reporter to harass the inhabitants by asking questions which would be televised throughout the State.

It is important to decide whether the defendants' agents trespassed from the moment of entry or only from a reasonable time after being asked to leave. This is because, for reasons which I will go into shortly, there would be no rights to have an injunction granted to restrain publication of a film taken when the maker was not a trespasser. The mere fact that a licence was revoked later would not operate respectively: see *Never-Stop Railway (Wembley) Ltd v British Empire Exhibition (1924) Inc* [1926] Ch 877.

There was a faint attempt to justify the entry in the public interest in highlighting a matter of public importance. Accepting for present purposes that the matter which the defendants were seeking to televise was one of great public interest, this would not, in my view, justify their entry. The reference in Hunt J's decision previously noted as to the great importance of freedom of the press and freedom of speech must not be read too widely. In none of those cases was there a rude intrusion onto private property and harassment of citizens quietly going about their own business on their own property. As long ago as *Entick v Carrington* (1765) 19 Howell State Tr 1029 at 1066, Lord Camden CJ said:

> "The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole …. By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action, though the damage be nothing; which is proved by every declaration in trespass, where the defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact, he is bound to shew by way of justification, that some positive law has empowered or excused him."

The same result is reached in the only two United States cases that I have seen which involve similar facts to this case, namely, *Le Mistral Inc v Columbia Broadcasting System* 402 NYS 2d 815 (1978) and *Belluomo v Kake TV & Radio Inc* 596 P 2d 832 (1979). In each case a TV station sent a team unannounced to a restaurant to highlight a story of unhealthy restaurant premises. The team entered the premises with their lights on and their cameras running. In each case it was held that a trespass was committed and in the former case exemplary damages were awarded. Indeed, this legal position has been constantly recognised in more or less the same terms by two books on media law: see, for instance, *Burrows News Media Law in New Zealand* (1974) (at 340 and 341).

Indeed, Mr Turnbull for the defendants even reminded me of the decision in *Dietemann v Time Inc* 449 F 2d 245 (1971) in which, of course, the court said (at 249) that even the US constitutional guarantee of freedom of speech did not accord news gatherers immunity from torts or as it was put in *Galella v Onassis* 28 ALR Fed 879 (1973) at 889: The first amendment is not a licence to trespass.

The defendant then says that even if it is a trespass to enter private property, for which damages may be awarded, the court has no power or alternatively it is inappropriate for the court to grant an injunction to prevent publication of photographs taken while the photographer was trespassing.

This submission goes into very deep waters. First, it is clear that one does not commit a tort merely by looking. The *Entick* referred to above provided the dictum from Lord Camden (at 1066): … the eye cannot by the laws of England be guilty of a trespass.

Just as it is not a trespass just to look, so it is not a trespass to sketch what one sees: *Hickman v Maisey* [1900] 1 QB 752 at 756, or to broadcast what one sees: *Victoria Park Racing and Recreation Grounds Co Ltd v Taylor* (1937) 58 CLR 479 or to photograph it: *Sports and General Press Agency Ltd v "Our Dogs" Publishing Co Ltd* [1916] 2 KB 880 ; [1917] 2 KB 125. I reviewed all these cases recently in *Bathurst City Council v Saban* (1985) 2 NSWLR 704, and dealt with the exceptions to the general rules and it is not necessary to do that work again. However, none of the cases reviewed in the *Saban* involved a trespass, nor do any of the reported cases in England or Australia.

If a trespass to land is threatened it can be enjoined if it appears that the defendant is likely to carry out his threat and that the plaintiff will suffer irreparable damage if he does. If a defendant has once trespassed and appears likely to repeat his trespass then an injunction can be granted either at common law or in equity. Neither of these situations occurred in the instant case. The defendants make no threat to trespass again, they merely wish to make use of the tape they have already obtained.

The defendants acknowledge that if what was filmed could be classed as confidential then an injunction could go. I think they even conceded that confidentiality in this context exists under what Knight Bruce VC said in *Prince Albert v Strange* (1849) 2 De G & Sm 652 at 69764 ER 293 at 312:

> "… A man may employ himself in private in a manner very harmless, but which, disclosed to society, may destroy the comfort of his life, or even his success in it. Everyone, however, has a right, I apprehend, to say that the produce of his private hours is not more liable to publication without his consent, because the publication must be creditable or advantageous to him, then it would be in opposite circumstances."

The defendants say that whatever occurred here occurred in the open lobby of the plaintiff's office and involved no confidentiality whatsoever. As I have already said, the evidence makes me doubt that this is wholly true, but probably it is substantially true. It seems to me that whilst there does not appear to be any modern cases on the point in England or Australia the defendants' submission is contrary to principle and to the American authorities.

The court can clearly grant an injunction to restrain further trespasses and if a breach of contract has occurred it can, in appropriate cases, trace the money paid and in the case of unconscionable commercial dealings even impose a resulting trust in cases outside the contract. Further, it has wide powers to restrain material obtained in breach of confidence. It has wide powers to stop damage to children who are wards of courts and indeed, if one considers the matter, the court has power to restrain almost all sorts of unconscionable conduct, except in this very narrow class of case, according to the defendants' submission that someone has obtained the fruits of his tort without holding money or property of the plaintiff and without a breach of confidentiality. In that case it is said the court is powerless.

From early times, however, the jurisdiction of this Court has not been compartmentalised, but has been a general one based on the need to restrain unconscionable conduct. This jurisdiction has been exercised in many different forms over the centuries. Whilst predominantly this Court has been involved in dealings with breaches of trust and stopping people taking advantage of the poor, the emotionally distressed or uneducated, it has even from 1577 involved itself in commercial disputes and if it has seen conduct which is unconscionable, even in a commercial dispute, it has in appropriate cases granted a remedy. One of the first examples in the reports is *Wood v Tirrell* (1577) Cary 5921 ER 32. Four centuries later an American Federal Court*Wood v Tirrell* (1577) Cary 5921 ER 32. Four centuries later an American Federal Court restrained a magazine, which appeared tortiously to have got hold of some semi-nude photographs of an actress, which had been distributed in breach of contract between the film maker and the actress, from publishing such photographs: *Ann-Margret v High Society Magazine Inc* 498 F Supp 401 (1980) and see also *Muhammad Ali v Playgirl Inc* 447 F Supp 723 (1978).

It is sometimes said, see eg Meagher Gummow and Lehane, *Equity Doctrines and Remedies* 2nd ed (1984) at 68-69, that equity's power to act as a court of conscience is now spent. That statement is correct in so far as it is clearly recognised that many situations which previously were dealt with according to the rule of the Chancellor's Foot are now dealt with by settled principles as a result of the work of Lord Eldon and others. However, it does not mean that when unconscionable situations exist in modern society which do not have an exact counterpart in history, that this Court just shrugs its shoulders and says that as no historical example can be pointed to as a precedent the court does not interfere. This Court still continues both in private and commercial disputes to function as a court of conscience. What is unconscionable will depend to a great degree on the court's view as to what is acceptable to the community as decent and fair at the time and in the place where the decision is made. Just as views will differ as to the degree of unfairness in tricking an elderly person out of his property that will be unconscionable, so too opinions may differ as to where the line of unconscionability is to be drawn, but that does not remove from this Court its responsibility to make a decision as to whether conduct is unconscionable in new commercial situations. *Equity Doctrines and Remedies* (1984) at 68-69, that equity's power to act as a *Equity Doctrines and Remedies* 2nd ed (1984) at 68-69, that equity's power to act as a court of conscience is now spent. That statement is correct in so far as it is clearly recognised that many situations which previously were dealt with according to the rule of the Chancellor's Foot are now dealt with by settled principles as a result of the work of Lord Eldon and others. However, it does not mean that when unconscionable situations exist in modern society which do not have an exact counterpart in history, that this Court just shrugs its shoulders and says that as no historical example can be pointed to as a precedent the court does not interfere. This Court still continues both in private and commercial disputes to function as a court of conscience. What is unconscionable will depend to a great degree on the court's view as to what is acceptable to the community as decent and fair at the time and in the place where the decision is made. Just as views will differ as to the degree of unfairness in tricking an elderly person out of his property that will be unconscionable, so too opinions may differ as to where the line of unconscionability is to be drawn, but that does not remove from this Court its responsibility to make a decision as to whether conduct is unconscionable in new commercial situations.

I am quite sure that the *Ann-Margret* would be decided the same way in New South Wales as it was in the USA, but although we have adopted American business habits to a great degree I am also sure that the average member of the community of this State still very greatly values his living in a society where if a person wants to go onto his property it is only with his invitation and I would think that this Court would have no difficulty in the appropriate case in granting an injunction to prevent a person publishing a copy of a photograph, the original of which was stolen from the plaintiff's office and then returned to the plaintiff, notwithstanding that a contrary result was reached in the USA in *Pearson v Dodd* 410 F 2d 701 (1969). This points up that one must be very careful when looking at the decisions of American courts in this area, especially in view of the fact that many of the substantive rules differ, but on the other hand there is much common ground between the law in this State and the law in America and it is useful to look

at American decisions because very often courts in that country have had to look at problems ten to fifteen years ago that are now just happening in this State.

Thus I am of the view that the Court has power to grant an injunction in the appropriate case to prevent publication of a videotape or photograph taken by a trespasser even though no confidentiality is involved. However, the Court will only intervene if the circumstances are such to make publication unconscionable. Some American cases highlight where the dividing line lies. In the *Pentagon Papers*, *New York Times Co v United States* 403 US 713 (1971), the United States Supreme Court declined to restrain the New York Times and Washington Post from publishing classified material which was obtained as a result of trespass. The Court clearly acknowledged that there was power to grant an injunction, but considered that the United States Government, as plaintiff, had not met the heavy burden of showing that in the light of the circumstances by which the information was obtained that such a restraint on the freedom of publication was warranted. On a lesser level a New York court held that a TV film of conditions in a children's home taken whilst trespassing should not be restrained: *Quinn v Johnson* (1976) 381 NYS 2d 875 (1976). However, a different result was obtained where photographs were taken of a home for mentally ill people in *Commonwealth v Wiseman* 249 NE 2d 610 (1969).

In the instant case, on a prima facie basis I would have thought that there is a lot to be said in the Australian community where a film is taken by a trespasser, made in circumstances as the present, upon private premises in respect of which there is some evidence that publication of the film would affect goodwill, that the case is one where an injunction should seriously be considered. However, there is a long way to go from that point to the point where the court actually grants an injunction. The court will only grant an injunction if it can be seen that irreparable damage will be suffered by the plaintiff if such an injunction is not given. Such may occur where the damages are virtually impossible of quantification. It is not only that the plaintiff merely shows that there is a strong prima facie case that the trespass is committed and that it is the sort of case where the court may grant an injunction, it must also show that irreparable damage is likely to be suffered if an injunction is not granted and that the balance of convenience favours the grant of an injunction.

Were the trespass proved at the final hearing it would be open for the court to award exemplary damages (see eg *Carmyllie Pty Ltd v Mudgee Shire Council* (Lusher J, 15 November 1984, unreported)); such damages could conceivably be of immense proportions. It is interesting, but, of course, legally irrelevant, to note that in the *Le Mistral* a New York jury gave a quarter of a million dollars for just such a trespass. The availability of exemplary damages takes away any problems there may be for the plaintiff in quantifying damages because even after the telecast it may be that the plaintiff's goodwill may not have been affected at all or it can demonstrate a fall-off of business. In either case the jury may award, if it considers it appropriate to do so, large exemplary damages. There is no dispute that the defendants are able to meet such demands, if awarded, and in such circumstances it seems to me hard to show that irreparable damage would be suffered by the plaintiff if an injunction were not granted.

It is not necessary to look at the cause of action involving the innominate action on the case (see *Beaudesert Shire Council v Smith* (1966) 120 CLR 145; *Sid Ross Agency Pty Ltd v Actors and Announcers Equity Association* (1970) 90 WN (Pt 1) (NSW) 743[1970] 2 NSWR 47; *Merkur Island Shipping Corporation v Laughton* [1983] 2 AC 570 ; ; *Van Camp Chocolates Ltd v Aulsebrooks Ltd* [1984] 1 NZLR 354) because the plaintiff's position if this cause of action were established could not be any stronger than the plaintiff's position in trespass.

It is also unnecessary, in view of the opinion that I have formed as to damages, to go into the question of the balance of convenience or, as it was more aptly put by the English Court of Appeal in *Francome v Mirror Group Newspapers Ltd* [1984] 1 WLR 892 at 898[1984] 2 All ER 408 at 413, the balance of justice. Thus I do not have to decide between the public interest in having full dissemination of news of matters of general importance, on the one hand, and the Court's duty to prevent persons in positions of power riding roughshod over the personal and proprietary rights of other citizens, on the other hand and nor do I have to weigh the prejudice suffered by the defendants if the story, on which is doubtless invested considerable sums of money, might go stale as against the possible prejudice to the plaintiff's business if it were telecast. All these questions would have required very serious consideration of public policy and balance of justice issues.

Accordingly I am of the view that I announced yesterday, namely, that while the plaintiff has demonstrated a prima facie case that a trespass was committed and that the video tape was taken in the course of the trespass damages are an adequate remedy and accordingly I decline to give an interlocutory injunction. Although I will hear solicitors for the parties on costs, it seems to me prima facie that the ordinary rule in these sort of applications should apply, that is, that the costs of both parties on the application should be costs in the cause and I should give directions in due course that the matter stand over to the Registrar's list so that it can be considered whether this action will proceed to final hearing in this Division or be transferred to the Common Law Division; whether the pleadings should be ordered or whether it should be dealt with by affidavit before a master of this Division. The orders are that no interlocutory injunction is granted. The costs of both parties are their costs in the cause. The proceedings are stood over generally with liberty to restore to the Registrar's list on five days notice.

Orders accordingly

Reported by G J MCCARRY, Barrister.