this part of the evidence is only relevant to the question of damages in so far as it gives some indication of what the value of the premises was in terms of a monthly rental. We have come to the conclusion, having regard to the accommodation which the respondent leased when the premises were totally demolished, that the monthly rental of the premises should be estimated at £13. 10*s.* a month. The respondent was about 80 years of age when she had to leave the premises on the 1st November, 1950; and allowing an expectation of life of five years, we reach the conclusion that the damages awarded in this case should be £810.

The judgment of the trial Court must therefore be varied by substituting this sum for the amount of damages awarded by that Court.

[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]

(February 10, 1953)

CHRISTODOULOS RODOSTHENOUS OF ARMINOU,

Appellant,

v.

HARALAMBOS J. POLEMITES OF LIMASSOL,

AND

ELPINIKI CH. POLEMITES OF LIMASSOL,

Respondents.

(*Civil Appeal No.* 3921.)

Obstruction of ancient light in party wall—Test of what constitutes nuisance—When injunction rather than damages granted.

In 1928 the predecessor in title of plaintiff-respondent erected a two-storey building putting windows in party wall. The predecessor-in-title of the defendant-appellant was co-owner of the party wall. In 1948 the appellant erected a building within "a matter of inches" from the respondents' windows on the party wall.

Held: (1) There appears to be no legal principle or authority to prevent a co-owner of a party wall from acquiring an easement of light through the wall.

(2) The interference with the respondents' right to light amounted to a nuisance and was therefore actionable; test laid down *Colls* v. *Home and Colonial Stores Ltd.* (23 L.J. Ch. D. 484) and *Sheffield Masonic Hall Co.* v. *Sheffield Corporation* (101 L.J. Ch. D. 328) applied.

(3) The appellant had acted in a high handed manner and an injunction rather than damages was the proper remedy. An injunction is a discretionary remedy and a Court of Appeal will not interfere unless the trial Court acted unreasonably or upon a wrong principle.

Appeal dismissed.

Appeal by defendant from the judgment of the District Court of Limassol (Action No. 564/48).

Sir Panayiotis Cacoyiannis for the appellant.

M. Houry with *Z. Rossides* for the respondents.

The facts of the case appear in the judgment of the Court which was delivered by:

HALLINAN, C.J.: This appeal concerns certain premises at the junction of Eleftheria Street and Cleopatra Street in Limassol. The plaintiff-respondents brought an action claiming, *inter alia*, a mandatory injunction ordering the defendant-appellant to demolish a building which had blocked four ancient lights of the respondents. The trial Court granted the mandatory injunction as claimed.

The respondents' premises in the year 1928 were owned by people called Chrysostomides and the appellant's premises were owned by Evanthia Galanides. In that year Chrysostomides demolished the building which then existed and erected the present building which has two storeys. For this purpose they appeared to have used a common wall between Evanthia's premises and their own. In 1932 the Chrysostomides' premises were sold, and between 1932 and 1936 the respondents' premises were owned by the husband of Evanthia. In 1931 Evanthia built several shops in the space of her old house and yard and used the party wall on the north side of the respondents' premises to support the one-storey buildings which she erected. The appellant is Evanthia's successor in title to the premises he now occupies. The respondents purchased the premises, which they now occupy, in 1936.

In 1948 the appellant began to build a second storey on to his premises which adjoined the respondents' premises on the north side, and on the 17th August in that year the respondents warned the appellant that this building would close the ancient lights of the respondents, and that if the building were not stopped legal proceedings would be taken.

The respondents commenced this action on the 23rd August, 1948, but were out of time in delivering the statement of claim. On the 14th September they applied for

leave to extend the time in which to file the statement of claim. In the first respondent's affidavit in support of the motion he said: "The building of the second storey by the defendant will be finished in about three months' time and it will then show if and to what extent there will be any interference in the light which the plaintiff claims to be entitled to and the diminution and suppression which the plaintiff now claims to be threatened." The appellant went ahead and finished the buildings, whereupon on the 14th September, 1948, the respondents delivered their statement of claim.

The respondents' premises affected by the appellant's building consist of a series of rooms facing north which, from west to east, are as follows: W.C., bathroom, kitchen, larder, and two bedrooms. Access to these rooms is from a corridor which runs along the south side. Each bedroom has a window with shutters on the north side and the other rooms had smaller openings also on the north side. Appellant has carried his building up right against these ancient lights which have existed since 1928; so close was his wall that he had to remove the shutters from the respondents' bedroom windows.

It has been argued for the appellant that the trial Court erred in two findings of fact: First, it is alleged that the weight of the evidence supported the appellant's contention that there had been a contract or agreement between the appellant and respondents' predecessors in title in 1928, when the respondents' predecessors had converted their premises into a two-storied building. The alleged agreement was that Evanthia, the appellant's predecessor in title, should be allowed to add a second storey to her buildings whenever she desired, and thereby to block the windows and verandah of the respondents' premises. It is sufficient to say that after considering the evidence we see no reason to disturb the findings of the trial Court when it held that the existence of this contract or agreement had not been proved. Secondly, it was submitted that the respondents had led no evidence to show that these ancient lights had been enjoyed by them or their predecessors during the prescriptive period. When seeking to establish the enjoyment of ancient light it is, we consider, sufficient for the plaintiff to show that he or his predecessors in title occupied and used the premises during the prescriptive period; it is not necessary for them to lead evidence that during the material time each room of the house was occupied.

Some of the points of law argued by counsel for the appellant can be disposed of briefly: First, there is the fact that between the years 1932 and 1936 the dominant tenement

was owned by the husband of the lady who owned the servient tenement. Undoubtedly, if during the prescriptive period the dominant and the servient tenement are in the possession and enjoyment of one person, the prescriptive right is interrupted. However, the circumstances that existed between 1932 and 1936 are not, in our view, sufficient evidence to hold that the possession and enjoyment of both premises between 1932 and 1936 were in the same person.

It was further argued that the wall on the north side of the respondents' premises was a party wall, and that the appellant was entitled to build against it. There is, we think, considerable evidence that this was a party wall; but there appears to be no legal principle or authority to prevent a co-owner of a party wall from acquiring an easement of light through the upper part of this party wall for more than the prescriptive period.

The principal arguments on this appeal concern, first, whether the interference with the respondents' right to light amounted to a nuisance and was therefore actionable; secondly, assuming this to be so, whether the relief granted by the Court should be an injunction or an award of damages.

The question of what interference with ancient lights is actionable has been discussed in a very long line of decisions. The leading case is *Colls* v. *The Home and Colonial Stores Ltd.* (73 Law Journal, Chancery Division, 484). The decisions are summarized in 11 Halsbury, 2nd Edition, 339, as follows:—

> "The test whether the interference complained of amounts to a nuisance is not whether the diminution is enough materially to lessen the amount of light previously enjoyed, nor is it entirely a question of how much light is left, without regard to what there was before, but whether the diminution (that is the difference between the light before and the light after the obstruction) is such as really makes the building to a sensible degree less fit than it was before for the purposes of business or occupation according to the ordinary requirements of mankind."

It was argued by counsel for the appellant that the respondents might obtain sufficient light from the doors on the south side of the rooms or by making fanlights over these doors. In the case of the *Sheffield Masonic Hall Company* v. *The Sheffield Corporation*, (101, Law Journal, Chancery Division, 328) it was held that: "Where a building has ancient lights on two sides, an adjoining

owner is not entitled to build so as to interfere with such light on the one side, on the plea that there is sufficient light coming from the other side." In our view the building erected by the appellant constitutes a very serious infringement of the respondents' rights.

The question of whether the remedy for an infringement of a right to light should be damages or an injunction was also discussed in the *Colls* case. Lord Macnaghten at page 492 stated: "In some cases, of course, an injunction is necessary—if, for instance, the injury cannot fairly be compensated by money; if the defendant has acted in a high-handed manner; if he has endeavoured to steal a march upon the plaintiff or to evade the jurisdiction of the Court. In all these cases an injunction is necessary, in order to do justice to the plaintiff and as a warning to others. But if there is really a question as to whether the obstruction is legal or not, and if the defendant has acted fairly and not in an unneighbourly spirit, I am disposed to think the Court ought to incline to damages rather than to injunction. It is quite true that a man ought not to be compelled to part with his property against his will, or to have the value of his property diminished, without an Act of Parliament. On the other hand, the Court ought to be very careful not to allow an action for the protection of ancient lights to be used as a means of extorting money."

We do not think that the appellant tried to steal a march upon the respondents or to evade the jurisdiction of the Court as in the case of *Daniel* v. *Fergusson* (1891), 2, C.D. 27, but it is difficult to reach any other conclusion on the facts but that the appellant in erecting a building within a matter of inches from the respondents'. ancient lights acted in a high-handed manner.

Counsel have referred us to several cases in which an injunction was refused and damages awarded. In the case of *Isenberg* v. *East India House Estate Co. Ltd.* (3, Law Journal, Equity, 392) the facts were very different. There the dominant and servient tenements were situated in Lime Street, in London, and were separated by 27½ feet; and in the other case where an injunction was refused, *Price* v. *Hilditch*, (99 Law Journal, 299) Maugham J. found that the only right to light that had been infringed was in respect of a scullery and he stated at page 304: "I have come to the conclusion that I ought to bear in mind the convenience of the parties, the probability that the scullery, so far as one can say, will continue to be used as a scullery, and the fact that it can, without great inconvenience, be used for that purpose by a moderate increase in the use of electric light."

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But in the present case two of the rooms are bedrooms, and if the interference of the appellant's building is allowed to continue it is difficult to see how the award of damages could compensate the respondents for such a gross interference with their enjoyment of these rooms. An injunction is a discretionary remedy, and we do not consider that a Court of Appeal should interfere with the exercise of that discretion unless the trial Court acted unreasonably or upon a wrong principle. We cannot say that in the present case the discretion was wrongly exercised.

In our opinion the findings of the trial Court, both on the law and on the facts, were correct and *this appeal should be dismissed with costs.*

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CYPRUS MINERAL SPRINGS LTD.
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DEMETRIOS KOUVAS.

[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]

(February 10, 1953)

CYPRUS MINERAL SPRINGS LTD., *Appellants,*

v.

DEMETRIOS KOUVAS OF LIMASSOL, *Respondent.*

(*Civil Appeal No.* 3944.)

Limitation of Actions Law (Cap. 21) sec. 3 (1) (f)—Action by company for unpaid balance on shares—Meaning of phrases "goods sold and delivered" and "book debts".

In 1947 the defendant-respondent at his request was allotted 50 shares in the plaintiff-appellant company. The defendant paid in part and the plaintiff informed the defendant that "the balance of £200 is debited in your temporary account." In 1950 the plaintiff sued for the balance. The defendant pleaded as a defence section 3 (1) (*f*) of the Limitation of Actions Law (Cap. 21) which prescribes a period of limitation of 2 years (*inter alia*) for actions in respect of goods sold and delivered or of a book debt; the trial Court accepted this defence and dismissed the action.

Held: The allotment of shares is a chose in action and is not "goods sold and delivered" and the debt owed by the defendant was not a "book debt" within the meaning of these expressions in section 3 (1) (*f*) of Cap. 21. The appellant's action was, therefore, not statute barred.

Appeal allowed.

Appeal by plaintiffs from the judgment of the District Court of Limassol (Action No. 833/50).