CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL FROM THE ASSIZE COURTS AND DISTRICT COURTS.

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

(February 23, April 6, 1950)

1950
April 6

VINE INDUSTRIES LTD., *Appellants*,

v.

SPYROS G. PAVLIDES AND ANOTHER, *Respondents.*

(*Civil Appeal No.* 3864.)

VINE INDUSTRIES LTD. *v.* SPYROS G. PAVLIDES AND ANOTHER.

Nuisance—Public Nuisance may be private Nuisance—Pecuniary damage —Civil Wrongs Law, 1932, *sections* 40, 41 *and* 57.

Appeal from judgment of the District Court of Limassol awarding damages for nuisance caused to the respondents by the action of the appellants in ejecting into the sea, opposite their factory, refuse produced by their manufacturing processes which caused a highly objectionable smell. It was argued for the appellants that this could not create at the same time a public nuisance under section 40 of the Civil Wrongs Law, 1932, and a private nuisance, under section 41 of the same law. That there being provision in the Cyprus law regarding nuisance, English law (which permits a public nuisance to be at the same time a private nuisance) could not be invoked ; and the definitions of public and private nuisance contained in sections 40 and 41 above-mentioned were by their wording mutually exclusive. Consequently the respondents could only succeed in an action for public nuisance without proof of pecuniary damage. That the respondents have not proved pecuniary damage nor given particulars thereof with their statements of claim as required by section 57 of the Civil Wrongs Law.

Held: that sections 40 and 41 of the Civil Wrongs Law, 1932, were not mutually exclusive, and that therefore the respondents were not required to prove pecuniary damage under section 57 of the said law.

M. Houry for the appellants.

J. Eliades for the respondents.

The facts sufficiently appear from the judgment of the Court which was delivered by the Chief Justice.

JACKSON, C.J.: The first question raised by the appellants is a question of fact. The District Court found that a nuisance, consisting of a highly objectionable smell, had been caused by the action of the appellants in ejecting into

the sea, opposite to their factory, refuse produced by their manufacturing processes. There was much evidence upon which the District Court was entitled to come to that conclusion and we informed the advocate for the appellants, at an early stage of the hearing of this appeal, that it would be very difficult for us to reject the finding of fact which the District Court had reached upon that evidence. Thereupon Mr. Houry stated, very fairly, that he did not propose to press that ground of appeal and would confine himself to the others stated in his notice.

Shortly expressed, the remaining grounds of appeal are that the nuisance was a public nuisance and not a private nuisance and that the respondents had no right of action unless they showed that they had suffered pecuniary damage. That argument rested on section 40 of the Civil Wrongs Law of 1932, and on the definition of pecuniary damage in section 2 of that Law. A further argument was based upon section 57 of the same Law which provides that if a plaintiff has suffered pecuniary damage no compensation in respect thereof shall be awarded unless the plaintiff shall have given particulars of such damage in, or together with, his Statement of Claim. Mr. Houry maintained that the District Court had expressly found that the first respondent, Dr. Spyros Pavlides, had neither suffered nor proved any pecuniary damage and that the Court was wrong in finding that, if the nuisance was in fact a public nuisance and not a private nuisance, the second respondent Mr. Takis A. Michaelides, the owner of the Palace Hotel, had either proved pecuniary damage or had given particulars of it in, or with, his Statement of Claim in the manner required by section 57 of the Law quoted. On these grounds Mr. Houry argued that the claim of both the respondents should have been dismissed by the trial Court.

The first question which arises from those arguments is whether the nuisance, which undoubtedly existed, was a public nuisance under section 40 of the Civil Wrongs Law, or, in so far as the two respondents were concerned, a private nuisance under section 41 of the same Law. In the latter case compensation may be awarded to a plaintiff who has suffered damage by reason of the nuisance and the requirements of sections 40 and 57 of the Civil Wrongs Law relating to the pleading and proof of pecuniary damage do not apply. The difference between "damage" and "pecuniary damage" appears from the definitions in section 2 of the Law.

The District Court based their judgment primarily upon the view that, in so far as the two plaintiff-respondents were concerned, the nuisance was a private nuisance. In support of that view they quoted a passage from the judgment of Lord Romer in the case of *Sedleigh-Denfield*

v. St. Joseph's Missions (All Eng. Rep. 1940, Vol. 3 at page 371). The passage quoted was as follows :—

> "It is well settled that a private individual, who suffers damage from a public nuisance greater than that sustained by the public in general, is entitled to sue in respect of that damage. So far as he is concerned, the nuisance is a private nuisance, and his rights and remedies in respect of both kinds of nuisance are to be ascertained on precisely the same footing."

In relation to that passage, Mr. Houry argued that whatever may be the position in English law, the position under the law of Cyprus is determined by sections 40 and 41 of the Civil Wrongs Law, which define public nuisance and private nuisance, and that these definitions are mutually exclusive.

There was evidence to show that the nuisance arising from the act of the appellants, and consisting of an objectionable smell, affected a large number of the inhabitants of Limassol and of the public who frequented the sea-front. There had been many complaints to the Municipal Health Officer about it, and criminal proceedings were taken by the police. The smell was objectionable over an area extending along the front for a distance of at least 400 yards. Consequently, said Mr. Houry, the nuisance was clearly a public nuisance and cannot therefore be a private nuisance as well.

In order to examine that particular argument it is necessary to look at the definitions of public nuisance and private nuisance contained in sections 40 and 41 of the Civil Wrongs Law. Rights arising in respect of one differ in some respects from rights arising in respect of the other.

The definition of public nuisance in section 40 is as follows :—

> "A public nuisance consists of some unlawful act, or omission to discharge a legal duty, where such act or omission endangers the life, safety, health, property or comfort of the public or obstructs the public in the exercise of some common right".

The definition of a private nuisance in section 41 is as follows :—

> "A private nuisance consists of any person so conducting himself or his business or so using any immovable property of which he is the occupier as habitually to interfere with the reasonable use and enjoyment, having regard to the situation thereof, of the immovable property of any other person".

In this case the nuisance arose from the conduct by the appellants of their business in their factory in such a manner as habitually to interfere, for a period of about four months, with the reasonable use and enjoyment of the

immovable property of the respondents. In the case of the first respondent, Dr. Spyros Pavlides, the immovable property was a combined dwelling house and clinic separated by a street from the factory of the appellants and in the case of the second respondent the immovable property was a hotel adjoining the combined dwelling house and clinic of the first respondent.

It is true that the nuisance actually arose outside the appellants' factory and not in it. But it arose as a consequence of what was done in the factory, namely, the ejection of refuse into the sea at a distance of about 25 yards from the factory.

It seems to us to be beyond doubt that the nuisance committed by the appellants falls, in so far as both the respondents are concerned, within the definition of private nuisance in section 41 of the Civil Wrongs Law. We are also of the opinion that even if the nuisance amounted to a public nuisance under section 40, that fact would not by itself take the nuisance out of the definition of private nuisance in section 41.

We see no ground for the argument that these two definitions are mutually exclusive and that a particular nuisance cannot be at the same time both a private nuisance as it affects some people, and a public nuisance as it affects others. If the appellants' argument were correct, the consequence would be that a person who suffered damage from a private nuisance, and to whom a specific remedy is given by section 41, would lose that remedy if the nuisance happened to be at the same time a public nuisance and would be limited to the remedy given in the case of a public nuisance by section 40. Such a construction might result in substantial hardship to individuals, and we can find nothing in the two sections quoted to indicate that they should be construed in that way.

The wording of those two sections, read with the definitions of " damage " and " pecuniary damage " in section 2 may or may not have introduced differences from the English law on the subject of rights of action in respect of public nuisances. We express no opinion. All that it is necessary for us to say for the purposes of this appeal, and we have already said it, is that we see no reason to hold that, upon a true construction of sections 40 and 41 of the Civil Wrongs Law, a nuisance cannot be at the same time a private nuisance under section 41, as it affects particular individuals, and a public nuisance under section 40, as it affects others.

We think, therefore, that the District Court was right in holding that the respondents had a right of action in respect of the private nuisance which the appellant had committed, and that they would be entitled to compensation if they proved damage in the sense in which that

word is defined in section 2 of the Civil Wrongs Law; that is to say, if they proved that they had suffered "loss of or detriment to any property, comfort, bodily welfare, or other similar detriment." It follows that in our opinion the District Court was right in receiving from each of the respondents the evidence of damage that was given by them or on their behalf.

The first respondent, Dr. Spyros Pavlides, said that he suffered great discomfort and some temporary loss of health as the result of the smell which permeated his house, that he had to keep the house shut up, even in the hottest weather when it would normally be open, and that he could only work with difficulty at the practice of his profession. He ceased to sleep in the house. His wife and child were obliged to remain there, though they complained of the smell, because the respondent could make no other arrangement for them during the middle days of the weeks, but he took them away at week-ends. These conditions lasted for approximately four months. The respondent complained on many occasions to the appellants' representative but the latter said he could do nothing. There was a suggestion that, during the period for which the nuisance lasted, the appellants were executing some profitable contracts and were unwilling to complicate their processes. Some time after the action was instituted, however, they adopted another means of disposing of the refuse from their factory and the nuisance ceased.

The District Court accepted this respondent's evidence on the effect which the nuisance had produced in his house. He claimed £500 but the Court assessed the diminution of comfort and bodily welfare that he and his family had suffered at £50. It is impossible for us to say that they were wrong.

The other respondent, the hotel-keeper, said that during the period for which the nuisance lasted there had been a substantial falling off in the business done by his hotel and that he had been obliged to discontinue altogether an open-air restaurant which, in the summer, he normally maintains, with considerable profit, on the sea-front opposite to his hotel. He is an experienced hotel manager and had managed this particular hotel since 1931, first in another situation and then in the situation in which the hotel now is. This witness also said that it is in the summer season that his hotel makes its profit because of the influx of visitors to Limassol at that time. In the winter he makes a loss and recoups himself in the summer. His evidence, which appears to have been given after consulting his books, was that in the four months from June to September, 1948, during the period of the nuisance, he had actually lost approximately £7. No figures could be produced to show the financial result in the corresponding months of previous years, but there was evidence

that during the period of the nuisance visitors who were brought to the hotel by taxi-drivers left it because of the smell. This respondent claimed £1,000 for damage resulting from the nuisance. He arrived at that figure by taking £600 as the actual loss of profit that he had sustained, at the rate of £150 per month for the four summer months for which the nuisance lasted, and £400 for damage to the reputation of his hotel. The District Court awarded him a round sum of £250.

It was, indeed, a natural consequence of the persistence of a foul smell in and around this respondent's hotel for a period of four months that his business, including that of his open-air restaurant, should decline, in the absence of more precise figures than were produced, it is impossible for us to say that the District Court was wrong in awarding him a round sum of £250.

The appellants, in their grounds of appeal, also contested the right of the District Court to grant an injunction to the respondents, as the Court did, but no argument was put before us on this point. The appellants' argument was, as we have already said, that the nuisance was a public nuisance and could not, therefore, be a private nuisance as well, and that if it was a public nuisance, the respondents had not proved pecuniary damage as it was essential that they should if they were to have a right of action, and had not pleaded pecuniary damage, as it was essential that they should if pecuniary damage was to be awarded to them.

We have already expressed the view that, whether the nuisance was a public nuisance or not, it was a private nuisance as far as the respondents were concerned and that the District Court was justified in acting on the evidence of damage that they gave.

The District Court, however, having arrived at the conclusion with which we agree, went on to deal with the case on the assumption that the nuisance was a public nuisance and not a private nuisance. On that assumption, the Court arrived at the same conclusion. Having reached the view that we have expressed, it is unnecessary for us to consider the case on the assumption made by the District Court and we should not be taken to endorse the conclusions at which they arrived in that part of their judgment.

In our opinion this appeal must be dismissed with costs.

Appeal dismissed.