[BOURKE, C.J., and EDWARDS, S.P.J.]

MARTHA GEROUDI,

Appellant (Plaintiff),

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondents (Defendants).

(Civil Appeal No. 4309).

Civil Wrongs—Nuisance—Civil Wrongs Law, Cap. 9, sections 42 to 44.

Public Corporations—The Electricity Authority—No liability for nuisance, apart from negligence, caused in carrying out its statutory duties—The Electricity Development Law, 1952, sections 12 (1), (2) (c), 42 (3)—The Civil Wrongs Law, Cap. 9, section 55—Principles of English law.

Observation by the Chief Justice as to the hardship resulting to individuals.

The appellant is the owner of a house at Ktima where she lived with her family. Adjoining the house is the power station operated by the respondents, the Electricity Authority of Cyprus, for the supply of electric current in the area. The appellant brought an action in the District Court at Paphos seeking an injunction on the ground of nuisance to restrain the respondents in effect from working the power plant and also claiming special damages for alleged damage to her house as a result of vibration from the machinery together with general damages in respect of discomfort alleged to be caused by " the noise, sparks, vibration and otherwise ". The claim was founded on nuisance and there was no allegation of negligence on the part of the respondents. The Court of trial found that the operation of the power station creates a nuisance to the plaintiff and her family and has caused them appreciable discomfort. But it found also that the installations of the respondents were necessitated by the increased demand for electricity, that there was no negligence on their part, their agents or servants and that there was no faulty construction in the power house installations. The action was therefore dismissed in reliance upon section 55 of the Civil Wrongs Law, Cap. 9 (*note:* this section is set out in the judgment, *post*) and upon the provisions of section 42 (3) of the Electricity Development Law, 1952. (*note:* this sub-section is set out in the judgment, *post*).

On appeal, affirming the judgment of the trial Court:

Held: (1) No blame attaches to the respondents. Even though they had notice of the discomfiture being caused, they had statutory duties to carry out. They were doing that which the legislature had authorised them to do. (see: The Electrici-

ty Development Law, 1952, section 12 (1)): moreover, section 12 (2) (c) provides that for the purpose of carrying out its obligations the Authority may: " carry on all such activities as may appear to it requisite, advantageous or convenient, for or in connection with the discharge of its duties under sub-section (1) ". On the other hand the necessary constructions and installations to meet increasing demand from consumers of electric current were made and operated without negligence.

(2) Consequently, upon the principles of English law the respondents are not liable.

Geddis v. Bann Reservoir Proprietors, (1878) 3 App. Cas. 430. 455 per Lord Blackburn, *followed*.

(3) But further than that there are the express provisions of section 42 (3) of the Electricity Development Law, 1952 (*Note:* The sub-section is set out in the judgment, *post*)

(4) In our opinion the trial judges were also correct in holding that section 55 of the Civil Wrongs Law, Cap. 9, bars the appellant from relief. (*Note:* The section is set out in the judgment. *post*).

(5) There being no negligence in the manner in which the respondents carried out their statutory duties, it seems evident that they would have been at fault if they had failed to take action to meet the increasing demand and would have neglected to observe and carry out the duty laid upon them of encouraging and promoting the use of electricity.

Appeal dismissed with costs.

Cases referred to:

Longhurst v. Metropolitan Water Board, (1948) 2 All E.R. 834;
East Suffolk Catchment Board v. Kent, (1940) 4 All E.R. 527;
Geddis v. Bann Reservoir Proprietors, (1878) 3 App. Cas. 430.

Observations by BOURKE, C.J.:

" For myself I do not hesitate to say that this has all the appearance of a case of real hardship and I would find it surprising if there is no avenue to compensation from public funds in such an instance where, though there be no negligence, the result of a benefit to the public arising under statutory powers given to an Authority serving the Community, is that the individual should suffer damage ".

Appeal.

Appeal by the plaintiff against the judgment of the District Court of Paphos (Zenon, P.D.C., Attalides, D.J.) dated the 27th November, 1959, (Action No. 390/59) dismissing her claim for an injunction restraining the defendants from continuing the nuisance their power station is causing etc. and for damages for nuisance.

Chr. Mitsides with
E. Ieropoulos for the appellant.

Sir Panayiotis Cacoyiannis for the respondents.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court, read by:—

BOURKE, C.J. : The appellant is the owner of a house at Ktima where she lived with her family. Adjoining the house is the power station operated by the respondents, the Electricity Authority of Cyprus, for the supply of electric current in the area. The appellant brought an action in the District Court at Paphos seeking an injunction on the ground of nuisance to restrain the respondents in effect from working the power plant and also claiming special damages for alleged damage to her house as a result of vibration from the machinery together with general damages in respect of discomfort alleged to be caused by " the noise, sparks, vibration and otherwise ". The claim was founded on nuisance and there was no allegation of negligence on the part of the respondents. As will be seen, it was necessary for the appellant in order to succeed to show that any damage caused resulted from negligence. It may be that this was overlooked when the statement of claim was drafted or it may have been considered that the allegation of nuisance was enough to cover the element of negligence for, as was said by Lord Porter in *Longhurst* v. *Metropolitan Water Board*, (1948) 2 All E.R. 834, 839, " liability for nuisance without negligence or deliberate act is not readily established ". I think myself however, having regard to the statutory provision to which I am about to come, that an express averment of negligence was necessary to constitute a valid cause of action. At any rate the Court below found as a fact that there was no negligence on the part of the respondents, their agents or servants and that there was no faulty construction in the power house installations. The action was therefore dismissed in reliance upon section 55 of the Civil Wrongs Law (Cap. 9) and the provisions of section 42 (3) of the Electricity Development Law, 1952, which reads as follows:—

> " The Authority (that is, the respondents) shall not be liable for any damage to person or property or for any cessation of the supply of energy which may be due to any accident, fair wear and tear, or overloading due to unauthorised connection of apparatus, or to the reasonable requirements of the system, or to defects in any installation not provided by the Authority, but shall be liable only when such damage or cessation is shown to have resulted from negligence on the part of persons employed by the Authority, its agents or servants, as the case may be, or from faulty construction of the Authority installation or Authority undertaking ".

In the grounds of appeal matter appears as to negligence which in my opinion might more properly have been alleged as a matter of pleading in the first instance. Paragraphs 2 to 5 of the notice of appeal are as follows:—

"2. Though the defendants - respondents were warned since 1955 about the nuisance and damage caused to the appellant by the installation of their two new engines they took no steps to abate the nuisance and/or remedy the damages but on the contrary they allowed it to continue thus causing a continuously increasing damage and/or injury to the appellant.

3. In 1957 the defendants - respondents with full knowledge of the nuisance and damages inflicted on the appellant and her premises negligently or in a way amounting to constructive negligence installed a new generator engine of 380 K.W. thus enhancing the damages to such a degree as to render her adjoining house uninhabitable.

4. For all these reasons and/or any of them it is submitted to the Honourable Court that the defendants - respondents exercised their powers under the Law in such a way as to cause damages to the appellant through negligence on the part of persons employed by them.

5. Moreover the appellant submits that all the facts proved showed faulty construction of works and/or installations on the part of the defendants - respondents so as to deprive them of the protection of the aforesaid sections.".

The case there being made, and as it was pressed in argument, amounted to this, that the respondents had knowledge of damage resulting from the working of the power engines and were under a duty to see that the comfort and property of the appellant were not endangered by a condition of which they were aware ; but so far from ameliorating the condition they aggravated things and showed a lack of reasonable care by putting in extra engines which increased the vibration and noise : in short, they were guilty of negligence. As I have said, I consider that if the appellant wished to rely upon negligence it was at least necessary in the first place to plead negligence. And I see nothing, in view of the wording of section 42 (3), which permits an action successfully to be founded on nuisance alone ; there is nothing in the Electricity Development Law, 1952, corresponding for instance to section 81 of the Electric Lighting (Clauses) Act, 1899 (C.19) which reads:—

> " Nothing in this Schedule or any local enactment shall exonerate the Undertakers from any indictment, action, or other proceedings for nuisance in the event of any nuisance being caused or permitted by them ".

The principle to be adopted is, as I see it, that which was referred to in *Longhurst* v. *Metropolitan Water Board* (*supra*) and *East Suffolk Catchment Board* v. *Kent*, (1940) 4 All E.R. 527, and is quoted from the language of Lord Blackburn in *Geddis* v. *Bann Reservoir Proprietors*, (1878) 3 App. Cas. 430, 455 :

> ".....I take it, without citing cases, that it is now thoroughly well established that no action will lie for doing that which the legislature has authorised, if it be done without negligence, although it does occasion damage to anyone ; but an action does lie for doing that which the legislature has authorised, if it be done negligently ".

The respondents, no doubt by way of caution, led evidence at the trial to disprove any negligence and the finding of the Court in their favour has been noted. Although I have indicated my views as to the value of the appellant's pleading for the purpose of sustaining an action for damage, I propose, because negligence was considered below, and in deference to the arguments advanced by both sides before this Court, to turn in some detail to the circumstances.

The power station beside the appellant's house was originally operated by the Municipality of Paphos as an undertaking for the supply of electricity to Paphos town. It seems that it was constructed in 1952. In any event in March, 1954, it was acquired by the respondent Authority under section 28 of the Electricity Development Law, 1952, and by virtue of the acquisition the Authority became "the undertaker as provided by this Law for the area of supply of the former undertaker" (s. 28 (2)). By section 12 (1) of the Law the respondents were under a duty *inter alia* to generate electricity and to maintain and work the installation or undertaking and to promote and encourage the use of electricity ; moreover, section 12 (2) (*c*) provides that for the purposes of carrying out its obligations the Authority may:

> " carry on all such activities as may appear to it requisite, advantageous or convenient, for or in connection with the discharge of its duties under sub-section (1) ".

At the time of the acquisition there were four engines in the power house. With development the load increased considerably from 1955 and in that year it was found necessary to install two further engines. In 1957 the Authority found that in order to meet the demand for current and carry out its duties under the law it was absolutely necessary to install yet another engine and this addition to the power was required apart from the extension of electricity supply to three small suburb villages occurring in 1958 and 1959. The necessary load could not have been met without the working of these three extra engines and, as the electrical engineer,

Mr. Bradshaw, said in evidence, without these additional installations the Authority would have been unable to perform its duties under the Law devised to regulate its functions. This witness also testified, and his evidence, which stood uncontradicted, was accepted by the lower Court, that the additional installations had been made under his personal supervision and had been properly carried out. The findings of the trial Court taken from the judgment are:—

> " From the evidence before us we are fully satisfied that the operation of the power station by the defendants creates a nuisance to the plaintiff and her family, and has caused them appreciable discomfort, to the extent that they have been obliged to leave the house and go and live elsewhere.....
>
> We have no doubt that the new installations were necessitated by the increased demand for electricity, and that they were made properly, and without any fault in the construction, and without any negligence on the part of the defendants, their agents and servants. This being the case, we agree with the submission of Sir Panayiotis Cacoyannis, that the defendants are protected by the provisions of section 42 (3) of Law 23 of 1952 and by section 55 of Cap. 9. Therefore the action of the plaintiff fails on that ground only ".

It is true that the appellant protested as early as June, 1955, (see exhibit 1) and pointed out the nuisance that was being created so far as she and her family living in the adjoining house were concerned. One can readily share the sympathy felt by the judges below which is implicitly revealed by their judgment. For myself I do not hesitate to say that this has all the appearance of a case of real hardship and I would find it surprising if there is no avenue to compensation from public funds in such an instance where, though there be no negligence, the result of a benefit to the public arising under statutory powers given to an Authority serving the Community, is that the individual should suffer damage. But clearly no blame attaches to the respondents. What were they to do ? Even though they had notice of, to say the least of it, the discomfiture being caused, they had statutory duties to carry out : they were doing that which the legilsature had authorised and the necessary constructions and installations to meet increasing demand from consumers of electric current were made and operated without negligence. I think it is a case where the principle enunciated by Lord Blackburn as quoted above (*supra*) clearly applies. But further than that there are the express provisions of section 42(3) of the Law which protect the respondents in the circumstances of the case. In my opinion the trial judges were also correct in holding that section 55 of the Civil Wrongs Law bars the appellant from relief. That section reads :-

"It shall be a defence to any action brought in respect of a civil wrong that the act complained of was done under and in accordance with the provisions of any enactment".

The appellant brought the action in respect of the civil wrong of nuisance but the act complained of, that is, the taking of necessary steps to generate the increased load of electricity required for public consumption in the locality served by the power station, was done in accordance with the provisions of the Electricity Development Law, 1952, and there was no negligence in the manner in which such steps were carried through : it seems evident that the Authority would have been at fault if they had failed to take action to meet the increased demand and would have neglected to observe and carry out the duty laid upon them of encouraging and promoting the use of electricity. If the appellant's claim were to be sustained it would mean the virtual closing down of the power station and construction elsewhere with all the disruption and upset to public convenience that would be entailed for no doubt an appreciable time. The contemplation of such a happening readily affords understanding for the curtailment of rights provided by section 42(3) of the Law.

In my judgment there is no merit in this appeal and it should be dismissed. I would hold also that the respondents are entitled to their costs of this appeal and an order should be made accordingly.

DAVID EDWARDS, S.P.J. : I respectfully agree with the judgment just delivered and I have nothing to add.

Appeal dismissed with costs.