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CHRYSOTHEMIS PALANTZI
v.
NICOLAS AGROTIS

[JOSEPHIDES, LOIZOU, HADJIANASTASSIOU, JJ.].

CHRYSOTHEMIS PALANTZI,

Appellant-Plaintiff,

v.

NICOLAS AGROTIS,

Respondent-Defendant.

(Civil Appeal No. 4624).

Nuisance—Private nuisance—Noise—Cold-store operating next to plaintiff's house—Noise emanating for such store at night-time—Claim for injunction granted by Court of Appeal reversing findings of the trial Court—What constitutes private nuisance—The Civil Wrongs Law Cap. 148, sections 46, 47 and 48, reproducing the common law in the matter—See, also, herebelow.

Nuisance—Private nuisance—Noise—Abnormal or unusual sensitiveness not to be taken into account in considering what is reasonable in the circumstances—"Reasonableness"—"Sensitiveness" to noise—Test applicable—Noise—Consideration of social values involved—In case of irreconcilable conflict between the peace and quiet of a man in his home and the business activities or pleasure of his neighbour—The home should be preferred.

Civil Wrongs—Nuisance—See above.

Appeal—Findings of fact made by trial Court—Reversed in this case because such findings were not warranted when considered as a whole and the reasoning behind such findings was unsatisfactory.

Findings of fact—Appeal—Findings reversed—See above.

Nuisance—Injunction—Private nuisance—Form of injunction—See above.

Injunction—Form in a case of private nuisance by noise—See above.

Practice—Appeal—Findings of fact—Injunction—Form—See above.

This is an appeal by the plaintiff from the judgment of

the District Court of Nicosia dismissing the main part of her claim for an injunction against the defendant restraining him from causing nuisance by noise. The present dispute arises out of the operation by the defendant of a cold-store at 8, Athinon Street, Nicosia. The plaintiff, who is aged 59, is the owner of the adjoining dwelling house which has been her family residence for a very long time. She is living there with two elderly sisters and a brother who is aged 80. She complains that the noise emanating between 9 p.m. and 6 a.m. from the defendant's cold-store amounts to a private nuisance materially interfering with the reasonable use and enjoyment of her house. The learned trial judge stated that he felt unable to rely on the witnesses for the plaintiff "in arriving at a safe finding as to the degree of interference" with the comfort of the occupants of the plaintiff's house or to draw conclusion of his own and held that nuisance by noise at night time had not been proved. In reaching his conclusions the trial judge found that the plaintiff and her sisters were over-sensitive to noise to an exceptional degree and relying on a statement in Windfield on Tort, 6th edition, at page 545, that the law of nuisance "does not take account of the abnormal "sensitiveness in persons", held that the plaintiff was, therefore, not entitled to relief.

The law of private nuisance is to be found in sections 46, 47 and 48 of the Civil Wrongs Law, Cap. 148. These sections (which are fully quoted in the judgment, *post*) reproduce the English common law which may be found summarised in Halsbury's Laws of England, 3rd edition, vol. 28, page 136, paragraphs 175, *et seq.*

Reversing the finding of the trial Judge regarding abnormal sensitiveness of the plaintiff and allowing the appeal, the Court:-

Held, (1). The question of "sensitiveness" is one of the considerations to be taken into account in determining "reasonableness" in the law of nuisance. The true test is then whether the plaintiff is abnormally or unusually sensitive.

(2)(*a*) Having considered the evidence in this case, we have reached the conclusion that the findings of the trial judge are not warranted by the evidence when considered

as a whole and that the reasoning behind such findings is unsatisfactory.

(*b*) No doubt the plaintiff and her sister M. are sensitive persons. But considering the other evidence in this case as to the noise emanating from the defendant's cold store, we are of the view that they are not abnormally or unusually so; on the evidence adduced the noise complained of is an inconvenience materially interfering with the ordinary physical comfort of human existence and with the reasonnable use and enjoyment of the plaintiff's house, according to the standards of the average man.

(*c*) The plaintiff is, therefore, entitled to an injunction.

(3) A home in which sleep is possible is indeed a necessity. In a case of irreconcilable conflict between the peace and quiet of a man in his home and the business activities or pleasure of his neighbour, we think that is the home that should be preferred. In this respect we agree with the approach to the consideration of social values in *Hamstead and Suburban Properties Ltd.* v. *Diomedous* [1968] 3W.L.R. 990, at p. 998; [1968] 3 All E.R. 545, at p. 551.

(4) Consequently, there will be an injunction restraining the defendant by himself, his servants or agents, from operating any compressor in his cold-store or so operating his plant there as, by reason of noise, to cause a nuisance to the plaintiff between the hours of 10 p.m. and 6 a.m. This injunction is suspended for two months from today to give time to the defendant to make appropriate arrangements for his cold-store.

Appeal partly allowed.
No order as to costs.

Cases referred to:

Walter v. *Selfe* (1851) 4 De G. and Sm. 315, at p. 322;

Vanderpant v. *Mayfair Hotel Co.* [1930] 1 Ch. 138, at pp. 166, 167;

Polsue and Alfieri Ltd. v. *Rushmer* [1907] A. C. 121, at p. 123;

Halsey v. *Esso Petroleum Co. Ltd.* [1961] 2 All E.R. 145, at pp. 151, 152, 155;

Crump v. *Lambert* [1867] L.R. 3 Eq. 409;

Leeman v. *Montagu* [1936] 2 All E.R. 1677;

Metropolitan Properties Ltd. v. *Jones* [1939] 2 All E.R. 202;

Hampstead and Suburban Properties Ltd. v. *Diomedous* [1968] 3 W.L.R. 990, at p. 998; [1968] 3 All E.R. 545, at p. 551;

Heath v. *Brighton (Mayor of)* (1908) 98 L.T. 718;

Robinson v. *Kilvert* [1889] 41 Ch. D. 88.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Vakis D.J.) dated the 20th March, 1967 (Action No. 3285/65) dismissing the main part of her claim for an injunction against the defendant restraining him from causing nuisance by noise.

C. Indianos for the appellant.

X. Clerides for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:-

JOSEPHIDES, J.: This is an appeal by the plaintiff from the judgment of the District Court of Nicosia dismissing the main part of her claim for an injunction against the defendant restraining him from causing nuisance by noise.

The present dispute arises out of the operation by the defendant of a cold-store at 8, Athinon Street, Nicosia. The plaintiff, who is aged 59, is the owner of the adjoining dwelling house (6, Athinon Street), which has been her family residence for a very long time. She is living there with two elderly sisters and a brother who is aged 80. She complains that the noise emanating from the defendant's cold-store amounts to a private nuisance materially interfering with the reasonable use and enjoyment of her house.

Originally the defendant had his cold-store in the Turkish quarter of Nicosia and soon after the outbreak of the inter-communal troubles he installed it, in February 1964, without a licence from the Municipal Council, in his present premises at 8, Athinon Street, which is situate in a residential part of Nicosia, outside the industrial zone. There are three cold-

rooms and an "ante-cold-room". There are three electrically operated compressors, one of which is 2 h.p. and the other two of 3 h.p. each. Each compressor has a separate switch, a starter and a time-switch. All three compressors can be started simultaneously but they gradually operate at intervals, that is, when the desired temperature is reached the compressors automatically stop. There is an automatic thermostat for each of the cold rooms which controls the unit so that temperature does not go below the desired degree. At times it may be necessary for all three compressors to operate at the same time but when the rooms have attained a certain degree of temperature then, as already stated, the compressors automatically switch off. The time switches were so regulated that two of the compressors did not operate between 9 p.m. and 5.30 a.m.

This arrangement with regard to the operation of the compressors was made following a settlement in a previous court action between the same parties. The settlement (in D.C. Nicosia Action No. 265/64), which is dated 21st April, 1964, reads as follows:-

> "By consent defendant restrained from working more than one compressor on his cold-store premises at any one time during the period between 9 p.m. and 6 a.m. Defendant to pay £10 costs.
>
> "This compromise is without prejudice to plaintiff's right to bring a fresh action for nuisance if a nuisance is caused by plaintiff's plant during that period in spite of compliance with the injunction. But plaintiff shall not be entitled to bring an action for nuisance in respect of noise caused by defendant's plant during any other period unless the noise so caused is more than it has been so far".

The plaintiff's house consists of two bedrooms and two living rooms on the ground floor and two bedrooms on the first floor. One of the upstairs bedrooms has a window opening on to the roof of the defendant's cold-store. This is the room occupied as a bedroom by the plaintiff's sister Evanthia, a widow who has been living there since October 1964, after the death of her husband. This room is also used by the occupants of the house as a sitting-room where they receive their close relatives and friends. The window of this room is 15 ft. from the defendant's cold-store which

consists of a ground-floor building with a main big store at the entrance and the "ante-coldroom" (in which the compressors are installed) at the back, and next to it the three cold-rooms. After the settlement in April 1964, the defendant removed an asbestos sheet, 8 feet by 4 feet, from the roof of his premises to help ventilation, as he put it.

The plaintiff's main complaints in this case were-

(*a*) increase of noise during the day from 6 a.m. to 9 p.m.;

(*b*) noise caused by the loading and unloading of goods at the defendant's store;

(*c*) breach of the terms of the 1964 settlement; and

(*d*) nuisance by noise at night between 9 p.m. and 6 a.m.

With regard to complaints (*a*) and (*b*), the learned trial Judge after considering the evidence adduced in this case reached the conclusion that the plaintiff had failed to prove her allegations and he held that the alleged nuisance did not amount in law to nuisance. Having given due consideration to these findings of the trial court, we are satisfied that on the evidence before him such findings were open to him, and we are not prepared to disturb them.

With regard to complaint (*c*), that is the breach of the terms of the 1964 settlement, the trial court found that there was a breach of the relevant term of the settlement with regard to the last half hour of the night period that is, between 5.30 and 6 a.m. and made a mandatory order directing the defendant to comply with the aforesaid term.

The only question now left for our determination is plaintiff's complaint (*d*), with regard to nuisance by noise at night between 9 p.m. and 6 a.m. The learned trial Judge, after analysing the evidence adduced before the court and referring to the law applicable, in a very careful judgment, stated that he felt unable to rely on the witnesses for the plaintiff "in arriving at a safe finding as to the degree of interference" with the comfort of the occupants of the plaintiff's house or to draw any conclusions of his own, and he held that nuisance by noise at night time had not been proved by the evidence before him.

In reaching his conclusions the learned trial Judge found

that the plaintiff and her sisters were over-sensitive to noise to an exceptional degree and, relying on a statement in Winfield on Tort., 6th edition, at page 545, that the law of nuisance "does not take account of the abnormal sensitiveness in persons", held that the plaintiff was not entitled to relief. We shall be reverting to this extract from Winfield on Tort when we come to consider the law in this case. The learned judge also rejected the evidence of the plaintiff's brother Charalambos, and that of police constable Karaolis, and he gave his reasons for doing so—we shall also consider this matter later.

Considering the issues in this case and the findings of the learned trial Judge, it becomes necessary for us to examine the evidence at some length for the purpose of satisfying ourselves whether the reasoning behind the judge's findings is satisfactory and whether his findings are warranted by the evidence when considered as a whole.

Before we proceed to do so, however, we consider it convenient to deal with the law of nuisance applicable to the present case. Our Civil Wrongs Law, Cap. 148, provides as follows:-

> "46. A private nuisance consists of any person so conducting himself or his business or so using any immovable property of which he is the owner or occupier as habitually to interfere with the reasonable use and enjoyment, having regard to the situation and nature thereof, of the immovable property of any other person.
>
> . . . . . .
>
> "47. It shall be a defence to any action brought in respect of any private nuisance that the act complained of was done under the terms of any covenant or contract binding upon the plaintiff which inures for the benefit of the defendant.
>
> "48. It shall not be a defence to any action brought in respect of a private nuisance that the nuisance existed before the plaintiff's occupation or ownership of the immovable property affected thereby".

These sections reproduce the English common law which may be found summarised in 28 Halsbury's Laws of England, 3rd edition, page 136, paragraph 175, et seq. It is the law that every person is entitled as against his neighbour to the comfortable and healthful enjoyment of the premises occupied

by him. In deciding whether, in any particular case, his right has been interfered with and a nuisance thereby caused, it is necessary to determine whether the act complained of is an inconvenience materially interfering with the ordinary physical comfort of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions obtaining among English people: see *Walter* v. *Selfe* (1851); 4 De G. & Sm. 315, at page 322. It is also necessary to take into account the circumstances and character of the locality in which the complainant is living:

> "The making or causing of such a noise as materially interferes with the comfort of a neighbour, when judged by the standard to which I have just referred, constitutes an actionable nuisance and it is no answer to say that the best known means have been taken to reduce or prevent the noise complained of, or that the cause of the nuisance is the exercise of a business or trade in a reasonable and proper manner. Again, the question of the existence of a nuisance is one of degree and depends on the circumstances of the case" (per Luxmoore, J. in *Vanderpant* v. *Mayfair Hotel Co.* [1930] 1 Ch. 138, at page 166). See also *Polsue & Alfieri Ltd.* v. *Rushmer* [1907] A.C. 121, 123.

Veale J. in *Halsey* v. *ESSO Petroleum Co. Ltd.* [1961] 2 All E.R. 145, at page 151, said: "On the other hand, nuisance by smell or noise is something to which no absolute standard can be applied. It is always a question of degree whether the interference with comfort or convenience is sufficiently serious to constitute a nuisance. The character of the neighbourhood is very relevant and all the relevant circumstances have to be taken into account. What might be a nuisance in one area is by no means necessarily so in another. In an urban area, everyone must put up with a certain amount of discomfort and annoyance from the activities of neighbours, and the law must strike a fair and reasonable balance between the right of the plaintiff on the one hand to the undisturbed enjoyment of his property, and the right of the defendant on the other hand to use his property for his own lawful enjoyment. That is how I approach this case".

The standard in respect of discomfort and inconvenience from noise that we have to apply is that of the ordinary reasonable and responsible person who lives in this particular area around Athinon Street, Nicosia. This is not necessarily the same as the standard which the plaintiff chooses to set up for herself. It is the standard of the ordinary man, and the ordinary man, who may well like peace and quiet, will not complain for instance of the noise of traffic if he chooses to live on a main street in an urban centre, nor of the reasonable noises of industry, if he chooses to live alongside a factory (*Esso* case, at page 151-2).

Referring to the plaintiff's complaint for noise by the defendant at night, Veale J. in the *Esso* case, at page 155, said: "It is in connection with noise that, in my judgment, the operations of the defendants at night are particularly important. After all, one of the main objects of living in a house or flat is to have a room with a bed in it where one can sleep at night. Night is the time when the ordinary man takes his rest. No real complaint is made by the plaintiff so far as the day time is concerned; but he complains bitterly of the noise at night". After considering the evidence in that case the learned judge granted an injunction restraining the defendants from so operating their plant etc. as, by reason of noise, to cause a nuisance to the plaintiff between the hours of 10 p.m. and 6 a.m.

The discomfort must be substantial not merely with reference to the plaintiff; it must be of such a degree that it would be substantial to any person occupying the plaintiff's premises, irrespective of his position in life, age, or state of health (*Walter* v. *Selfe*, *supra*); but it is not necessary to prove injury to health (*Crump* v. *Lambert* [1867] L.R. 3 Eq. 409).

It is appropriate, however, in this connection to refer to the latest Annual Medical Report (1967), issued by the Ministry of Health of the Republic, in which it is stated that noise is one of the contributing factors to a steady rise in the incidence of illness of nervous origin in Cyprus. This is the relevant extract (at page 14):- "The modern way of life, the strain of civilization have created a new range of health problems derived from stress. Nervous exhaustion, noise, the pressure of the crowd, the assault of propaganda and advertizing, the obliteration of the personality of the indivi-

dual, these and similar factors have contributed to a steady rise in the incidence of illness of nervous origin".

In *Leeman* v. *Montagu* [1936] 2 All E.R. 1677, the plaintiff purchased a house in a partly rural, but largely residential district. Adjoining this house was a poultry farm, and about 100 yards from the plaintiff's house was an orchard in which the poultry farmer kept a large number of cockerels. The plaintiff complained of the noise made by the cockerels in the early mornings, and he brought an action for an injunction. Neither the plaintiff nor his wife could sleep after 2 a.m. and they were compelled to sleep with cotton wool in their ears and the windows closed. The defendant called as a witness a previous owner of the plaintiff's house who stated that he had suffered no inconvenience from the noise; and another person who spent the summer in a house about 40 feet further from the orchard than the plaintiff's house who had no recollection of ever having been awakened by the cockerels. A nursery-man, who lived about 200 yards from the orchard, had never been disturbed by the cockerels. Expert evidence was given to the effect that the defendant's farm was one of the best laid-out in England. It was held that a nuisance had been proved and an injunction should be granted.

With regard to the question whether the plaintiff could avoid the discomfort by occupying another part of his house or other premises in his possession, Goddard, J. (as he then was) in *Metropolitan Properties Ltd.* v. *Jones* [1939] 2 All E.R. 202 said: "On the facts, I think that I ought to hold that for 3 weeks there was an annoyance from this motor sufficient to be dignified by the name of a nuisance. The noise commenced at 8 a.m. after which hour an elderly gentleman is quite entitled to stay in bed, if he wants to, and have a restful time, and it finished at 7 p.m. I do not think that there was much interference in the daytime, because Mr. Jones went to other places, but there was none the less some interference with his comfort for a period of 21 days. He could have done his work in the lounge, and he had another office, but he can say with force: 'I wanted to work there. I have my books and papers at Cavendish Square. I did not want to go down to Cadogan Square. I went down more frequently to Brighton' ". The nuisance in that case was caused by a small 1/2 h.p. electric motor for the circulation of the water in a central heating system.

In the leading case of *Vanderpant* v. *Mayfair Hotel Co.* quoted earlier, the evidence called on behalf of the plaintiff established that it was often impossible to get to sleep by reason of the noise coming from the kitchen of the defendants' hotel, or that the witness had been awakened from his or her sleep by such noise; and that there was also a nuisance caused in the early hours of the morning by the staff of the hotel leaving or arriving at the hotel, etc. The noises thus caused had frequently awakened the several witnesses and had made it difficult for them to enjoy a proper period of rest and sleep. It was held that "so far as the noise caused by the departure and the arrival of the staff and the delivery of goods is concerned, this would not, in my view, cause any substantial nuisance during the ordinary hours of the day, and I think it will be sufficient to restrain these particular matters by reference to the period between the hour of 10 p.m. in the evening and the hour of 8 a.m. in the morning. With regard to the kitchen I think the injunction must be in general terms" (page 167 of the report).

Recently Megarry J. had to consider whether to grant an interlocutory injunction in a case of nuisance caused by loud music. The following is an extract from his very interesting and helpful judgment (if we may say so), in which he considered the social values involved:-

> "In these circumstances, it seems to me that I am entitled to pay some regard to the social values involved. The point has not been argued, and I do not rest my decision upon it. But it seems to me that it is of some relevance to consider whether it is more important for the plaintiffs' tenants to have the relative peace and quiet in their homes to which they have been accustomed, or for the defendant's customers to have the pleasure of music while they eat, played at high volume. When this comparison is made, it seems to me that it is the home rather than the meal table which must prevail. A home in which sleep is possible is a necessity, whereas loud music as an accompaniment to an evening meal is, for those who enjoy it, relatively a luxury. If, of course, the two can peacefully co-exist, so much the better; but if there is irreconcilable conflict, as there is at present in this case, I think it is the home that should be preferred". (*Hampstead and Suburban Properties Ltd.* v. *Diomedous*, Chancery Division, 8th August, 1968, page

15 of the typescript judgment—not yet reported).*

We respectfully agree with the Judge's approach to the consideration of social values. A home in which sleep is possible is indeed a necessity. In a case of irreconcilable conflict between the peace and quiet of a man in his home and the business activities or pleasure of his neighbour, we think that it is the home that should be preferred.

Finally, we would refer to the following statement of the law appearing in the judgment of the trial court: "But however these people may feel the law of nuisance 'does not take account of the abnormal sensitiveness in persons' (Winfield on Tort, 6th edition, page 545)". We think it is necessary to refer to the whole extract from Winfield. It reads as follows: "*Sensitiveness.*—In considering what is reasonable the law does not take account of abnormal sensitiveness in either persons or property. If the only reason why a man complains of fumes is that he has an unusually sensitive nose or that he owns an exotic flower, he cannot expect any sympathy from the courts". In support of that statement the learned author quotes the case of *Heath* v. *Brighton* (*Mayor of*) (1908) 98 L.T. 718, as exemplifying the point as to persons; and the case of *Robinson* v. *Kilvert* [1889] 41 Ch. D. 88, as illustrating the point as to property.

The *Heath* case was in respect of humming noise from an electrical generating station alleged to disturb worshippers in a church. Unfortunately, the full report is not available in our library but the following is a summary of the case as given in Winfield, at page 545. "The incumbent and trustees of a Brighton church sought an injunction to restrain noise from the defendants' electrical power station. There was no proof of diminution of the congregation or of any personal annoyance to any one except the incumbent and he was not prevented from preaching or conducting his services; nor was the noise such as to distract the attention of ordinary healthy persons attending the church. An injunction was not granted".

It will thus be seen that this question of "sensitiveness" is one of the considerations to be taken into account in determining "reasonableness" in the law of nuisance.

*Now reported in [1968] 3 W.L.R. 990, 998 F.; [1968] 3 All E.R 545, 551.

Reverting to the *Heath* case, it would seem that only the incumbent suffered a personal annoyance, and even he was not prevented from preaching or conducting his services. Undoubtedly, if only one person feels the discomfort, and nobody else who has to go through the same inconvenience, it may be said that such inconvenience is not a material interference with the ordinary physical comfort of human existence.

The true test is then whether the plaintiff is abnormally or unusually sensitive. The learned judge in the present case found that the plaintiff and her sister, Dr. Maroulla Palantzi, who gave evidence, are oversensitive to noises to an exceptional degree. That they are sensitive to noise there is no doubt, but are they abnormally or unusually so, considering the noise emanating from the defendant's plant? The question which we now have to determine is whether the finding of the learned judge is warranted by the evidence as a whole.

On the question of noise, the plaintiff and three other witnesses gave evidence on her behalf. No evidence was called on behalf of the defendant on this point, although in evidence he stated that he had summoned as a witness one of his tenants who was occupying the flat next to the cold-store.

The trial judge stated in his judgment that the plaintiff, who is an unmarried retired schoolmistress aged 59, admitted "that both herself and her sisters are oversensitive; that a noise which does not annoy anybody else may be annoying to herself; she is annoyed when the wireless (radio) is on; also from the noise of a vehicle when its engine is in motion. In re-examination she stated: 'I am sensitive both to little noise and much noise' ".

Now let us look at her evidence. The following are extracts from what she said in her evidence: "The noise interferes with and affects my stomach, my health. We cannot have comfort. It interferes with our comfort and health. Also our sleep. It does also during daytime".

.. ..

"There is no other factory or workshop all along Athinon Street. On both sides there are residential houses. No other factory or workshop affects us".

.. ..

"Before the defendant installed the refrigerator my

health was very good. My nerves never suffered. My sister doctor administered to me some drugs. The window glasses tremble (vibrate) due to the noise. My house is our family house for many years".

"*Cross-examination:*..... "When the radio is open for a long time I get annoyed when listening to it. I do not know about T.V. The noise of a vehicle when its engine is in motion annoys me. The noise of the refrigerator annoys me day and night. It annoys me both the same either at day or at night".

Pausing there, we do not think that because a person is annoyed when the radio is on for a long time it can be said that he is unusually or abnormally sensitive. Further down the plaintiff frankly admits that she is sensitive "both to little noise and much noise".

The learned judge in considering the evidence of the plaintiff's sister, Dr. Maroulla Palantzi, states in his judgment that she appeared to be more sensitive to noise than the plaintiff and in support of that view he quoted the following extract from her evidence:

"The noise as at the inspection interferes with us when sitting in the room for conversation and each other's company. One has to talk louder or shout. 'Prepi na katavali kanis prospathian'. We were at that day silent so as to hear the noise.

"I live at Onasagorou. At times I am annoyed by the noise in the street caused by unloading of goods. When there is unloading I stop (interrupt) doing any work until noise from unloading is over. Also from noise of traffic.

"I am not sensitive to noises.

"I say that because of noises I am forced, I have to interrupt my work until there is no noise. This is not sensitiveness. I do not know what others do in such a case".

Undoubtedly, it cannot be said that it is unreasonable for a person to be annoyed from the noise of loading or unloading or to interrupt work due to noise. But it is a question of degree.

Another part of this witness's evidence, which the learned

judge criticised, was that she alleged that on the occasions that she slept at the plaintiff's house over the weekends the noise was unbearable, particularly after midnight, when the noise increased and awaked her. The learned judge in his judgment says: "Such version does not correspond with that of the plaintiff nor is it consistent with the technical evidence about the operation of the compressor". But, with great respect to the learned judge, this part of his judgment is to some extent controverted by the refrigerator engineer who was called by the defendant. This is what he says in his evidence: "The noise is more audible at night time because at night time it is more quiet". This, in fact, is common experience.

We agree, however, with the learned judge that to a certain extent this witness was exaggerating in her evidence. Apart from this evidence, however, there is also the evidence of the police officer, who is an altogether independent witness, and that of the plaintiff's brother, Charalambos; but the learned judge rejected the evidence of both of them.

With regard to the plaintiff's brother Charalambos, the judge said that the witness appeared to him to be exaggerating in some respects less than his sisters. yet he did not appear to the judge to have given an unbiased and true picture of how the noise was felt or experienced in plaintiff's house. Finally, the trial judge said that, in any case, he did not intend to rely on this witness either, and he rejected the witness's "expressed opinion as to the standard of resulting discomfort". This witness does not appear from his evidence to be an oversensitive person. In his evidence he said that the noise continued for hours and that it was a noise which one could not bear; and that it was difficult to listen to each other while sitting in the upstairs room. In cross-examination he likened the noise to that of a motorcycle working outside his shop, and sometimes louder.

Finally, there is the evidence of the police constable, Georghios Karaolis, aged 28. The judge in assessing his evidence said "this witness only experienced the noise for a few minutes among angry and excited people—I do not know the true reason for that—and his evidence is not positive on the point whether the noise he heard would materially interfere with the comfort of an ordinary man".

Let us see whether this is a correct assessment of the

evidence of this witness. He was called to the house one night in July, 1966, about 9.30 to 10 p.m. The following are the material extracts from his evidence:

"I noticed that noise was heard. I went to the upper floor at plt.'s request (ipodixi). I entered into one room. The same noise was heard there as was heard downstairs. This noise was emanating from premises at No.8 Athens Str., which is a cold-store.

"There are no many cold stores in the locality. That is the only cold store at Athens Str. The noise was a continuous noise (witness describes). If one stayed there for a long time it was 'eknevristikos' (irritating). I stayed there for about 10 minutes".

. . . . . .

"*Cross-examination by Mr. Clerides:* The noise I heard is similar to the noise created by a refrigerator kept in houses. It was of the same intensity (tis idias entaseos) as a house refrigerator.

"The persons there were excited. I would not form any impression as to whether plaintiff and the other persons were super-sensitive.

"I say that any person present there at the time would feel the same as the woman. If the noise was continuous I would have done the same, that is I would remove my bed to another room".

. . . . . .

"*Re-Examination*: The room upstairs was a bedroom. I saw beds therein. Small refrigerators create less noise and big ones create more.

"The noise created by the defendant's cold-store, if continuous, would interfere with the comfort of any person living in plaintiff's room, either upstairs or downstairs.

"If I was residing in that room and the noise was continuous, I would protest about it but I cannot say how I would have reacted to the noises.

"I would remove my bed from that room because I would not sleep there.

"The noise I heard was such as to interfere with the

comfort of a person sleeping in that room".

A fair summing up of his evidence is that the noise was a continuous one and that if one stayed in the house for a long time it would be irritating; that he would remove his bed from the upstairs bedroom because he would not be able to sleep owing to the noise; and that the noise he heard was such as to interfere with the comfort of a person sleeping in that room.

With great respect to the trial judge, we are of the view that this is a very positive and reliable evidence which should have been accepted and acted upon by the court, especially having regard to the fact that there was no evidence whatsoever on behalf of the defendant to controvert the evidence of this witness.

Having considered carefully the whole record of the evidence in this case, and having heard counsel on both sides, we have reached the conclusion that the findings of the trial judge are not warranted by the evidence when considered as a whole and that the reasoning behind such findings is unsatisfactory. There is no doubt that the plaintiff and her sister Dr. Maroulla are sensitive persons. But considering the other evidence in this case as to the noise emanating from the defendant's cold-store, we are of the view that they are not abnormally or unusually so; and the conclusion on the evidence adduced is that the noise complained of is an inconvenience materially interfering with the ordinary physical comfort of human existence and with the reasonable use and enjoyment of the plaintiff's house, according to the standards of the average man. The plaintiff is, therefore, entitled to an injunction with regard to night time to enable her and the occupants of her house to enjoy a proper period of rest and sleep.

There will accordingly be an injunction restraining the defendant by himself, his servants or agents. from operating any compressor in his cold-store or so operating his plant there as, by reason of noise, to cause a nuisance to the plaintiff between the hours of 10 p.m. and 6 a.m. This injunction is suspended for two months from today to give time to the defendant to make appropriate arrangements for his cold-store.

In the result the appeal is partly allowed and the judgment

of the District Court dismissing the plaintiff's claim on the head of the noise from the defendant's cold-store during the hours between 10 p.m. and 6 a.m. is set aside, and an injunction granted in the above terms.

The appeal in respect of the other parts of the judgment of the District Court is dismissed.

In the circumstances of this case there will be no order as to costs.

Appeal partly allowed; order for costs as aforesaid.