

AVGHI L. SAKELLARIDES AND ANOTHER,
Appellants-Defendants,
v.

MAROULLA MICHAELIDES AND 2 OTHERS,
Respondents-Plaintiffs.

(*Civil Appeal No. 4537*)

AVGHI L.
SAKELLARIDES
AND ANOTHER
v.
MAROULLA
MICHAELIDES
AND TWO
OTHERS

Civil Wrongs—Nuisance—Private nuisance—Appeal against injunction—Habitual interference with the reasonable use and enjoyment of neighbour's house—Civil Wrongs Law; Cap. 148, section 46—Second appellant not an "occupier" within section 46 of the Law.

Civil Wrongs—Damages—Claim for damages by cross-appeal for nuisance, under section 46 of the Civil Wrongs Law, Cap. 148—No sufficient material to decide claim—Claim abandoned.

The appellants, who are husband and wife, appeal against an injunction granted by the District Court of Limassol whereby they were restrained from in any way allowing their two dogs to go to the staircase and the roof of their house situated at Kolokotronis Street in the town of Limassol. Appellant No. 1 was the owner of the two dogs and of the house at Kolokotronis Street where she was residing with her husband, appellant No. 2, and their son.

Held, (1) Having heard the appellants today in Court and having read the record of the evidence before the trial Court we are satisfied that there was sufficient evidence before the Court to support their findings so far as the first appellant is concerned. The frequent barking of the dogs and the offensive smell from their fouling on the roof of the appellant's house caused considerable discomfort to the respondents and habitually interfered with the reasonable use and enjoyment of their house. If we may adapt the doctrine laid down by Lord Atkin in the leading case on the law of negligence, (*Donoghue v. Stevenson* (1932) A.C. 562 : (1932) All E.R. Rep. 1 at p. 11), the rule that you are to love your neighbour becomes in law : You must not injure your neighbour. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour ; in this case, you must avoid acts which would habitually interfere with the reasonable use and enjoyment of your neighbour's

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house (see section 46 of our Civil Wrongs Law, Cap. 148). The appeal of the first appellant must, accordingly, fail.

(2) As regards the second appellant (the husband) we do not think that there was sufficient evidence before the trial Court to support a finding against him that he had caused nuisance within the provisions of section 46 of the Civil Wrongs Law, Cap. 148. That section provides that 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 ”.

(3) In this case there is no dispute that the owner of the house and the dogs is the wife, the first appellant. The husband (second appellant) lives with the wife in the house, and the question arises whether he is the “ occupier ” of that house so conducting himself as habitually to interfere with the reasonable use and enjoyment of the neighbours' house. On the evidence before the trial Court and the conduct of the appeal before us it would appear that the wife is the dominant personality in that household and we do not think that the trial Court was justified in finding that the second appellant (the husband) committed nuisance within the provisions of section 46 of the Law. He was simply the joint occupier of the house as the husband of the first appellant, but it is very unlikely that he was allowed to have any say as to where the dogs were to be kept in the house. The question whether the injunction should be allowed to stand against the husband is not of academic interest only because in case the injunction of the Court is disobeyed then he would be liable to suffer serious consequences including imprisonment. As we are of the view that he has not created nuisance we allow his appeal and amend the injunction of the District Court accordingly.

(4) On the question of damages we think that learned counsel for the respondents very rightly did not insist on his cross-appeal because we are of opinion that there was not sufficient material before the Court to decide the matter which comes within the ambit of the first proviso to section 46 of the Civil Wrongs Law.

(5) As regards costs, the District Court granted the injunction but deprived the successful plaintiffs of their costs. As the defendants appealed against that injunction and as

we are satisfied that the judgment, so far as the first appellant is concerned, was fully supported by the evidence and that her appeal must fail, we are of the view that in the circumstances of this case she should pay the costs of the proceedings both in the Court below and in this Court.

(6) In the result the appeal of the second appellant is allowed without costs. The plaintiffs' (respondents') claim against him is dismissed and the injunction of the District Court of Limassol is amended accordingly so far as the second appellant is concerned. The appeal of the first appellant is dismissed and she is ordered to pay the costs here and in the Court below.

Appeal of second appellant allowed without costs. Injunction of the District Court amended accordingly as far as the said appellant is concerned. Appeal of first appellant dismissed with costs here and in the Court below.

Cases referred to :

Donoghue v. Stevenson (1932) A.C. 562 ; (1932) All E.R. Rep. 1 at p. 11.

Appeal.

Appeal against an injunction made by the District Court of Limassol (Malyali and Beha, D.JJ.) dated the 29.6.65 (Action No. 507/65) whereby the defendants were perpetually restrained from in any way allowing their two dogs to go on to the staircase or on to the terrace of their house situated at Kolokotronis Str. No. 57, Limassol.

Appellants, in person.

M. M. Houry, for the respondents.

The facts sufficiently appear in the judgment of the Court.

VASSILIADES, J.: The judgment of the Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J. This is an appeal by the defendants from an injunction granted by the District Court of Limassol restraining them from in any way allowing their two dogs to go on to the staircase and the roof of their house situated at Kolokotronis Street in the town of Limassol.

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The appellants are husband and wife. Respondent No. 1 owns a block of flats adjoining the appellants' house. In one of these flats, respondent 1 resides with her husband, respondent 2, and another flat is occupied by respondent 3. The flat occupied by respondent 3 is only a few metres away from the staircase of the appellants, and the flat occupied by respondents 1 and 2 is about 10 metres away from the roof of the appellants. Appellant 1 is the owner of two dogs, about a year old, and of the adjoining house which is situated at 57, Kolokotronis Street, Limassol, and she resides there with her husband, appellant 2, and their son.

The trial Court found as a fact that the dogs were kept in a small room on the ground-floor but during most of the time, day and night, they were allowed to go out on to the roof of the appellants' kitchen on the first floor *via* a staircase which starts from the first floor of the appellants' house and, from the outside of the building on the first floor, it reaches the roof passing outside the wall of the appellants' house. The appellants' house has no garden or open yard. The trial Court further found that the dogs barked quite frequently when they were on the staircase and the roof, day and night, that they discharged urine and excreta on the roof which were left there for a considerable time and from which offensive smells emanated and reached the respondents' flats, thus causing material discomfort and annoyance to the respondents.

On these findings of fact the trial Court was satisfied that the respondents had proved their case and that the appellants had caused nuisance to the respondents and the Court granted an injunction against the appellants.

Having heard the appellants today in Court and having read the record on the evidence before the trial Court we are satisfied that there was sufficient evidence before the Court to support their finding so far as the first appellant is concerned. The frequent barking of the dogs and the offensive smell from their fouling on the roof of the appellants' house caused considerable discomfort to the respondents and habitually interfered with the reasonable use and enjoyment of their house. If we may adapt the doctrine laid down by Lord Atkin in the leading case on the law of negligence, (*Donoghue v. Stevenson* (1932) A.C. 562; (1932) All E.R. Rep. 1 at page 11), the rule that you are to love your neighbour becomes in law: You must not injure your neighbour. You must take reasonable care

to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour ; in this case, you must avoid acts which would habitually interfere with the reasonable use and enjoyment of your neighbour's house (see section 46 of our Civil Wrongs Law, Cap. 148 *infra*). The appeal of the first appellant must, accordingly, fail.

As regards the second appellant (the husband), we do not think that there was sufficient evidence before the trial Court to support a finding against him that he had caused nuisance within the provisions of section 46 of the Civil Wrongs Law, Cap. 148. That section provides that 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".

In this case there is no dispute that the owner of the house and the dogs is the wife, the first appellant. The husband (second appellant) lives with the wife in the house, and the question arises whether he is the "occupier" of that house so conducting himself as habitually to interfere with the reasonable use and enjoyment of the neighbours' house. On the evidence before the trial Court and the conduct of the appeal before us it would appear that the wife is the dominant personality in that household and we do not think that the trial Court was justified in finding that the second appellant (the husband) committed nuisance within the provisions of section 46 of the Law. He was simply the joint occupier of the house as the husband of the first appellant, but it is very unlikely that he was allowed to have any say as to where the dogs were to be kept in the house. The question whether the injunction should be allowed to stand against the husband is not of academic interest only because in case the injunction of the Court is disobeyed then he would be liable to suffer serious consequences including imprisonment. As we are of the view that he has not created nuisance we allow his appeal and amend the injunction of the District Court accordingly.

On the question of damages we think that learned counsel for the respondents very rightly did not insist on his cross-appeal because we are of opinion that there was not sufficient material before the Court to decide the matter which comes within the ambit of the first proviso to section 46 of the Civil Wrongs Law.

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Finally, as regards costs, the District Court granted the injunction but deprived the successful plaintiffs of their costs. As the defendants appealed against that injunction and as we are satisfied that the judgment, so far as the first appellant is concerned, was fully supported by the evidence and that her appeal must fail, we are of the view that in the circumstances of this case she should pay the costs of the proceedings both in the Court below and in this Court.

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