[VASSILIADES, P. TRIANTAFYLLIDES AND LOIZOU, JJ.]

THEOFANOU AKAMA AND ANOTHER,

Appellants-Defendants,

v.

NIKI IOANNOU TSIAKOLI,

Respondent-Plaintiff.

(*Civil Appeal No.* 4584).

Civil Wrongs—Easement of light—Section 50 *of the Civil Wrongs Law, Cap.* 148—*Interference—Interference with day-light enjoyed through obstructed window—Daylight enjoyed for a period not less than fifteen years immediately preceding the obstruction complained of—Section* 50—*On the true construction of this section in deciding whether or not the obstruction of the said window amounts to a civil wrong, other sources of daylight must be taken into account. Notion of "a reasonable amount of daylight" in section* 50—*Construction of the words occurring in the said section : "Any person who shall by any obstruction or otherwise prevent the enjoyment by the owner or occupier of any immovable property of a reasonable amount of daylight having regard to the situation and nature of such immovable property ..... shall commit a civil wrong"—Those words refer to the light left to be enjoyed after the obstruction complained of—And account must, therefore, be taken in the instant case of the daylight enjoyed by the kitchen of the respondent through other sources, namely its open side towards the inside yard—See, also, herebelow.*

Civil Wrongs—Easement of light—Section 50 *of the Civil Wrongs Law, Cap.* 148—*Construction of section* 50—*Section* 50 *is an attempt to put into statutory form the tort of interference with an easement of light to such an extent as to amount to a nuisance—It appears to have been inspired by an analogous provision in the English Prescription Act,* 1832 (*particularly section* 3 *thereof*) *and the subsequently developed Common Law on the point—Section* 50 *has therefore to be construed in the light of the common law, the more so in view of section* 2 (1) *of Cap.* 148 (supra) *and section* 29 (1) *of the Courts of Justice Law,* 1960 (*Law of the Republic No.* 14 *of* 1960) *and, also, in view of the observations of Hallinan C.J. in the case* The Universal

Advertising and Publishing Agency v. Vouros 19 *C.L.R.* 87—*Cfr. Article* 1201 *of the Mejelle.*

Easements—Easement of light—Interference—Alternative sources of daylight—Section 50 *of Cap.* 148 (supra)— *See above.*

Light—Easement—Interference with—See above.

Statutes—Construction—Section 50 *of the Civil Wrongs Law, Cap.* 148*—Principles upon which the section has to be construed—See above.*

Daylight—Obstruction—See above.

Torts—The tort of interference with an easement of light—Section 50 *of the Civil Wrongs Law, Cap.* 148*—See above.*

This is an appeal by the appellants-defendants against the judgment given by the District Court of Limassol whereby, *inter alia*, the appellants were ordered to remove an obstruction which they had placed opposite a window of the respondent's plaintiff's kitchen, opening into their adjacent yard, and a perpetual injunction was granted restraining the appellants, "their servants and/or agents from in any way interfering with the aforesaid window".

It was argued by counsel for the appellants, *inter alia*, that in the light of section 50 of the Civil Wrongs Law, Cap. 148 (infra) and in view of certain facts the respondent-plaintiff was not entitled to judgment in her favour. Counsel contended that notwithstanding the complaint of obstruction of the daylight enjoyed through the window in question, the kitchen of the respondent-plaintiff continued to enjoy a reasonable amount of daylight, having regard to the situation and nature of the kitchen. Indeed, this kitchen was a semi-detached shed, on one side of which there was no wall and such side was completely open towards an inside yard of the house of the respondent; thus the said shed-kitchen enjoyed all the daylight it needed, irrespective of any obstruction of the said window opening into the yard of the appellants-defendants. This kitchen has only one window, the obstructed one.

Section 50 of the Civil Wrongs Law, Cap. 148 reads as follows :

"50. Any person who shall by any obstruction or otherwise prevent the enjoyment by the owner or occupier of any immovable property of a reasonable amount of daylight having regard to the situation and nature of such immovable property

when such light has been continuously enjoyed by such owner or occupier or his or their predecessors in title, otherwise than under the terms of any covenant or contract, for a period of not less than fifteen years immediately preceding such obstruction or prevention shall commit a civil wrong".

The said window was constructed more than fifteen years immediately before the obstruction complained of.

Section 2 (1) of the Civil Wrongs Law, Cap. 148 provides :

"This Law shall be interpreted in accordance with the principals of legal interpretation obtaining in England, and expessions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English law and shall be construed in accordance therewith".

Section 29 (1) (*c*) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) reads :

"1. Every Court in the exercise of its civil or criminal jurisdiction shall apply-

(*a*) .. ..

(*b*) .. ..

(*c*) the common law and the doctrines of equity save in so far as other provision has been or shall be made by any law made or becoming applicable under the Constitution or any law saved under paragraph (*b*) of this section in so far as they are not inconsistent with, or contrary to, the Constitution".

In allowing the appeal on the aforesaid issue of obstruction of daylight, the Court :

Held, (1) (*a*) In our opinion section 50 of Cap. 148 (*supra*) is an attempt to put into statutory form the tort of interference with an easement of light to such an extent as to amount to a nuisance, as known to English law. That section 50 appears to have been inspired to a certain extent by an analogous provision in the English Prescription Act, 1832 (and particularly section 3 thereof) and the subsequently developed Common Law on the point (see, *inter alia*, the decision of the House of Lords in *Colls* v. *Home and Colonial Stores* (1904) 73 L.J. Ch. 484).

(b) The Supreme Court of Cyprus while dealing in 1953 with a case of this nature in *Rodosthenous* v. *Polemites* 19 C.L.R. 177 applied in the matter the English Common Law—and it did not even refer expressly in its judgment to the relevant section in the Civil Wrongs Law

(c) Bearing all the above in mind, as well as the provisions of section 2(1) of Cap 148 (*supra*) and of section 29(1)(c) of the Courts of Justice Law, 1960 (*supra*), and the observations of Hallinan C J in the case of *The Universal Advertising and Publishing Agency* v *Vouros* 19 C.L.R. 87, regarding the provisions of the Civil Wrongs Law *vis-a-vis* the Common Law of England, we have found much help in the Common Law in construing our section 50 (*supra*)

(2) (*a*) We are particularly concerned in the present case with the construction of section 50 (*supra*) in relation to the question of whether, in deciding if the obstruction of the window concerned amounts to a civil wrong the enjoyment by the respondent-plaintiff of a reasonable amount of daylight from another source, namely, the inside open side of the kitchen should be taken into account

(b) On this aspect the wording of section 50 is not such as to render its construction, for the purposes of this case, entirely free from difficulty. We might observe like Halsbury L C in the *Colls* case, *supra*, that 'the statute upon which reliance is placed in this case illustrates the danger of attempting to put a principle of law into the iron frame-work of a statute'

(c) But, considering the authorities (*infra*) and what has been already said earlier in this judgment, we have no doubt that the words in section 50 of the Civil Wrongs Law Cap 148 (*supra*), 'shall by any obstruction or otherwise prevent the enjoyment by the owner or occupier of any immovable property of a reasonable amount of light having regard to the situation and nature of such immovable property" refer to the light left to be enjoyed after the obstruction complained of, and account must, therefore, be taken of the daylight enjoyed by the kitchen of the respondent-plaintiff through other sources, namely, its open side towards the inside yard

(3) We, thus, hold that, as the daylight reaching the respondent's kitchen through its said open side is, no doubt, reasonably sufficient for the lighting of a kitchen—notwithstanding that the inside said yard is, indeed, a narrow one—the respondent-plaintiff was not entitled to succeed in

her claim for the obstruction of the window of the said kitchen by the appellants-defendants and, therefore, the part of the judgment of the trial Court in her favour regarding the window in question is hereby set aside, and the relevant injunctions granted to her are cancelled.

Appeal allowed as aforesaid.

Cases referred to :

Colls v. *Home and Colonial Stores* (1904) 73 L.J. Ch. 484;

Rodosthenous v. *Polemites* 19 C.L.R. 177; *followed*;

The Universal Advertising and Publishing Agency v. *Vouros* 19 C.L.R. 87, observations of Hallinan C.J., *followed*;

Sheffield Masonic Hall Co. v. *Sheffield Corporation* (1932) 101 L.J. Ch. 328;

Smith v. *Evangelization Society (Incorporated) Trust,* (1933) 102 L.J. Ch. 275, at p. 284 per Romer L J., *applied.*

Appeal.

Appeal against the judgment of the District Court of Limassol (Malyali D.J) dated the 11th May, 1966 (Action No. 1107/64) whereby it was, *inter alia,* adjudged that the plaintiff was entitled to be registered as owner of certain property at Lania village under plot Nos. 165/2 and 27/1/1.

J. Potamitis, for the appellants.

J. Mavronicolas, for the respondent.

Cur. adv. vult.

VASSILIADES, P. : The Judgment of the Court will be delivered by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J. : This is an appeal by the Appellants-Defendants against the judgment given on the 11th May, 1966, by the District Court of Limassol in civil action 1107/64.

By virtue of the said judgment the Respondent-Plaintiff was found to be entitled to be registered as owner of certain property at Lania (designated on the Lands Office survey map as plots 165/2 and 27/1/1).

The Appellants were, further, ordered to remove an obstruction which they had placed opposite a window of the Respondent's kitchen (plot 165/2), opening into their adjacent yard, and a perpetual injunction was granted preventing the Appellants, "their servants and/or agents from in any way interfering with the aforesaid window".

There was, also, judgment given in favour of the Respondent in respect of damage caused by the Appellants to an adjacent wall of the Respondent; and an amount of £2 was awarded to her as damages.

The Appellants have attacked only those parts of the judgment of the trial Court which relate to the obstruction of the window and to the award of £2 for the damage caused to the Respondent's wall.

In relation to the obstruction of the window, learned counsel for the Appellants submitted that the finding of the trial Court, that such window was constructed in 1941, is erroneous, in the light of the evidence before the trial Court. Furthermore, in the light of section 50 of the Civil Wrongs Law (Cap. 148), and in view of certain facts—with which we shall be dealing later on in this judgment—counsel for the Appellants has submitted that the Respondent was not entitled, in any case, to judgment in her favour in respect of the obstruction of the window in question.

After hearing learned counsel for Appellants, we decided that it was not necessary to call upon the other side to address us on the issue of the time at which the window was constructed, because we had not been persuaded that the finding of the trial Court, that such window was constructed in 1941, was not warranted by the evidence before the Court; it was largely a matter of credibility of the witnesses heard on that issue at the trial.

Likewise, we did not call upon counsel for the Respondent to address us on the issue of the award of £2 damages, as at that stage we were of the view that the making of such an award was reasonably open to the trial Court on the material before it.

Regarding the part of the judgment concerning the obstruction of the window and the effect in relation thereto of section 50 of Cap. 148, upon which Respondent's claim was based, counsel for the Appellants submitted, as stated earlier, that such section was erroneously applied in that its provisions did not entitle

the Respondent to succeed in the circumstances of this case; counsel contended that, notwithstanding the complained of obstruction of the daylight enjoyed through the window in question, the kitchen of the Respondent continued to enjoy a reasonable amount of daylight, having regard to the situation and nature of the kitchen; counsel pointed out in this connection that such kitchen was in fact a semi-detached shed, on one side of which there was no wall at all and such side was completely open towards an inside yard of the house of the Respondent; thus, the said shed in view of its situation and nature enjoyed all the daylight it needed, irrespective of any obstruction of the window opening into the yard of the Appellants.

There seemed on the record before us to exist some confusion about the exact nature of the structure in question. At one point in the judgment it has been described as a covered verandah with three outside walls; yet, later on in the judgment—and more than once in the evidence—it appears stated that the obstructed window is the only window of the said kitchen.

At the hearing before us it became, in the end, common ground between the parties, that the kitchen is, indeed, a shed, as described to us by counsel for the Appellants; it has indeed only one *window*, the obstructed one, but has no wall towards the inside yard of the Respondent's house. Though it is correct that the width of such inside yard, between the open side of the shed and the main building of the house of the Respondent opposite, appears to be rather small, a matter of feet and not of yards, it is obviously sufficient to allow ample light to reach the shed in question.

On the issue of the effect of section 50 of Cap. 148, after hearing counsel for the Respondent, as well, we deferred our judgment till to-day for the purpose of considering its proper application to the present case. Section 50 reads :

> "50. Any person who shall by any obstruction or otherwise prevent the enjoyment by the owner or occupier of any immovable property of a reasonable amount of daylight having regard to the situation and nature of such immovable property when such light has been continuously enjoyed by such owner or occupier or his or their predecessors in title, otherwise than under the terms of any covenant or contract, for a period of not less than fifteen years immediately preceding such obstruction or prevention shall commit a civil wrong".

In our opinion section 50 of Cap. 148 is an attempt to put into statutory form the tort of interference with an easement of light to such an extent as to amount to a nuisance, as known to English law; and, as a matter of fact, the said section—which when enacted for the first time in 1932 was section 45 of the Civil Wrongs Law 1932 (Law 35/32)—has all along been found in the part of the Civil Wrongs Law dealing with nuisance. Such section 50 appears to have been inspired to a certain extent by an analogous provision in the English Prescription Act 1832 (and particularly by section 3 thereof) and the subsequently developed Common Law on the point; *inter alia*, the decision of the House of Lords in *Colls* v. *Home & Colonial Stores* (1904, 73 L.J. Ch. p. 484). Earlier, until the repeal by means of Law 35/32 of the relevant provisions in the Mejellè ("a sort of codification of Mohamedan Common Law" see Introduction to Tyser's translation (1901), p. XI), the matter was governed by Art. 1201 (see Tyser, *supra*, p. 181) in the part of the Mejellè "about the relations of neighbours to one another".

The Supreme Court of Cyprus while dealing in 1953 with a case of this nature in *Rodosthenous* v. *Polemites* (C.L.R. XIX p. 177) applied in the matter the English Common Law—and it did not even refer expressly in its judgment to the relevant section in the Civil Wrongs Law—(section 46, as section 50 was to be found then in the Civil Wrongs Law, Cap. 9 of the 1949 edition of the Cyprus Statutes).

Bearing all the above in mind, as well as the provisions of section 2 (1) of Cap. 148 and of section 29 (1) (*c*) of the Courts of Justice Law 1960 (Law 14/60), and the observations of Hallinan C. J. in the case of *The Universal Advertising and Publishing Agency* v. *Vouros* (C.L.R. XIX p. 87), regarding the provisions of the Civil Wrongs Law *vis-a-vis* the Common Law of England, we have found much help in the Common Law in construing our section 50.

As already stated, we are particularly concerned in the present case with the construction of section 50 in relation to the question of whether, in deciding if the obstruction of the window concerned amounts to a civil wrong, the enjoyment by the Respondent of a reasonable amount of daylight from another source, namely, the inside open side of the kitchen, should be taken into account.

On this aspect the wording of section 50 is not such as to render its construction, for the purposes of this case, entirely

free from difficulty. We might observe, like Halsbury, L.C. in the *Colls* case, *supra*, that: "The statute upon which reliance is placed in this case illustrates the danger of attempting to put a principle of law into the iron framework of a statute".

The English Common Law on the point before us is summarized as follows in Halsbury's Laws of England, 3rd ed. vol. 12, p. 586, para. 1267 :

> "1267. *Light from other sources.* The access of light from other sources cannot be regarded if and in so far as it is light upon the continuance of which the dominant owner cannot insist; for light to which a right has not been acquired by grant or prescription, and of which the dominant owner may be deprived at any time, ought not to be taken into account. Light which he can control, however, even though it reaches or reached him through a skylight in his roof and not across any neighbouring tenement, must be taken into account".

This statement of the law appears to be based on the judgments in the House of Lords in the *Colls* case (*supra*) and subsequent case law in England.

One such subsequent case is the case of *Sheffield Masonic Hall Co.* v. *Sheffield Corporation* ((1932), 101 L.J. Ch. p. 328). We refer to this English case because it has been relied upon in the *Rodosthenous* case (*supra*) in rejecting the argument that it was a good defence that the Respondents-Plaintiffs in the *Rodosthenous* case might obtain sufficient light from other sources. What was quoted for the purpose in the judgment in the *Rodosthenous* case was the headnote only of the *Sheffield* case, which reads as follows :

> "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".

We have to observe, however, that such headnote does not convey the exact effect of the *Sheffield* case, which has not gone to such lengths, as it was taken to have gone to, in the *Redosthenous* case. What Maugham, J. held in his judgment in the *Sheffield* case was that the owner of one of two servient tenements, over which easements of light had been acquired in favour of a dominant tenement, could build to such a height as, with a similar building by the owner of the other servient

tenement, would yet leave sufficient light for the dominant tenement. In other words the *Sheffield* case does not exclude consideration of light from a source other than the one obstructed, as it was taken to do in the *Rodosthenous* case.

A case more or less on the same point as the present one is that of *Smith* v. *Evangelization Society (Incorporated) Trust* ((1933), 102 L.J. Ch. p. 275) where the position was as follows: In 1912 the plaintiff's room was lighted by, *inter alia*, two skylights. In 1924 the skylights were removed, and a window overlooking the defendants' property was increased in size. In an action to restrain the defendants from blocking up the window concerned, it was held by the Court of Appeal, affirming the decision of Maugham, J., that since it appeared from the evidence that if the skylights had continued to exist the room would have been sufficiently lighted notwithstanding the obstruction, the action should fail.

Romer, L.J., had this to say in his judgment in the *Smith* case (at p. 284) :

> "Section 3 of the Prescription Act, 1832, enacts that 'when the access and use of light to and for any dwelling-house, workshop or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed of writing'. That Act was passed in the year 1832, and until the year 1904 there were many persons, including some persons of great eminence, who thought that in enacting that section the Legislature meant what it said, and accordingly they thought, and in some cases held, that where light over the servient tenement had been received by the dominant tenement for the period mentioned in that section, the owner of the dominant tenement acquired a right to receive that light without substantial diminution. It was, however, held in COLLS' CASE by the House of Lords that that is by no means the meaning or effect of that section; and that all that the dominant owner gets after his twenty years' enjoyment is a right only to receive so much light over the servient tenement as is essential for the comfortable enjoyment of the dominant tenement according to the ordinary usages of mankind. The result

of that, of course, is that if the dominant tenement can be so comfortably enjoyed without the use of any light coming over the servient tenement, he obtains, notwithstanding the words of the Act, no right whatsoever to the light that he has been enjoying for the twenty years.

Of course, the result of that decision, or one of the results of that decision, is that it is necessary to consider, in any action brought for the obstruction of an ancient light, what other lights are possessed and enjoyed by the owner of the dominant tenement, and not only must it be ascertained what lights he is enjoying at the date of action brought that is to say, at the end of the period of twenty years, but also what lights he enjoyed at the commencement of the period; for the rights acquired must be measured by the enjoyment over the twenty years".

It may be pointed out, too, at this stage, that under the aforementioned Art. 1201 of the Mejellè, blocking off all light from a neighbour's room which had only one window was not allowed, as causing him "excessive damage"; but blocking one of the two windows of a room was not considered as "excessive damage", and could not be stopped. Thus, the notion of a "reasonable amount of daylight" can be found there as well.

In the present case before us all the evidence on record points to the kitchen in question having had all along only three, outside, walls on one of which the window, the subject-matter of the proceedings, was opened. So, during the prescription period of 15 years, laid down under section 50 of Cap. 148, this kitchen was lighted both through such window and through its open side.

In view of all that has been already said in this judgment, we have no doubt that the words in section 50 of Cap. 148 "shall by any obstruction or otherwise prevent the enjoyment by the owner or occupier of any immovable property of a reasonable amount of light having regard to the situation and nature of such immovable property" refer to the light left to be enjoyed after the obstruction complained of, and account must, therefore, be taken of the daylight enjoyed by the kitchen of the Respondent through other sources, namely, its open side towards the inside yard.

We, thus, hold that, as the daylight reaching the Respondent's kitchen through its open side is, no doubt, reasonably sufficient

for the lighting of a kitchen—notwithstanding that the inside yard is, indeed, a narrow one—the Respondent was not entitled to succeed in her claim for the obstruction of the window of the said kitchen by the Appellants and, therefore, the part of the judgment of the trial Court in her favour regarding such window is hereby set aside, and the relevant injunction granted in her favour is cancelled.

Regarding costs we have decided to set aside the order for costs made by the trial Court, and to direct that the Appellants should bear half of the costs of the trial and that there should be no order as to the costs of the appeal.

Appeal allowed. Order, and order as to costs, as aforesaid.