1980 November 13

[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

LOUIS GEORGHIOU ARAOUZOS AND ANOTHER,

Appellants in Civil Appeal No. 5857 *and Respondents in Civil Appeal No.* 5858,

v.

ANASTASSIA LAMBRIANOU IOANNOU,

Respondent in Civil Appeal No. 5857 *and Appellant in Civil Appeal No.* 5858.

(*Civil Appeal Nos.* 5857, 5858).

Nuisance—Nuisance by noise—Principles applicable—No finding that nuisance caused "habitually"—But such conclusion could be inferred from other relevant findings of the trial Court—Evaluation of the evidence a matter for the trial Court—No reason to interfere with its relevant findings—Section 46 *of the Civil Wrongs Law, Cap.* 148.

In an action by the respondent in Civil Appeal 5857 ("the respondent") the District Court of Limassol issued an injunction against the appellants in Civil Appeal 5857 ("the appellants") restraining them from causing the respondent nuisance by means of noise through the operation of their carob kibbling mill in Limassol and through the use of machinery and of vehicles at the premises of the said mill.

Upon an appeal by "the appellants" on the grounds that the evidence which was adduced in order to substantiate the complaint of nuisance by means of noise was not reliable, and that it has not been established that there exists nuisance as defined in section 46 *of the Civil Wrongs Law, Cap.* 148, *because there does not exist a finding of the trial Court that the nuisance by means of noise is being caused "habitually" in the sense of, and as required by, the said section; and upon appeal by "the respondent" challenging the findings of the trial Court that there has not been esta-*

blished that the appellants were guilty of causing nuisance by means of dust escaping from, and by means of flies emanating from, their factory in question:

Held, (I) on the appeal of the appellants (Civil Appeal 5857):

That the finding that there existed a nuisance caused by means of noise was warranted by evidence which was rightly treated as credible to the extent to which it was relied upon by the trial Court in arriving at its conclusions; that though it is correct that there is no finding by the trial Court that the nuisance is caused "habitually" other relevant findings of the trial Court have been made in such a manner that it has to be inevitably inferred from them that the trial Court had arrived, also, at the conclusion that the nuisance was caused not only "habitually" but "constantly"; that the trial Court has applied correctly the law to the facts of this case, not only in so far as the provisions of section 46 of Cap. 148 are concerned, but, also, as regards the relevant principles of law (see, *inter alia, Halsey* v. *Esso Petroleum Co. Ltd.*, [1961] 2 All E.R. 145); accordingly Appeal No. 5857 will be dismissed.

Held, (II) on the appeal of the respondent (Civil Appeal 5858): That it is up to the trial Court to evaluate the evidence and this Court finds no reason to interfere with its relevant findings; accordingly appeal No. 5858 will be dismissed.

Appeals dismissed.

Cases referred to:

Halsey v. *Esso Petroleum Co. Ltd.*, [1961] 2 All E.R. 145;

Palantzi v. *Agrotis* (1968) 1 C.L.R. 448 at pp. 455, 456;

Symeonides v. *Liasidou* (1969) 1 C.L.R. 457.

Appeals.

Appeals by defendants and plaintiff No. 1 against the judgment of the District Court of Limassol (Loris, P.D.C. and Hadjitsangaris, S.D.J.) dated the 12th May, 1978, (Action No. 1502/75) whereby the defendants were restrained from causing to the plaintiffs nuisance by means of noise through the operation of their carob kibbling mill in Limassol and through the use of machinery and of vehicles at the premises of the said mill.

P. Cacoyiannis, for the appellants in civil appeal 5857 and for the respondents in civil appeal 5858.

E. Efstathiou with *A. Hadji Panayiotou*, for the respondent in civil appeal 5857 and for the appellant in civil appeal 5858.

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellants in Civil Appeal 5857, who were the defendants in action No. 1502/75 before the District Court of Limassol, appeal against an injunction issued against them and in favour of the respondent—the plaintiff in the said action—by virtue of which they were restrained from causing to the respondent nuisance by means of noise through the operation of their carob kibbling mill in Limassol and through the use of machinery and of vehicles at the premises of the said mill.

Counsel for the appellants in a thorough and painstaking review of the testimony on record has argued that the evidence which was adduced in order to substantiate the complaint as regards nuisance by means of noise was not reliable, and, also, that, in any event, it has not been established that there exists a nuisance as defined in section 46 of the Civil Wrongs Law, Cap. 148, because there does not exist a finding of the trial Court that the nuisance by means of noise is being caused "habitually" in the sense of, and as required by, the said section.

Having heard the able address of counsel for the appellants and having perused carefully the record of the appeal and, in particular, the judgment of the trial Court, we are of the opinion that the finding that there existed a nuisance caused by means of noise was warranted by evidence which was rightly treated as credible to the extent to which it was relied upon by the trial Court in arriving at its conclusions.

It is correct that there is no finding by the trial Court that the nuisance is caused "habitually" but, as was correctly pointed out by counsel for the respondent, other relevant findings of the trial Court have been made in such a manner that it has to be inevitably inferred from them that the trial Court had arrived, also, at the conclusion that the nuisance was caused not only "habitually" but "constantly".

We are of the view that the trial Court has applied correctly the law to the facts of this case, not only in so far as the provisions of section 46 of Cap. 148 are concerned, but, also, as regards the relevant principles of law which were expounded in, *inter alia*, *Halsey* v. *Esso Petroleum Co. Ltd.*, [1961] 2 All E.R. 145; this case has been relied on in *Palantzi* v. *Agrotis*, (1968) 1 C.L.R. 448, 455, 456, which has been followed in *Symeonides* v. *Liasidou*, (1969) 1 C.L.R. 457.

We, therefore, uphold the judgment of the trial Court in so far as the injunction restraining the appellants from causing to the respondent nuisance by means of noise is concerned.

Moreover, on the basis of the evidence adduced before the trial Court we find that the terms on which such injunction was granted are reasonable and, therefore, it is not proper for us to interfere with the injunction in order to vary it in any of the ways suggested by counsel for the appellants.

The respondent has, by means of Civil Appeal 5858, which has been heard together with the present appeal, challenged the findings of the trial Court that there has not been established that the appellants were guilty of causing nuisance to her by means of dust escaping from, and by means of flies emanating from, their factory in question. It was up to the trial Court to evaluate the evidence in this respect and we find no reason to interfere with its relevant findings which are attacked in the aforesaid Civil Appeal 5858.

We, therefore, dismiss both appeals and, in the circumstances, we make no order as regards their costs.

Appeals dismissed. No order as to costs.