1981 February 13

[TRIANTAFYLLIDES, P., L. LOIZOU, DEMETRIADES, JJ.]

ROUSSIAS HADJICHRISTODOULOU,

Appellant-Defendant,

v.

OMIROS ARISTEDOU AND OTHERS,

Respondents-Plaintiffs.

(Civil Appeal No 6087).

Nuisance—Private nuisance—Rural area with many pigsties—Smell and flies emanating from appellant's pigsty—" Serious addition " to inconvenience and discomfort already prevailing in the area—Rightly found to amount to a nuisance—Sections 46, 47 *and* 48 *of the Civil Wrongs Law, Cap.* 148.

The appellant-defendant was the owner and occupier of a pigsty at Peristerona village situated at a distance of about three hundred feet from properties of the respondents-plaintiffs which comprised a house, a bakery, a petrol station and building plots. In an action by the respondents for nuisance the trial Court found (*vide* p. 299 post) that in the pigsty of the appellant there were kept about four to five thousand pigs and that, as a result, there were emanating therefrom offensive smells and flies which caused inconvenience and discomfort to the occupiers of the premises of the respondents.

Upon appeal by the defendant against an injunction restraining him from so operating his pigsty as to cause by reason of smell and the existence of flies a nuisance to the respondents it was contended that the trial Court failed to pay due regard to the character of the particular area which was an area with many pigsties where the smells and flies complained of were normal features.

Held, that on the basis of the findings of the trial Court there is no difficulty in affirming that the smells and flies emanating from the pigsty of the appellant constitute " a serious addi-

tion" (see per Lord Loreburn in *Polsue & Alfieri, Limited v. Rushmer* [1907] A.C. 121 at p. 123) to the inconvenience and discomfort already prevailing at the area in question and, therefore, they were quite rightly found to amount to a nuisance which had to be restrained as decided by the trial Court ; accordingly the appeal must be dismissed. 5

Appeal dismissed.

Cases referred to :

Palantzi v. Agrotis (1968) 1 C.L.R. 448 at pp. 454, 456 ;

Halsey v. Esso Petroleum Co. Ltd. [1961] 2 All E.R. 145 at p. 151 ; 10

Polsue & Alfieri, Limited v. Rushmer [1907] A.C. 121 at p. 123.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and Fr. Nicolaides, D.J.) dated the 31st January, 1980 (Action No. 2000/78) whereby the plaintiff secured an injunction restraining the defendant from so operating his pigsty, or using the property under his occupation at Peristerona villag(as to cause by reason of smell and the existence of flies a nuisance to plaintiff. 15 20

Chr. Kitromilides, for the appellant.

N. Pelides, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant, who was the defendant at the trial, appeals against the judgment of the District Court of Nicosia by means of which the respondents, as plaintiffs, secured an injunction restraining the appellant, and his servants or agents, from so operating his pigsty, or using property under his occupation, at Peristerona village, as to cause by reason of smell and the existence of flies a nuisance to the respondents. 25 30

The appellant is the owner and occupier of a pigsty situated at a distance of about three hundred feet from properties of the respondents which comprise a house, a bakery, a petrol station and building plots. 35

The trial Court found, on the basis of the evidence adduced, that in the pigsty of the appellant there were kept about four

to five thousand pigs and that, as a result, there were emanating therefrom offensive smells and flies which cause inconvenience and discomfort to the occupiers of the premises of the respondents.

5 In summarizing its conclusion the trial Court stated the following:

"... we find that a private nuisance is created by the defendant using his immovable property as habitually to interfere with the reasonable use and enjoyment, having regard to 10 the situation, the location of the property and the nature of the nuisance, of the immovable property of any other person. We find that there is an interference with the property of the plaintiffs for a substantial length of time and in the present case the nuisance was a continuing wrong, 15 i.e. it consisted in the establishment or maintenance of some state of affairs which continuously and repeatedly caused the escape of offensive smells and the incubation of flies which annoyed the plaintiffs. We find that such inconvenience materially interfered with the ordinary 20 physical comfort of human existence..."

We have gone through the evidence on record and, having examined it in the light of the arguments advanced before us by counsel for the parties, we are of the view that all the relevant findings of the trial Court are fully warranted by such evidence.

25 A point which was stressed by counsel for the appellant is that, in finding the appellant guilty of nuisance, the trial Court failed to pay due regard to the character of the particular area; and it was argued that it is an area where there are to be found many pigsties and where, consequently, the smells and flies com- 30 plained of are normal features.

Sections 46, 47 and 48 of the Civil Wrongs Law, Cap. 148, which relate to the civil wrong of nuisance, reproduce, in essence, the relevant principles of the English Common Law (see, in this respect, *Palantzi* v. *Agrotis*, (1968) 1 C.L.R. 448, 454).

35 On the basis of dicta such as those in *Halsey* v. *Esso Petroleum Co. Ltd.*, [1961] 2 All E.R. 145, 151, it was held in the *Palantzi* case, *supra*, as follows (at p. 456):-

"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)".

It is useful to refer, too, in this respect, to *Polsue & Alfieri, Limited* v. *Rushmer*, [1907] A.C. 121, where Lord Loreburn L.C. said (at p. 123):-

"The law of nuisance undoubtedly is elastic, as was stated by Lord Halsbury in the case of *Colls* v. *Home and Colonial Stores*. (1) He said: 'What may be called the uncertainty of the test may also be described as its elasticity. A dweller in towns cannot expect to have as pure air, as free from smoke, smell, and noise as if he lived in the country, and distant from other dwellings, and yet an excess of smoke, smell, and noise may give a cause of action, but in each of such cases it becomes a question of degree, and the question is in each case whether it amounts to a nuisance which will give a right of action'. This is a question of fact.

It is said, indeed, by the learned counsel for the appellants that Warrington J. did not carry out his law in the way in which he approached the facts. I cannot see that it is so. There was evidence sufficient to shew that, taking into consideration the character of the locality and the noises there prevailing, yet a serious addition had been caused by the defendants. In my opinion that was quite sufficient to warrant the conclusion arrived at by the learned Judge and the Court of Appeal.

I agree with Cozens-Hardy L.J. when he says: 'It does not follow that because I live, say, in the manufacturing part of Sheffield I cannot complain if a steam-hammer is introduced next door, and so worked as to render sleep at night almost impossible, although previously to its

(1) [1904] A.C. 179, 185.

introduction my house was a reasonable comfortable abode, having regard to the local standard; and it would be no answer to say that the steam-hammer is of the most modern approved pattern and is reasonably worked' ".

5 On the basis of the findings of the trial Court, we feel no difficulty in affirming that the smells and flies emanating from the pigsty of the appellant constitute "a serious addition"—in the words of Lord Loreburn, above—to the inconvenience and discomfort already prevailing at the area in question and, 10 therefore, they were quite rightly found to amount to a nuisance which had to be restrained as decided by the trial Court.

In the result this appeal is dismissed with costs in favour of the respondents and against the appellant.

Appeal dismissed with costs.