1982 February 23

[L. LOIZOU, STYLIANIDES, PIKIS, JJ.]

BERENGARIA P. PAPAKOKKINOU AND OTHERS,
*Appellants-Plaintiffs,*

*v.*

PprincESS ZENA DE TYRA KANTHER,
*Respondent-Defendant.*

(*Civil Appeal No.* 5994).

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*Damages—Trespass to land—Measure of damages—Principles applicable—Damage should be that amount of money that should put the plaintiff in the position he would be if he did not suffer the wrong—And principles on which Court of Appeal interferes with an award of damages made by a trial Court—So long as the award is designed to restore the injured party to the position he would enjoy but for the civil wrong it will be upheld provided the outcome is also one reckoned as fair between the parties—Failure of plaintiffs to substantiate their material loss—Court cannot take an active part in the elucidation of the issues pertaining to damage—Because it is the parties' responsibility to prove their case.*

*Damages—Exemplary damages—Principles applicable—Conduct accompanied by a marked element of arrogance, insolence or motive may justify an award of exemplary damages, particularly if it tends to humiliate the victim of the tort—Whether rules approved in* Rookes *v.* Barnard [1964] 1 *All E.R.* 367 *applicable in Cyprus—Supreme Court inclined to follow the wider approach that permits the award of exemplary damages for tortuous conduct whenever such conduct is so intrinsically blameworthy as to deserve punishment from a civil court—Trespass to land—Defendant acting in gross disregard to the rights of plaintiffs, her conduct wanton and capricious and undertaken for the sole purpose of enhancing her property—Plaintiffs wrongly deprived of an award of exemplary damages.*

*Damages—Exemplary damages—Quantum—Principles applicable—When exemplary damages are awarded one award is justified—Wrong to separate exemplary from compensatory damages.*

*Injunction—Trespass to land—Though suspension of injunction possible no justification for suspending injunction in the circumstances of this case—Rule 1 of Order 34 of the Civil Procedure Rules.*

*Costs—Award of—Discretion of the Court—Principles applicable—Successful plaintiffs—Occasioning part of the costs because of their conduct—Properly deprived of part of their costs.*

The appellants-plaintiffs and the respondent-defendant were the owners of nearby properties in a forested part of Prodromos village which was separated by a public pathway 4 ft. wide. Respondent built a house on her property and in order to improve access thereto she constructed a road 28 ft. wide; and in the process she blotted out the pathway and trespassed upon a big part of the property of the appellants, extending to about 2,600 sq. feet. This encroachment entailed the defacement of the property and alteration of its character; and some 20 grown pine-trees were felled to pave the way for the construction of the road. About three years prior to the institution of these proceedings the appellants addressed a letter to the respondent and requested her to discontinue the acts of trespass and remedy the damage done to the property. As there was no response from the respondent the appellants brought an action claiming damages exceeding £18,000 and a mandatory as well as a prohibitory injunction.

The trial Court found for the appellants and held the respondent liable in damages for trespass; but they disapproved of the conduct of the appellants who, as they found, inflated their claim out of all proportion to the damage suffered, so, only part of appellants' costs were allowed. They awarded the appellants £750.- damages consisting of the following two items of damage.

(a) £50.- for damage caused to the trees; they arrived at this figure on the basis of the timber value of 20 pine-trees, and

(b) £700.- damage to the property, calculated on the basis of the cost needed to reinstate the property in the

condition it was, by conveying thereto a quantity of soil equal to that removed by respondent.

Moreover, the trial Court granted an injunction enjoining the respondent not to interfere in future with the property of the appellants. The enforcement of the injunction was suspended and made dependent on a new survey and delineation of the properties of the parties.

The appellants failed, before the trial Court, to substantiate in a satisfactory manner their material loss; and in assessing the damage the trial Court adopted the reinstatement method holding that it was, in the circumstances of the case, the most commodious approach to exacting a fair and reasonable result.

Upon appeal by the plaintiffs it was contended:

(a) That the amount awarded as damages was far below the damage suffered by the appellants;

(b) That they were wrongly deprived of exemplary damages;

(c) That the suspension of the injunction was arbitrary in view of the presence of satisfactory evidence before the trial Court as to the boundaries of the properties of the parties;

(d) That the lump sum of costs awarded by the trial Court was manifestly low.

*Held*, (1) that the underlying principle in assessing the damage suffered is that damage should be that amount of money that should put the plaintiff in the position he would be if he did not suffer the wrong; that so long as the award is designed to restore the injured party to the position he would enjoy but for the civil wrong, it will be upheld by the Court of Appeal provided the outcome is also one reckoned as fair between the parties, which constitutes the second basic rule that governs the determination of damage in a given case; that having duly reflected on the assessment of compensatory damage in the light of the material before the trial Court, this Court remains unpersuaded that the award should be set aside for any reason; that this Court cannot subscribe to the submission made on behalf of appellants that the Court should have taken an active

part in the elucidation of the issues pertaining to damage; that this would be injudicious as well as unfair; that under our system of law, it is the parties' responsibility to prove their case and the Court's duty is to see that this right of the litigants is duly safeguarded; accordingly contention (a) should fail.

(2)(a) That conduct accompanied by a marked element of arrogance, insolence or malice, may justify an award of exemplary damages, particularly if it tends to humiliate the victim of the tort; that the respondent acted in gross disregard to the rights of the appellants and her conduct was wanton and capricious; that her conduct was in every sense a flagrant interference with the property of the appellants meant to be lasting and going to the extent of defacing appellants' property and altering its character; that the conduct of the respondent was undertaken for the sole purpose of enhancing her property taking it upon herself to be the arbiter of the property of her neighbours; that her unwillingness to remedy the situation thereafter is another indication of a desire on her part to take by sheer stealth what she could not acquire in law; and that, therefore, the trial Court wrongly deprived the appellants of an award of exemplary damages, a remedy to which they were plainly entitled (pp. 74–78 post).

(2)(b) That in assessing the quantum of exemplary damages the gravity of the behaviour of the defendant as well as her means are considerations to which the Court should have regard; that in this case this Court knows only of the conduct of the defendant and nothing about her means; that when exemplary damages are awarded, one award is justified and it is wrong to separate exemplary from compensatory damages; that in the end, one award must be made, based on a global view of the facts of the case; that having reflected on every aspect of the case as it emerges from the facts on record, the amount of £1,500– is regarded as a proper award; accordingly judgment will be given for the appellants for £1,500.–

*Held*, further, that it is unnecessary to express a concluded opinion on the precise limits to an award of exemplary damages in these proceedings, nor is it necessary to pronounce finally on the applicability in Cyprus of the rules approved in *Rookes* v. *Barnard* [1964] 1 All E.R. 367 for, on any view of the law, defendant is liable to exemplary damages; that if this Court

were required to choose between the two streams of authority, its inclination would be, as presently advised, to follow the wider approach that permits the award of exemplary damages for tortuous conduct whenever such conduct is so intrinsically blameworthy as to deserve punishment from a civil court; that in this way, civil law would retain an effective armoury for the suppression of contumacious conduct out of keeping with minimum acceptable norms of behaviour.

(3) That there was no valid reason for suspending the injunction; though possible under 0.34 r. 1 of the Civil Procedure Rules to suspend, in the exercise of the Court's discretion, the enforcement of the injunction for a period of time or condition it upon the happening of a future event such suspension must be judicially warranted; that such justification was lacking in this case; that the facts were clear beyond peradventure, including the boundaries of the properties of the parties; that not only there should have been no postponement, but one might seriously consider, in the circumstances of the case, making a mandatory injunction which was one of the remedies sought by the appellants in the proceedings; that where the rights of the citizens are flagrantly violated, the grant of an injunction is an appropriate remedy notwithstanding non-exhaustion of other remedies (see *Stafford B.C.* v. *Elkeu Ford Limited* [1977] 2 All E.R. 519 (C.A.) ); that, therefore, the fetter posed to the activation of the injunction will be removed and consequently it will be made enforceable immediately.

(4) That costs form an issue to be resolved by the exercise of the Court's discretion which is exercised judicially in the light of the facts of the case, primarily its outcome; that the outcome is not the sole consideration to which the Court should pay heed; that the conduct of the parties is also relevant, particularly the height of the claim considered in juxtaposition to the damages awarded; that where the plaintiffs have, by their conduct, occasioned part of the costs of the proceedings, it is legitimate for the trial Court to deprive them of part or the whole of their costs, as the trial Court rightly did in this case; and that, therefore, there is no ground for interfering with the Court's discretion in this area.

*Appeal allowed.*

Cases referred to:

*Rookes* v. *Barnard* [1964] 1 All E.R. 367;

*Cassell & Co.* v. *Broome* [1972] 1 All E.R. 801;

*Drane* v. *Evanghelou* [1978] 2 All E.R. 437;

*Swordheath Properties* v. *Tabet* [1979] 1 All E.R. 240;

*Livingstone* v. *Rawyards Coal Co.* [1880] 5 App. Cas., 25 at p. 29;

*Dodd Properties* v. *Canterbury C.C.* [1980] 1 All E.R. 928;

*C.R. Taylor (Wholesale) Limited* v. *Hepworths Limited* [1977] 2 All E.R. 784;

*Services Europe Atlantique* v. *Stockholm* [1978] 2 All E.R. 764;

*Bahner* v. *Marwest Hotel Co. Ltd.* (1969) D.L.R. (3rd) 322;

*Fraser* v. *Wilson* (1969) 6 D.L.R. (3rd) 531;

*Australian Consolidated Press* v. *Uren* [1967] 3 All E.R. 523;

*Paraskevas* v. *Mouzoura* (1973) 1 C.L.R. 78;

*London* v. *Ryder* [1953] 1 All E.R. 741;

*I.C.P. Cyprus Limited* v. *Times Newspapers Limited and Others* (1972) 4 J.S.C. 455;

*Toumba* v. *Loutsios* (1975) 1 J.S.C. 115;

*Gregoriades* v. *Kyriakides* (1971) 1 C.L.R. 120;

*Eliades* v. *Lyssarides* (1979) 1 C.L.R. 254;

*Stafford B.C.* v. *Elken Ford Limited* [1977] 2 All E.R. 519.

**Appeal.**

Appeal by plaintiffs against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C. and Orphanides, S.D.J.) dated the 20th July, 1979 (Action No. 6162/73) whereby the defendant was ordered to pay to the plaintiffs the sum of £750.— by way of damage caused to their property and trees and an injunction was also issued restraining the defendant from interfering in future with the property of the plaintiffs.

*L.N. Clerides* with *A. Papakokkinou (Miss)*, and *A. Saveriades*, for the appellants.

*C. Adamides*, for the respondent.

*Cur. adv. vult.*

L. Loizou J.: The judgment of the Court will be delivered by Pikis, J.

Pikis J.: The appellants and respondent are the owners

of nearby properties in a forested part of Prodromos village, separated by a public pathway about 4 ft. wide.

Respondent built a house on her property and in order to improve access thereto she constructed a road 28 ft. wide. In the process, she blotted out the pathway and trespassed upon a big part of the property of the appellants, extending to about 2,600 sq. ft. The encroachment on the property of the appellants was arbitrary and capricious, entailing the defacement of the property and alteration of its character. Some 20 grown pine-trees were felled to pave the way for the construction of the road. Respondent's disregard of the rights of the appellants was total.

About three years prior to the institution of the action, in May, 1970, the appellants addressed a letter to the respondent and requested her to discontinue acts of trespass and remedy damage done to the property (see, exhibit 3). There was no response from the respondent; hence the commencement of this action in 1973. By their action, appellants claimed damages exceeding £18,000.—and a mandatory as well as prohibitory injunction.

The trial Court found for the plaintiffs and held the respondent, defendant before the trial Court, liable in damages for trespass. Nonetheless they disapproved of the conduct of the plaintiff who, as they found, inflated her claim out of all proportion to the damage suffered, so, only part of appellants' costs were allowed. They awarded the plaintiffs £750.— damages consisting of two items of damage; notably,

(a) £50.— for damage caused to the trees; they arrived at this figure on the basis of the timber value of 20 pine-trees, and

(b) £700.— damage to the property, calculated on the basis of the cost needed to reinstate the property in the condition it was, by conveying thereto a quantity of soil equal to that removed by respondent.

An injunction was granted, enjoining the respondent not to interfere in future with the property of the appellants. The enforcement of the injunction was suspended and made

dependent on a new survey and delineation of the properties of the parties.

The appeal is directed against—

(a) The quantum of damages; the submission is that the amount awarded is far below the damage suffered by plaintiffs.

(b) The suspension of the injunction, arbitrary in the contention of the appellants, in view of the presence of satisfactory evidence before the trial Court as to the boundaries of the properties of the parties (see exhibit 4), and

(c) the limitation of the order for costs.

The appellants argued strenuously on appeal that they were wrongly deprived of exemplary damages, a submission that found no favour with the trial Court. It is the case for the appellants that the conduct of the defendant justified the award of exemplary or at least aggravated damages. A big part of the address of Mr. Clerides was devoted to this aspect of the case. Extensive reference was made to English case law, particularly the decisions in *Rookes* v. *Barnard* [1964] 1 All E.R. 367, *Cassell & Co. Ltd.* v. *Broome* [1972] 1 All E.R. 801, and *Drane* v. *Evanghelou* [1978] 2 All E.R. 437.

*Recovery of Damages in Tort—Principles:*

Counsel for plaintiffs drew attention to the relatively thin body of evidence upon which the trial Court rested its deliberations with regard to damages. He was critical of the acceptance by the trial Court of opinion evidence on certain aspects pertaining to the value of the land, without prior satisfactory proof that the witnesses were qualified to express an opinion notwithstanding the fact that no objection was taken to the admissibility of this evidence before the trial Court, as well as the fact that evidence of this description was adduced by the appellants themselves.

Another criticism is that the Court did not probe into the correctness or relevance of the data upon which opinion evidence was based. It emerges on a consideration of the record of the proceedings that evidence adduced in this connection was loosely

admitted and then not sufficiently scrutinised as to its provenance. This being said, it must be acknowledged that the trial Court was faced with a difficult task in view of the failure of the plaintiffs to substantiate in any satisfactory manner their material loss. For example, no effort was made to articulate the difference between the value of the land before and after trespass; or to establish the letting value of the property trespassed upon which is the normal measure of damages in cases of trespass to property. (See, inter alia, *Swordheath Properties* v. *Tabet* [1979] 1 All E.R. 240; *Halsbury's Laws of England*, 4th ed., para. 1170).

Criticism of the judgment of the trial Court with regard to the quantum of damages is, to our comprehension, but a reminder of the resounding failure of plaintiffs to prove the damage claimed. In the end the Court did the best it could of a difficult task. Contending as they had to, with the evidence before them, they valued, in the absence of any satisfactory evidence as to the impact of standing trees on the value of land, the trees felled as at their timber value. Arguably, standing trees add to the value of land in money terms more than the equivalent of their timber value. But in the absence of such evidence, it would be arbitrary on the part of the Court to elevate subjective impressions into the realm of facts.

In its judgment the Court made reference to two alternative methods of assessing damage to land. Firstly, that of diminution in value as a result of the wrong complained of, and, secondly, that of reinstatement, that is, the money needed to restore the land to its state prior to the commission of the tort in question. The trial Court adopted the reinstatement method, holding that it was, in the circumstances of the case, the most commodious approach to exacting a fair and reasonable result. Plaintiffs levelled no complaint at this choice of the Court. Rightly so, for in the light of the evidence there was hardly any reliable material to shed light on the value of land after trespass. The biggest part of the evidence adduced by plaintiffs on the value of land was but remotely relevant to its economic value being primarily directed towards establishing its aesthetic worth (especially the evidence of Mr. Theodossiades, an architect).

The recent trend of authority leaves a wide margin of appre-

ciation to the trial Court for ascertaining, as well as assessing the damage suffered. The underlying principle is that expressed by Lord Blackburn in *Livingstone* v. *Rawyards Coal Co.* [1880] 5 App. Cas., 25 at p. 29, that "damage should be that amount of money that should put the plaintiff in the position he would be if he did not suffer the wrong". This principle constitutes, as it was recently observed in *Dodd Properties* v. *Canterbury C. C.* [1980] 1 All E.R. 928 (C.A.), the foundation upon which rules relevant to the assessment of damage rest or derive their raison d' etre. All other rules are subordinate to the aforementioned basic principle, including the rule, as it was mentioned in *Dodd*, supra, that damage should be assessed at the date of the tort or breach, as the case may be. We need not debate these dicta, for the date of assessment of the damage is not in issue. But we are in full agreement that restoration ab integrum is the object of compensatory damage in tort.

There are no constraints to the choice of path leading to the assessment of damage. It is largely dependent on the facts of the particular case. So long as the award is designed to restore the injured party to the position he would enjoy but for the civil wrong, it will be upheld provided the outcome is also one reckoned as fair between the parties, which constitutes the second basic rule that governs the determination of damage in a given case. (*C. R. Taylor (Wholesale) Limited* v. *Hepworths Limited* [1977] 2 All E.R. 784 (May, J. ). As Geoffrey Lane. L.J. emphasized in *Services Europe Atlantique* v. *Stockholm* [1978] 2 All E.R. 764, justice and fairness should illuminate the process of assessing damages in the case.

Having duly reflected on the assessment of compensatory damage in the light of the material before the trial Court, we remain unpersuaded that the award should be set aside for any reason. Nor can we subscribe to the submission made on behalf of appellants that the Court should have taken an active part in the elucidation of the issues pertaining to damage; that would be injudicious as well as unfair. Under our system of law, it is the parties' responsibility to prove their case. The Court's duty is to see that this right of the litigants is duly safeguarded.

*Exemplary Damages—Principles—Practical Considerations*:

Exemplary damages are an extraordinary species of damage

aimed to punish rather than compensate which is the normal measure for the assessment of damage in tort. Hence they are also known as punitive because of their essentially punishing character. Until the decision in *Rookes* v. *Barnard*, decided in 1964, the accepted view of the law was that the award of exemplary damages was permissible whenever the behaviour of the defendant was of such a character as to deserve punishment as a just measure of the law and in order to set an example. Therefore, the tribunal of fact, the jury, could, in a proper case, award damages out of range with the loss suffered by the plaintiff in order to castigate the conduct of the defendant and proclaim the efficacy of the law.

In *Rookes* v. *Barnard*, the House of Lords decided that the above view of the law was based on a misconception of the relevant principles of the common law and held that the award of exemplary damages should be confined to three categories of cases. These categories are:-

(a) Civil wrongs resulting from the use of oppressive and unconstitutional conduct by servants of the Crown.

(b) Civil wrongs committed in gross disregard to the rights of the injured party, perpetrated in circumstances calculated to yield profit to the perpetrator, and

(c) where the statute expressly permits award of exemplary damages.

In the opinion of Lord Devlin, who gave the leading judgment of the House in *Rookes*, exemplary damages are an anomaly; and like every anomaly it should not be extended. In *Cassell*, [1972] 1 All E.R. 801, the Court of Appeal felt free to depart from the principles approved in *Rookes*, supra, taking the view that the judgment was given per incurium. Also they drew attention to the fact that *Rookes* was disapproved in many commonwealth jurisdictions including Australia. The House of Lords took a contrary view of the law and reaffirmed the principles stated in *Rookes* and held them to represent the correct state of English law on the subject of exemplary damages, but they pointed out that the three categories defined in *Rookes*, should be broadly viewed and applied. The desire to make a profit, in the words of Lord Hailsham, need not emerge on a fine balancing of profit resulting from the tort and damage

payable thereafter but from a wider perspective. The award of exemplary damages is justified whenever the Court concludes that the wrongdoer committed the wrong in gross disregard to the rights of the victim thereof motivated by a desire to reap profit thereby. Also, oppressive and unconstitutional conduct need not of necessity emanate from servants of the Crown. An award is equally justified if officials of local government and members of the police are guilty of such unacceptable conduct.

The decision in *Rookes* was met with disapproval in Australia, Canada and New Zealand. (See, inter alia, *Bahner* v. *Marwest Hotel Co. Ltd.* (1969) D.L.R. (3rd) 322, and *Fraser* v. *Wilson* (1969) 6 D.L R. (3rd) 531). The Privy Council in *Australian Consolidated Press* v. *Uren* [1967] 3 All E.R. 523, examined the juridical freedom of Commonwealth Courts not to follow *Rookes* and sustained Australian Courts in their refusal to do so. They held, as we comprehended the ratio of the case to be, that the precise rules governing the award of exemplary damages are largely a matter of policy which policy the national courts of each jurisdiction are pre-eminently in a position to shape. Consequently, courts of different commonwealth jurisdiction may evolve their own rules without violating the remedial principles of the common law. At common law, exemplary damages may be awarded. The determination of the policy of the courts of each jurisdiction on the subject of exemplary damages, is apt to vary, depending on social ethics and the need arising to proclaim the efficacy of the law outside the bounds of the criminal law. In Cyprus, there is no authoritative pronouncement of the applicability of the principles upheld in *Rookes*. However, dicta in *Savvas Paraskevas* v. *Despina Mouzoura* (1973) 1 C.L.R. 78, suggest that exemplary damages need not of necessity be confined within the limits earmarked in *Rookes*.

The case of *London* v. *Ryder* [1953] 1 All E.R. 741, was on two occasions followed by the District Court as authority for the proposition that exemplary damages may be awarded in every case where the defendant is guilty of conduct deserving punishment. (See *I. C. P. Cyprus Limited* v. *Times Newspapers Limited and Others* (1972) 4 J.S.C. 455, and *Toumba* v. *Loutsios* (1975) 1 J.S.C. 115). It is noteworthy that Lord Devlin did not regard the case of *London* v. *Ryder*, supra, as conflicting with the principles

sanctioned in *Rookes*, or in any way inconsistent with them. In fact, specific reference is made to the aforesaid decision (p. 12, letters C-D) as authority for the proposition that exemplary damages may be awarded whenever a civil wrong is motivated by malice, insolence or arrogance, a conduct often encountered in cases of assault. The learned Judge did not expressly indicate to which of the three categories such conduct falls. It is arguable that such conduct falls in the first category if profit is widely interpreted and construed as including conduct embarked upon in disregard of the likely consequences that may befall the culprit in criminal law as well as civil law. A passage in the judgment of Lord Devlin, explaining the principle underlying the first category to the effect that exemplary damages may be awarded whenever it is necessary to teach the wrongdoer that tort does not pay, seems to point in the direction above indicated (p. 411, letter B). The fact is that conduct accompanied by a marked element of arrogance, insolence or malice, may justify an award of exemplary damages, particularly if it tends to humiliate the victim of the tort. Therefore, no conflict is discernible between the decisions of the Supreme Court in *Gregoriades* v. *Kyriakides* (1971) 1 C.L.R. 120, and *Eliades* v. *Lyssarides* (1979) 1 C.L.R. 254, and the decision in *Rookes*, supra. Arguably, the damages awarded in the above cases classify as "aggravated", an intermediate category between compensatory and exemplary damages; a kind of inflated compensatory damages, inflated to the extent of indicating the disapproval of the Court of the conduct of the defendant but within the range of compensatory damages.

It is unnecessary to express a concluded opinion on the precise limits to an award of exemplary damages in these proceedings, nor need we pronounce finally on the applicability in Cyprus of the rules approved in *Rookes*; for, on any view of the law, defendant is liable to exemplary damages. If we were required to choose between the two streams of authority, our inclination would be, as presently advised, to follow the wider approach that permits the award of exemplary damages for tortuous conduct whenever such conduct is so intrinsically blameworthy as to deserve punishment from a civil court. In this way, civil law would retain an effective armoury for the suppression of contumacious conduct out of keeping with minimum acceptable norms of behaviour.

The defendant in this case acted in gross disregard to the rights of the plaintiffs; her conduct was wanton and capricious as well. Defendant could be in no doubt as to the boundaries of her property nor as to those of her neighbours, the appellants. A public pathway marked off their respective properties. It was in every sense a flagrant interference with the property of the appellants meant to be lasting and going to the extent of defacing appellants' property and altering its character. The conduct of the defendant was undertaken for the sole purpose of enhancing her property, taking it upon herself to be the arbiter of the property of her neighbours. In the initial stages, she took advantage of the absence of the plaintiffs whom she never sought to consult. Her unwillingness to remedy the situation thereafter is another indication of a desire on her part to take by sheer stealth what she could not acquire in law. Her conduct comes within the four corners of an example envisaged by Lord Devlin in *Rookes*, supra, as meriting an award of exemplary damages. The learned Judge stated that the principle regulating the award of exemplary damages "extends to cases in which the defendant is seeking to gain, at the expense of the plaintiff, some object—perhaps some property which he covets—which, either he could not obtain at all or not obtain except at a price greater than he wants to put down. Exemplary damages can properly be awarded whenever it is necessary to teach a wrong-doer that tort does not pay". (Page 411, letters A–B).

Another apt quotation is one from the judgment of Lord Hailsham in *Cassell,* supra; "what is necessary is that the tortuous act must be done with guilty knowledge for the motive that the chances of economic advantage outweigh the chances of economic, or perhaps, physical penalty". (Page 831, letters B–C).

In our judgment, the trial Court wrongly deprived the plaintiffs of an award of exemplary damages, a remedy to which they were plainly entitled.

*Quantum of Exemplary Damages:*

In McGreggor on Damages, 13th ed., at para. 317 et seq., there is a discussion of the factors that must be taken into consideration in adjudicating upon the height of an award of exemplary damages. The gravity of the behaviour of the

defendant as well as her means are considerations to which the Court should have regard. In this case, we know only of the conduct of the defendant and nothing about her means. When exemplary damages are awarded, one award is justified and as Lord Reid indicated in *Cassell*, it is wrong to separate exemplary from compensatory damages. (Page 539, letters G–H). In the end, one award must be made, based on a global view of the facts of the case.

Having reflected on every aspect of the case as it emerges from the facts on record, we regard the amount of £1,500.– as a proper award, and we so adjudge.

*Injunction:*

There was no valid reason for suspending the injunction; though possible under 0.34 r. 1 to suspend, in the exercise of the Court's discretion, the enforcement of the injunction for a period of time or condition it upon the happening of a future event such suspension must be judicially warranted. And such justification was lacking in this case. The facts were clear beyond peradventure, including the boundaries of the properties of the parties. Not only there should have been no postponement, but one might seriously consider, in the circumstances of the case, making a mandatory injunction which was one of the remedies sought by the appellants in the proceedings. However, the plaintiffs did not press for a mandatory injunction either before the trial Court or before us.

Where the rights of the citizens are flagrantly violated, the grant of an injunction is an appropriate remedy notwithstanding non-exhaustion of other remedies. (See, *Stafford B.C.* v. *Elken Ford Limited* [1977] 2 All E.R. 519 (C.A.) ). The fetter posed to the activation of the injunction is, therefore, removed and consequently it will be made enforceable immediately.

*Costs:*

Costs form an issue to be resolved by the exercise of the Court's discretion. The discretion is exercised judicially in the light of the facts of the case, primarily its outcome. But the outcome is not the sole consideration to which the Court should pay heed. The conduct of the parties is also relevant, particularly the height of the claim considered in juxtaposition

to the damages awarded. Where the plaintiffs have, by their conduct, occasioned part of the costs of the proceedings, it is legitimate for the trial Court to deprive them of part or the whole of their cost, as the trial Court rightly did in this case. There is no ground for interfering with the Court's discretion in this area.

The appeal is allowed. Judgement is given for the appellants for £1,500.–. Further, an injunction is made, restraining the respondent, its servant or agents, from in any way trespassing upon the property of the appellants. The respondent is adjudged to pay the costs of the appeal.

*Appeal allowed with costs.*