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IN THE COURT OF APPEAL

R. M. COURT CIVIL APPEAL NO. 13/65

BEFORE: The Hon. Mr. Justice Duffus (President)
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Shelley (Acting)

BETWEEN

JAMES HALL - PLAINTIFF/APPELLANT

AND THE JAMAICA OMNIBUS SERVICES LIMITED - DEFENDANT/RESPONDENT

February 25, 1966 and March 31, 1966

Mr. Hugh Small for the Plaintiff/Appellant

Mr. R. N. A. Henriques with Mr. Maurice Tenn for the Defendant/Respondent.

DUFFUS, P.

This is an appeal from the Judgment of His Honour Mr. H. Rowan Campbell, Resident Magistrate for Kingston, Civil Division, in favour of the Defendant/Respondent, on a claim for damages for nuisance brought by the Plaintiff/Appellant. The facts were as follows:

The Plaintiff/Appellant is the owner of land situated at 63½ Duke Street in the city of Kingston. Duke Street is a public highway. The Appellant in his evidence stated that in the year 1958 he erected a wall along the boundary of his premises adjacent to the public sidewalk on Duke Street, and that he had erected this wall for the purpose of providing advertising spaces for such persons as were willing to rent the spaces. The cost of erecting the wall amounted to £75 or thereabouts and it was sub-divided into three panels.

In the month of August 1959 the Appellant observed workmen erecting a bus shelter on the sidewalk immediately in front of the central or principal advertising space and he thereupon objected to the workmen proceeding. They however, completed the erection whereupon the Appellant wrote to the Respondent company. The correspondence was tendered in evidence in the Court below but unfortunately, it would seem that the letters were lost as they were not forwarded to the Court of Appeal nor were there any copies

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The Respondent Company did not remove the bus shelter. The Plaintiff's evidence indicated that the bus shelter was constructed of metal and had panels of metal to the sides and rear and a metal roof and advertisements were displayed thereon. It did not obstruct the free passage of the public. The structure was placed some three inches away from the Appellant's wall and was so close that it not only completely prevented the Appellant from displaying any advertising material on his wall but deprived him of access thereto for the purposes of cleaning and painting it. As a result the particular panel of the Plaintiff's wall became quite useless to him for the purpose of displaying advertisements and he claimed the sum of £100 by way of damages for loss of rental for the period May 1961 to December 1962.

At the trial before the learned Resident Magistrate the Plaintiff's original claim which was for use and occupation of his advertising space was amended to read "in the alternative .... for damages for trespass and/or for rent....." and was further amended to cover a claim for damages for nuisance.

Learned counsel for the Respondent stated that the defence was a denial of nuisance "then or at all" and the case thereafter proceeded as a claim for damages for a private nuisance. The evidence negatived public nuisance. The Appellant himself gave evidence and he called one witness, a Municipal Officer employed to the Kingston & St.Andrew Corporation, who stated that the Corporation had approved of the erection of the bus shelter by the Respondent Company at the particular site. The Respondent Company called no witnesses and relied on a submission that the Appellant had failed to make out a cause of action in nuisance.

The learned Resident Magistrate found for the Respondent and in his reasons for Judgment he stated that no evidence was given to substantiate a case of nuisance and he further stated that it appeared that the Plaintiff merely had a wall erected on speculation but could show no financial loss.

On appeal there were two substantial grounds :-

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(i) That the learned Resident Magistrate had misdirected himself in holding that there was no evidence to substantiate a claim for nuisance ; and

(ii) That he had also misdirected himself in finding that there was no financial or other loss proved.

Learned counsel for the Appellant submitted that the Appellant had a right of access to his wall at common law and that this right included a right to have the public view his wall. He relied on what Rowlatt J. stated the law to be in Cobb v.Saxby (1914) 3 K.B. at p.825 and here I quote :-

" It is well settled law that the owner of land adjoining a highway has the private right of passing from his premises on to the highway, and if that right is obstructed and he brings an action against the person causing the obstruction, he .....is a person who has a cause of action by reason of the interference with or obstruction to his private right. Although no authority precisely in point has been cited I am of opinion that the owner of a house adjoining a public highway has precisely the same rights as regards the highway with respect to the wall of his house as he has in the case of a door or other entrance leading from his house on to the highway. He has the right to do anything he likes to the wall, for example, to display advertisements upon it, and if these rights are invaded or obstructed, he has, in my opinion, a good cause of action against the person causing the interference with his rights. Take the case of a wall of a house adjoining a highway which has a window in it which the owner of the house uses for the display of his goods, or suppose the owner of the house places on the wall pictures or advertisements of goods which he has for sale, it is to his interest that the members of the public using the highway should be able to look in at the window or to gaze at the advertisements on the wall, and if anyone prevents the public from so doing the rights of the owner of the wall are invaded. It is to my mind unthinkable that, if a man were to hold a screen in front of a shop window and thus prevent the public from looking in, he should be allowed to justify his so doing on the ground that, because he was not preventing egress from the shop to the highway,

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> he was not interfering with any right of the owner of the shop. In my opinion, the law does not in those circumstances leave the owner of the premises without a remedy."

Learned counsel for the Appellant further submitted, on the authority of Ashby v. White, 1 Salk. 19.;91 E.R. p.665, and Nicholls v. Ely Beet Sugar Factory Ltd. [1936] 1.Ch. 343, that once the invasion of a legal right had been established, it was not necessary to prove pecuniary loss, but the injury to the legal right itself carried with it the right to damages and he submitted that in any event, in the instant case, the Appellant had established by his own evidence, which was uncontradicted, that he had suffered financial loss.

Learned counsel for the Respondent on the other hand submitted that the owner of land had no right at common law to a prospect or view from his premises or to a prospect or view by the public of his premises and he relied on Butt v. Imperial Gas Company [1866] 2 L.R. Ch. App. 158; where Lord Chelmsford L.C. made it clear that " a building of a wall which merely intercepts the prospects of another without obstruction to his light or air is not a legal injury." In this case, the Plaintiff Butt was seeking an injunction against the Imperial Gas Company to restrain them from building a gasometer so close to the Plaintiff's premises as to deprive him of their use and enjoyment, on the ground that the proposed gasometer would prevent his board with his name and trade on it from being seen from the highway. There was nothing new about Lord Chelmsford's view of the Law.

As far back as 1752, Hardwicke L.C. in The Attorney General v.Doughty [1752] 2 Ves. Sen. 453:, said -

> " I know no general rule of common law which warrants that, or says, that building so as to stop another's prospects is a nuisance. Was that the case there could be no great towns and I must grant injunctions to all the new buildings in this town."

I am of the view that Rowlatt J. in Cobb v.Saxby stated the law quite correctly when he said that the owner of land

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adjoining a highway has the right of passing from his premises on to the highway and if that right is obstructed he is a person who has a cause of action by reason of the interference with or obstruction to his private right, and similarly, I agree with him that the owner of a wall on his land has the right (subject, of course, to various statutory restrictions) to do anything he likes to the wall, for example, to display advertisements thereon; but I think that the learned Judge went too far when he stated that if anyone prevented the public from gazing at the advertisements on the wall that the rights of the owner of the wall were invaded. To my mind, if this were so, it would mean that the owner of land would be entitled to a right of view from his land which Lord Hardwicke and Lord Chelmsford have stated clearly is not the law and so, a fortiori, it surely cannot be the law that the owner has a right for the public passing along the public highway to view his land.

On the facts established by the Appellant in the instant case, it seems quite clear however that the Appellant has been denied the right of access to his wall by reason of the bus shelter, It is quite clear that the shelter is so constructed and is placed so close to the Plaintiff's wall that he is prevented not only from placing advertisements thereon but from cleaning, painting or repairing the wall and this would be a clear negation of his right of access thereto.

I am therefore of the view that the learned Resident Magistrate erred when he decided that there was no evidence to support a claim for private nuisance and I am likewise of the opinion that the learned Resident Magistrate erred when he held that the Appellant had failed to establish any loss. There was a clear infringment of a legal right from which damage must flow, and it seems to me that the only question to be decided is the quantum of the damages. The Plaintiff/Appellant claimed the sum of £100 for loss of rent for the wall space at the rate of £5 per month for twenty months from September 1959 to April 1961. He based this figure on the loss of revenue from prospective

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advertisers. It is clear that persons wishing to advertise would not do so as there was neither access nor view of the wall. It is unlikely that anyone would advertise unless there was a clear, unrestricted view by the public of the wall but this is something which the Plaintiff had no legal right to, therefore in my view it would not be proper to assess the damages on any basis which involved loss of view by the public. Damages would have to be assessed on the basis of denial of access and this would of necessity be at a much lower rate.

It is extremely difficult to assess what will be fair compensation in these circumstances, but the fact that the Respondent was requested to remove the obstruction and refused to do so and persisted in maintaining it to the Plaintiff's loss, is a factor which can be considered in arriving at the amount of damages to award.

I think the sum of £5 (Five Pounds) would not be an unreasonable amount at which to assess these damages.

I would allow this appeal and set aside the Judgment awarded by the learned Resident Magistrate in favour of the Respondent and enter judgment for the Plaintiff in the sum of £5 with the appropriate costs in the court below and direct that the Appellant have the cost of this appeal fixed at £12.

President.

I agree K Kelly J.A. (ag.)