

stone-cutting, done by planing and sawing; no such noise was made as is made by a stone-crusher.

The complaint, so far as it was supported by evidence, was of noise and dust. The alleged injury to health was only that of the daughter of the plaintiff, who was an invalid, and whose complaint practically was, that "the noise got upon her nerves." There was no reasonable evidence that either the plaintiff or any other person suffered in the slightest degree in health by reason of the stone-cutting done by the defendant.

The onus of establishing discomfort from the noise was on the plaintiff, and he had not satisfied that onus. "When it is a question of noise, it is emphatically one of degree," as was said by Lord Selborne in *Gaunt v. Fynney* (1872), L.R. 8 Ch. 8.

The evidence shewed satisfactorily that no dust that could reasonably be complained of was occasioned by the defendant in carrying on his business.

Action dismissed with costs.

KELLY, J.

JUNE 10TH, 1916.

RE HENDERSON AND HILL.

Will—Construction—Power of Executor to Sell Lands of Testator—Time-limit—Best Interest of Estate—Delay in Selling—Power of Sale still Preserved—Title to Land—Vendor and Purchaser.

Application by a vendor, under the Vendors and Purchasers Act, for an order declaring his ability to make a good title to land contracted to be sold to a purchaser, the respondent.

The objection to the title was that, under the terms of the will of John Bull Bagwell, deceased, a conveyance by the vendor, as executrix of the will, will not vest a good title in the purchaser.

By one of the provisions of the will, the testator empowered his "executors to sell the vacant lot number 23 Park street north, adjoining my residence, also the premises number 90 King street west . . . as soon after my decease as my executors may consider for the best interest of my estate and pay the proceeds thereof into my general estate." The premises No. 90 King street west was the property in question.

By a later clause in the will, the testator gave his executors full power to sell and give title to "all the real estate of which I may be possessed at the date of my decease as soon as the