

Full Court.]

MILLER v. CAMPBELL.

[May 23.

*Injunction—Damage to building caused by blasting operations on adjoining land—Evidence in reply going to strengthen the original case—Non-disclosure of material facts on application for injunction—Offer to accept bond to secure damages, effect of—Costs.*

Appeal from an order for an interlocutory injunction at the suit of the owners of a substantial and valuable building restraining the defendant Alsip, the contractor employed by the other defendants who were engaged in the erection of a warehouse on land adjoining the plaintiff's building, until the hearing of the action, from blasting out the frozen earth in the process of excavating for the foundation in such a manner as to injure the plaintiff's building. The order further required the plaintiffs to abide by such order as the Court should make as to the damages suffered by the contractor by reason of the injunction or its continuance. The plaintiffs had previously obtained an interim injunction ex parte for a limited period absolutely restraining the defendants from blasting with blasting powder or other explosive substance of a similar nature in connection with the excavations on the land mentioned, and the order appealed from was made on the plaintiff's motion to continue that injunction. The affidavits filed on behalf of the plaintiffs tended to show that the blasting operations in question caused such a vibration or shaking of the plaintiff's building as to weaken it, and, if continued, to permanently injure it and threaten its destruction in whole or part. In reply to the affidavits filed on behalf of the defendants, the plaintiffs filed further affidavits containing statements not strictly in reply, but going merely to strengthen their original case; but an opportunity was given the defendants to answer the affidavits in reply.

*Held, 1.* The judge had a discretion to permit the evidence objected to which should not be interfered with on appeal.

Defendants objected that plaintiffs, on obtaining the ex parte interim injunction, had failed to disclose material facts known to them, and claimed that on that account the interim injunction should have been specifically discharged and the plaintiffs ordered to pay costs, and made that one of the grounds of the present appeal; but the Court declined to accept that view.

2. On the merits as disclosed in the affidavits, although there was no visible injury to the plaintiff's building, yet the evidence was such that a judge might not unreasonably come to the conclusion that the blasting operations in question, if continued, would almost certainly cause a permanent injury to the structure, and that the injunction should not be dissolved before the hearing. The general principles applicable to such a case are those laid down in *Fletcher v. Bealey*, 28 Ch. D. 688, and *Attorney General v. Corporation of Manchester*, (1893) 2 Ch. 87, for quia timet actions.

3. It is not necessary that each member of the Court should on such an appeal determine individually whether he would or would not have