

per Mellish, L.J., in *United Land Co. v. Great Eastern R.W. Co.* (1875), L.R. 10 Ch. 586, 590, cited with approval by Stirling, J., in *Sketchley v. Berger* (1893), 69 L.T.R. 754, 755, in which a mandatory injunction or the removal of the defendant's building was granted.

The defendant knew that she was wrong in erecting the garage upon the way. This point was of importance in determining the question to be decided: *Smith v. Smith* (1875), L.R. 20 Eq. 500, 505; *Holland v. Worley* (1884), 26 Ch. D. 578.

Distinct notice of the objection of the plaintiff to the erection of the building, as well as the small fence on the way, had been given to the defendant. Far from acquiescing in what the defendant was doing, the plaintiff protested against the erection of the garage as soon as the building rose above the surface of the way; and, when but little had been done above the surface, action was brought for a mandatory injunction.

The defendant, however, persisted in the work, and must take the consequences of her wrongful act. The only way in which justice could be done was by restoring the condition which existed prior to the time when the garage or any other obstruction was placed by the defendant on the way. Otherwise, as was said by James, L.J., in *Krehl v. Burrell* (1879), 11 Ch. D. 146, the consequence would be that a person would have a right to do a wrong to his neighbour at a price to be fixed by the Court. In *Lane v. Capsey*, [1891] 3 Ch. 411, where it appeared that a claim in a prior action for the removal of a house obstructing a right of way was dismissed without costs, owing to the laches and acquiescence of the plaintiffs, Chitty, J., gave them leave, notwithstanding that a receiver had been appointed, to proceed against the defendants for the abatement of the obstruction.

The building here was not of great value—unlike that referred to in *Durell v. Pritchard* (1865), 35 L.J. Ch. 223, L.R. 1 Ch. 244.

The discretion to grant a mandatory injunction to remove a building should be carefully, and, indeed, rarely, exercised. But, in circumstances such as exist in this case, where damages are an inadequate remedy, and the defendant acted with the knowledge that she was materially interfering with a clearly defined right, when she had ample space on her own property on which to place the garage without interference with the rights of the plaintiff, and persisted in wrong-doing, the discretion should be exercised. A mandatory injunction requiring the defendant to remove, within one month, the obstructions which she had placed on the way should, therefore, be granted. The defendant should pay the plaintiff's costs.

Reference to *Baxter v. Bower* (1875), 44 L.J. Ch. 625, and *Smith v. Smith*, *supra*.