

So far as the business of the defendant was concerned, on the principle of these authorities, the plaintiffs could not succeed. Assuming that the premises used as a billiard-room were fully adapted for the purpose, with floors reasonably constructed to deaden the sound, then, no matter to what extent the plaintiffs might be annoyed or rendered uncomfortable by such noises as are incident to a properly conducted billiard-room, they would not be entitled to an injunction nor to damages. The use of an upper storey in a building in a business district as a billiard-room is quite usual and reasonable; and the defendant is entitled, so far as the plaintiffs are concerned, to carry on this or any other business, not in itself objectionable, in the premises demised to him.

The question which presents the real difficulty is, whether or not, in adapting the premises for use as a billiard-room, the defendant took reasonable and proper steps to minimise the noise which apparently is necessarily incident to the business which he proposed to carry on.

For the accentuation of the noises by the metal ceiling over the plaintiffs' premises and under the floor of the defendant's premises, the plaintiffs must themselves find the remedy, the defendant being in no way responsible for that; but to the extent that the annoyance may be due to the defendant's floor, he is in the wrong. In refitting the room for use as a billiard-room, he failed to take proper and reasonable care to minimise the annoyance to his neighbours by providing a proper floor for a billiard-room.

To the extent, therefore, that the present inadequate floor (apart from the metal ceiling) aggravates the noises complained of by the plaintiffs, the defendant is guilty of creating a nuisance which the plaintiffs are entitled to have restrained by injunction; and to that extent the report of the learned County Court Judge should be affirmed; but the injunction order should be stayed for two months, in order that the defendant may make such alterations in the floor as are necessary to decrease and minimise the noise.

The defendant should pay to the plaintiffs their costs of the action and reference and of these motions.

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ORDE, J.

SEPTEMBER 10TH, 1920.

RE PARDON.

*Will—Construction—Soldier's Will—Printed Form—Blanks not Filled up—Ambiguity—Evidence—"Personal Estate"—Intention of Testator—Subjects of Gifts.*