

effect of placing outside windows on the defendant company's factory and whether that had been tried, and, on the advice of counsel, declined to answer unless the application of the question was confined to the period before this action was brought.

The Local Judge ordered that questions Nos. 134, 135, 136, 137, and 138 should be answered, and the defendants appealed.

Rule 327 entitles a party to examine the other, or the officer of the other if that other be a corporation, "touching the matters in question" in the action. That does not mean that all questions which may be asked at a trial must be answered upon the examination for discovery: *Kennedy v. Dodson*, [1895] 1 Ch. 334.

Rule 339 does not mean that—it refers to the manner and order of examination, etc., not to the questions which may be properly put. The one test is: "Will the answer to the question prove or help to prove some issue which arises in the action—evidence 'touching the matters in question?'"

In the present case there are two issues—not to speak of the alleged prescriptive right—viz.: (1) Was the defendant company's factory a nuisance as against the plaintiff? (2) If so, what are the damages to be awarded?

The first question applies to a nuisance, not at the time of the trial, but at the time of the teste of the writ of summons.

Rule 260 provides that "damages in respect of any continuing cause of action shall be assessed down to the time of assessment," but this is only where there was a cause of action when the writ was issued, not a cause of action arising thereafter.

The subsequent placing of outside windows and the effect would not prove nuisance at the teste of the writ. Nor would the evidence be admissible to prove the belief of the defendants that their plant was defective—that, in an action for a nuisance, is wholly immaterial, either on the question of nuisance or not, or on that of the quantum of damages.

The evidence sought would not assist the plaintiff in selecting her remedy—damages or injunction. Damages or injunction depends on the damage done, its kind and amount, not in the means taken to avoid a nuisance.

The questions were wholly irrelevant, and the appeal must be allowed—costs throughout to the defendants in any event.