

Eng. Rep.

VISCOUNTESS GORT V. CLARK—THE KING V. AHSEE.

[S. I. Rep.]

and an open space left in another part, but what guarantee has the plaintiff for the continuance of such accommodation? This accommodation, therefore, on which the defendant has laid some stress in his evidence, cannot be taken into account in estimating the injury sustained. I certainly am inclined to think that Lord Cranworth, L. C., carried a little too far the principle laid down by him in *Yates v. Jack*, 14 W. R. 618, L. R. 1 Ch. 295, that the owner of ancient lights is entitled not only to sufficient light for the purpose of his then business, but to all the light which he had enjoyed previously to the interruption sought to be restrained; but that is needless to be considered here, as in the present case there was an absolute interference with the plaintiff's light. That being so, there is no question but that the plaintiff might have filed her bill, and moved for an injunction while the factory was in course of erection. Now the factory was completed for all practical purposes in December, but the plaintiff's agent first complained on the 10th of January. The remarks of Sir G. Turner, L. J., in *Durell v. Pritchard*, as to the practice of the Court with respect to mandatory injunctions mean simply this—that the Court will not interfere to the extent of pulling down a building already finished, unless where very serious damage would otherwise ensue. Delay on the part of the plaintiff has been spoken of, but I think that a month was not a very long time for a reversioner like the plaintiff to become acquainted with what was going on and make up her mind to interfere. The case originally assumed the complexion of a mere question of damages; but £800 is a large sum, and the defendant did not choose to come in to such terms. It cannot, however, be said that the light and air enjoyed by another may be taken by any one with impunity on the condition of paying him damages for the deprivation, to be assessed possibly somewhat as claims of compensation are assessed under the Lands Clauses Act; although the plaintiff may all along have been willing enough to take damages, provided she could get the sum she demanded. The question as to noise and vibration rests on a different footing. The Court, in my opinion, has jurisdiction to direct an inquiry as to damages in this case. It is in evidence that a steam-engine and circular saw are in constant work from morning to night fourteen feet from the windows of one of the houses, and that must be an annoyance amounting to a nuisance, if *Soltau v. DeHeld*, 2 Sim. N. S. 150, be law. The decree of the Vice-Chancellor must be sustained, and the appeal dismissed.

SELWYN, L. J.—I am of the same opinion. The defendant has wholly failed to prove that the delay of the plaintiff in commencing proceedings to establish her right was such as to disentitle her to relief. With respect to the substantial injury which the evidence shows the plaintiff to have sustained, the case of *Durell v. Pritchard*, at first sight, would seem to justify the Court in granting a mandatory injunction. *Robson v. Wittingham*, however, shows that that class of cases has been carried too far. I think, therefore, that the Vice-Chancellor was right in limiting the relief to an inquiry as to damages sustained by the plaintiff, and not granting a mandatory injunction. The case goes far beyond the

principle laid down in *Clarke v. Clark*, inasmuch as it is clearly proved that the plaintiff has in the present case sustained substantial injury; and so I agree with the Lord Justice that the appeal must be dismissed.

SANDWICH ISLAND REPORTS.

SUPREME COURT.

THE KING V. AHSEE.

Suicide—Indictment—Attempt to commit murder.

By the Court.

ALLEN, Ch. J.—The indictment charges the defendant with an attempt to commit the offence of murder, by hanging himself by the neck; to which indictment a general demurrer is filed.

The Attorney-General alleges this act to be an offence against the statute of this kingdom, which declares murder to be the killing of any human being with malice aforethought, without authority, justification, or extenuation by law, and also against that statute (Penal Code, c. 45, s. 5) which declares the attempt to commit an offence punishable with death or imprisonment for life, as punishable by imprisonment at hard labor not more than ten years.

The counsel for defence contends that the act charged is not an offence known to the law, and hence it becomes necessary to ascertain the true meaning of the crime of murder under our statute; and, to do this satisfactorily, it may be well to ascertain what is the generally received definition of the crime of murder.

It is defined by Lord Coke, in 3d Institute, 47, as homicide with malice aforethought, either expressed by the party or implied by law. Malice, he says, is prepensed when one compasseth to kill, wound, or beat another, and does it *sedato animo*. In East's Pleas of the Crown (c. 5, s. 2) murder is defined as the voluntary killing of any person, of malice prepense, or aforethought express or implied. The penal code, upon which this indictment is found, uses the word in substantially the same sense; and, if we take the context together, it is very evident that it refers to the killing of another, and not one's self; and when the word is used by text-writers or by courts, it is always used as meaning the killing of another. It is never applied to suicide. The word self-murder is sometimes used. By the statutes of Massachusetts, in the first section of the class of offences against the lives and persons of individuals, it is declared that every person who shall commit the crime of murder shall suffer the punishment of death for the same. This can not apply to the suicide, for he is already dead by his own hand; and hence the statute cannot have reference to one who commits self-murder. The construction put upon our code by the Attorney-General leads to the same difficulty. Those learned in the law, and who draft statutes, would never use the expression, that whoever shall commit the crime of suicide shall suffer death.

It is very evident that the ablest text-writers never use the word murder as synonymous with suicide or self-murder. Punishment may be inflicted on the one, but the other is beyond its