

The plaintiffs' claim for injunction fails. They had a cheaper, a more just and convenient remedy for all the alleged wrongs done by defendant.

*Neal v. Rogers*, 22 O. L. R. 588, 1910.

The defendant says that owing to the injunction he was unable from June 10th to July 16th to proceed with the erection of the apartment house and thereby sustained heavy damages. These he claims under the plaintiff's undertaking, and asks for a reference.

The order is that the defendant "be restrained from wrongfully entering upon plaintiffs' lands, from pulling down the plaintiffs' fences, from wrongfully taking away the support of the plaintiffs' lands, from encroaching on the boundary of the plaintiffs' lands with excavation for a building, or in any other way trespassing upon the lands of the plaintiffs as set out in the writ of summons."

There seems nothing in that order to prevent the defendant from doing all that he says he desires to do, or all that he afterwards did, viz., erecting the apartment house upon his own land, unless the description by metes and bounds in the plaintiffs' writ was erroneous and so misled the defendant.

The plaintiffs are responsible at least to the extent of costs for wrongfully proceeding by injunction. The plaintiffs put the law in motion, put the defendant upon his defence, but the plaintiffs are not responsible in damages which, if sustained, resulted from an erroneous interpretation by the defendant of the injunction order.

In this case the defendant has in answer to plaintiffs' demand, furnished particulars of alleged damages. These particulars fill 6½ pages, and the damages are of a very varied character, amounting to very many thousands of dollars.

The Court is not bound to grant an enquiry as to damages even where the defendant has sustained some damage by the granting of the injunction, but it has a discretion and may refuse any enquiry if the damage is trivial or remote. See *Smith v. Day* (1882), 21 Ch. D. 421. A considerable amount of defendant's claim is for alleged loss of rent. It was held in the case just cited that damage because a person having agreed to rent, refused, as building not completed in time as delayed by injunction, ought not to be the subject of enquiry. The damages ought to be confined to