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ATTWOOD V. MAUDE—VISCOUNTESS GORT V. CLARK.

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acts of the plaintiff, his misconduct and the filing of his bill. But when we come to consider the nature of such a partnership as this, it is immaterial by whom the bill was first filed. The charge of negligence made by the defendant against the plaintiff is not proved; the evidence in support of it is weak and is answered by the evidence of the plaintiff; the case is thus narrowed to the charge of incompetence. Now, the defendant had ample opportunity of knowing what the plaintiff's capacity was; he must be taken to have known the kind of person he was treating with, and took higher terms in consequence. The decision might have been otherwise had there been fraudulent conduct or wilful neglect. [His Lordship cited the judgment of Lord Cottenham in *Hirst v. Tolson*, 2 M. & G. 124.]

Upon the evidence, and considering the defendant's means of knowledge, we must take it that he was well aware what the plaintiff would be to him, and accepted this sum in compensation. The inconvenience has turned out greater than he thought it would be. A state of circumstances having arisen which renders it impossible for the partnership to continue, the result is that the defendant has received the £800 in consideration of the inconvenience which he would have to undergo, and now he is relieved from it.

The plaintiff must have so much of his £800 returned as bears to the whole sum the same proportion that the unexpired term of the partnership bears to the whole term. There will be no costs of the appeal, but the deposit will be returned.

VISCOUNTESS GORT V. CLARK.

Light and air—Noise and vibration—Mandatory injunction—Damages.

Where the injury sought to be restrained has been completed before the filing of the bill, and the plaintiff has in the first instance, demanded damages, the Court will not grant a mandatory injunction, even where the injury is substantial, but will direct an inquiry as to damages.

The noise and vibration occasioned by a steam engine and circular saw considered an annoyance amounting to a nuisance, in respect of which an inquiry as to damages was granted.

Durell v. Pritchard, 14 W. R. 212, L. R. 1 Ch. 244, considered.

Decree of Stuart, V. C., affirmed.

This was an appeal from a decision of the Vice-Chancellor Stuart. The plaintiff was owner of a row of small tenements in Grosse-street Rathbone-place, which were let on lease to tenants, who sublet them in lodgings to persons of the working classes. Up to the month of August, 1864, at the back of the houses, fourteen feet from them only, was the back wall of a range of ancient stables in Black-Horse Yard, twenty-six feet in height. The defendant in that month, acquired the site of the stables, and began to erect thereon a factory, with an external wall fifty-six feet high, which was built up to its full height in the month of December, 1864, and the factory was completed and used soon after. On the 10th of January the agent of the plaintiff, who had hitherto not complained, wrote to the defendant, and complained that the factory wall interfered seriously with the access of light and air to the plaintiff's houses, and on the 26th of January wrote again, demanding £800 as compensation, and requiring in the alternative that

the damage should be assessed by a surveyor. The defendant in reply, offered to purchase the freehold at a fair price, or to take a long lease of the premises; but his offer was declined, and a mandatory injunction threatened. The bill was filed in April, 1865, praying that the defendant might be restrained from erecting a wall higher than any wall which had existed on the site during the last twenty years, or raising any wall, by which the access of light and air to the back of the house might be impeded, and that the defendant might be ordered to reduce any wall already built by him to a height not greater than the original height of the stable wall, with an alternative prayer for an inquiry as to damages sustained by the plaintiff. The plaintiff did not move for an injunction, but after answer amended her bill, and charged the existence of a nuisance, occasioned by the noise and vibration caused by a steam-engine and circular saw, which were at work in the factory from morning to night, and the smell of paint, used in painting the "self-coiling revolving shutters," of which the defendant was maker and patentee; in respect of which she prayed for an injunction or an inquiry as to damages.

The VICE-CHANCELLOR declined to grant the injunction, but directed an inquiry as to damages, in respect both of the loss of light and air, and of the annoyance caused by the noise and vibration. From this decision the defendant appealed.

Bacon, Q. C., and Bevir, for the appellant—We admit that the erection, to some extent, does interfere with the plaintiff's light and air, but her claim is an exaggerated one, and is not put forward in such a shape as to entitle her to relief in this court. She has herself made it a question of damages only, and this is a mere bill for £800, which ought to be dismissed, without prejudice to her right to bring an action. Delay is also fatal to her claim. She has stood by and allowed us to lay out £4,000, and it was too late in April, 1865, to ask for a mandatory injunction when the building was practically finished in December, 1864. As the plaintiff is a reversioner, the damage done to her is inappreciable, and the Court will not interfere on her behalf, when the result would be the ruin of our trade. They referred to *Clarke v. Clark*, 14 W. R. 115, L. R. 1 Ch. 16; *Durell v. Pritchard*, 14 W. R. 212, L. R. 1 Ch. 244; *Currier's Company v. Corbett*, 13 W. R. 1056; *Robson v. Wittingham*, 14 W. R. 291, L. R. 1 Ch. 442.

Greene, Q. C., and Walford, for the respondent, were not called upon.

Wood, L. J.—The strongest point in this case is, that the demand of the plaintiff was in the first instance shaped in the way of damages. As regards the actual state of things in the present case, the question whether injury is or is not done to the plaintiff in cases of this description has been fully considered in *Clarke v. Clark* *Durell v. Pritchard* (*ubi sup.*) There is a wall of fifty-six feet in height, erected by the defendant in substitution for a wall of twenty-six feet, and at a distance of fourteen feet only, upon the average, from the plaintiff's back windows. There is no doubt that the light and air have been considerably diminished: at the same time, as is generally the case, some compensation is given. There is a recess in one part of the wall,