

FREDERICK EMIL HAUBOLD v. JOHN PHILIP NILLSON

HIGH COURT. Apia. 1921. 1, 8 March. Wilson C.J.

Noise - damages and injunction claimed for nuisance.

In a claim for damages and injunction founded on nuisance, the requirements of the average man form a definite standard and test of the rights of the plaintiff.

Judgment for defendant.

Kent, for plaintiff.
Roberts, for defendant.

Cur. adv. vult.

WILSON C.J.: The plaintiff, a storekeeper at Matafele, Apia, sues the defendant, a baker in the same district, claiming Fifty pounds for damages and an injunction restraining the defendant from working in his bakehouse between the hours of 11 p.m. and 6 a.m. The grounds on which the plaintiff bases his claim are that the defendant or his servants have made such a noise during several months past between the hours of midnight and dawn that the plaintiff and his family have on very frequent occasions been awakened by such noise and prevented from sleeping and that such noise is creating a nuisance.

In support of his claim the plaintiff, his wife, Mrs Speeman and Mr Hack gave evidence of having been wakened and kept awake by noises made in the defendant's bakehouse during the past month. On the other hand the defendant testifies that his business is conducted without creating any nuisance, and witnesses called on his behalf to testify that the business of baking has been carried on in the premises occupied by the defendant for very many years without apparent discomfort to the former occupiers of the plaintiff's residence, and two of the witnesses who sleep in a building not very much further from the defendant's bakery than the plaintiff's residence say that they have not heard any of the noise of which the plaintiff complains, notwithstanding that one of them was for a time lying ill in bed.

The premises of the plaintiff and defendant are on the main street of Apia, in the business portion of the town, a narrow lane dividing them.

It is quite clear from the evidence of the plaintiff and his wife that the night work of the defendant is a source of irritation to them, but the evidence does not satisfy me that the defendant's operations create a nuisance entitling the plaintiff to relief. The case seems to me to come within the class referred to Sir John Salmond's Law of Torts, 4th Edition at page 217. The Author there says: "If a man is morbidly sensitive to noise so that he is prevented from working or sleeping by noises which would not annoy other people, this is indeed substantial damage inflicted on him, but is not actionable as a nuisance." And at page 218 - "In its application to those nuisances which consist in interference with health or comfort this rule is easy of application; the requirements of the average

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man form a definite standard and test of the rights of the plaintiff.

Judged by this standard I do not find that the plaintiff has established a right to an injunction or to damages, and judgment will therefore be for the defendant, with disbursements and 6/- each for the three witnesses called by him.