

BEDFORD ROW HOSPITAL COMMITTEE: QUERISTS.

re: Irish Cinemas Ltd., Building.

O P I N I O N .

I have considered the Instructions sent to me in this matter and read the copy Contract and correspondence.

Querists windows are undoubtedly ancient lights and I think that Irish Cinemas Ltd., new building will constitute an actionable obstruction. The obstruction is actionable if the access of light has been interfered with to such an extent as to render occupation of the house uncomfortable according to the ordinary notions of mankind and in the case of business premises to prevent the owner from carrying on his business as beneficially as before (Colls v Home & Colonial Stores, Ltd., 1904 A.C. 178). Having regard to the height of the new building it seems very likely that Querists Architects Messrs. C. Thompson & Co. are correct in contending that an actionable obstruction of Querists light must result.

Querists are not deprived of their right to complain by reason of the fact that they sold this plot of ground to Irish Cinemas, Ltd. The Contract contains no stipulation that Irish Cinemas, Ltd. shall be entitled to obstruct Querists lights, and although Querists knew that the plot was purchased for building if Irish Cinemas Ltd. wanted the right to obstruct these lights they should have stipulated for it in the contract. Agent refers to the principle that a man may not derogate from his grant, upon which if a man sells a house in which there are windows overlooking adjoining land which he retains he cannot afterwards build on the land in such manner as to darken the windows, for when granting the house he is presumed also to have granted a right to light for the windows. In the present case Irish Cinemas Ltd. are claiming to interfere with Querists right to light without having bargained for the right to do so.

If there had been no contract between the parties before Irish Cinemas, Ltd. started to build Querists would probably be entitled to an Injunction to prevent the building going up, but in fact the Architects on each side were in consultation about the plans and Querists Architects raised the matter of obstruction of light and on instructions stated that the Committee agreed to accept a sum of £650 with Architects and legal fees as reimbursement for their loss. The Architects for Irish Cinemas, Ltd. did not agree that the lights would be obstructed, but the building has proceeded on the basis that if there is an obstruction it can be compensated by the payment of £650 with certain fees. In these circumstances the Court would not grant an Injunction to restrain the erection of the building. The granting of an Injunction is a matter of judicial discretion and the person whose ancient lights are threatened with obstruction will not always be compelled to accept damages in compensation as for instance where the Defendants have acted in a high handed manner and endeavoured to steal a march upon the Plaintiffs or to evade the jurisdiction of the Court. The Court however is inclined to damages rather than an Injunction if the Defendant has acted fairly(see McGrath v Munster & Leinster Bank Ltd. 1959 I.R. at p. 328).

It would not be right to grant an Injunction in this case where Irish Cinemas, Ltd. have gone ahead with their building on the understanding that if Querists lights were obstructed the sum of £650 would compensate Querists for their loss. It is not necessary therefore to issue proceedings forthwith looking for an Injunction and the matter should be pursued as an ordinary action for damages. The Circuit Court jurisdiction is £600, and it is a matter to be considered whether if proceedings prove necessary they are to be brought in the Circuit Court or the High Court. If the Architects and legal fees are not in excess of £100 I would be disposed to recommend Circuit Court proceedings limiting the total claim to £500. If the claim is larger High Court proceedings should be issued. There is however no urgency about the matter and a com-

promise may be effected with Irish Cinemas Ltd.,

28th January, 1963.

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OPINION.

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