CLOCKS, BELLS AND COCKERELS

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In the public mind noise is associated more with the sound of twentieth century inventions than the ages old chime of church clocks and the clang of church bells or indeed the crowing of cockerels. The Law Reports give little guidance as to the principles governing the legal liability in the case of nuisance from clocks, bells and cockerels at common law and the circumstances in which an injunction can be obtained to stop them, in contrast to a steady flow of cases arising out of noise created by today's mechanised and industralised society. However, it would appear from recent experience as reported in national newspapers and from the writer's own experience that these issues are very much alive and of interest to practitioners, particularly those who are advising ecclesiastical authorities.

The facts of the recent case of Houston v Parochial Church Council of the Parish of St Mary's Belton and Reverend Stuart Samuel (Loughborough County Court) 1993 (unreported) are in themselves interesting. The bells in the church tower were themselves ancient. Shortly after the First World War the parish council and the British Legion raised monies to install a clock in the tower which struck on the hour on the tenor bell twenty-four hours per day until 1979 when the mechanism failed. At the same time the bells were removed because they were thought to be unsafe. Twelve years later the bells were reinstalled following repair and repair to the tower and in 1991 the parish council paid for a new striking mechanism to the clock and the striking of the clock resumed as before.

In the meantime the George Hotel, Belton, opposite the church, from being a relatively small hostelry had become much larger and much more important because it served the East Midlands Airport. The proprietor, Mr Houston, approached the incumbent and the parish council seeking to have the clock silenced during certain hours of the night when he said airline pilots and guests were trying to sleep. On a without prejudice basis the incumbent and church wardens and the parochial church council were inclined to compromise although agreement could not be reached as to the hours during which the clock should be silenced. The parish council who owned the clock were not inclined to compromise at all. Thereupon Mr Houston commenced proceedings for an injunction and damages against the PCC and the incumbent claiming that the noise of the clock striking on the tenor bell constituted a nuisance and seeking an injunction and damages for loss of goodwill and profit at his hotel.

The leading case in this area of law is the well known case of Soltau v De Held [1851] 2 Sim. (N.S.) 133. In that case the ringing of bells in a Roman Catholic Church at 5 am each morning for periods in excess of ten minutes was held to amount to a nuisance at common law. This case is cited in text books as being authority for the proposition that church bells may be a nuisance if rung *often enough and loud enough. This explanation of the case may be somewhat* too simple because in fact the leading judgment of Kindersley V-C lays great stress on the particular facts of that case as follows:

1. That the church was in fact not a church at all but a converted residential property and the other part of the same property in which the plaintiff lived was in fact only separated by a thin wall.

2. That the defendant claimed the right to ring the bells whenever he thought fit.

3. The particular effect the ringing had on the plaintiff. Kindersley V-C states (para 143) "a peal of bells may be and no doubt is an extreme nuisance and perhaps an intolerable nuisance to a person who lives within a very few feet or yards of them; but to a person who lives at a distance from them, although he is within the reach of their sound, so far from it being a nuisance or an inconvenience it may be a positive pleasure; but I cannot assent to the proposition of the plaintiff's counsel, that in all circumstances and under all conditions the sound of bells must be a nuisance".

Indeed it seems that one of the witnesses at the trial who gave evidence for the plaintiff conceded "but where I live at Clapham which is about a furlong from the bells and with the intervention of trees, so far from their being a nuisance to me they are a positive gratification and I confess I should be extremely sorry if they were done away with".

Nevertheless the judge was extremely impressed by the unusual circumstances of the case as follows:

"But I must observe that the six bells in the steeple of the church are not in respect of size such as are used in most chapels and district churches in and near London: but they are unusually large bells: and the effect produced by ringing them is thus described by Mr Soltau in his affidavit. He says: "that when a peal of the bells of the said Roman Catholic Church was rang the noise was so great that it was impossible for me or the members of my family to read, write or converse in my dwellinghouse: and I further say that the tolling and ringing of the said bell and bells was and is an intolerable nuisance to me; and if the said bell or bells is or are permitted to be tolled or rung in the manner in which the same was so tolled and rang as aforesaid, it will be impossible for me to continue to reside any longer in my said house." The Vice-Chancellor further recorded that Mr Soltau had said in evidence that the value of his dwellinghouse would be considerably diminished and that he and his family would be compelled to leave and that he could only dispose of the property at a great pecuniary sacrifice.

It will be an unusual case which is on all fours with the Soltau case. It is submitted that the judgment is an authority for little more than the proposition that it depends on the building and the proximity of the plaintiff to the defendant's bells or clock.

However, the judgment in the Soltau case is of further interest to those seeking to advise in this area of the law for the following reasons:

1. The question of the disturbance of the plaintiff's sleep. 5 am in the morning as in the peculiar circumstances of the Soltau case may be more thant the Court is prepared to countenance. However in Hardman v Hulberton [1866] W.N.379 the parish clock struck between 10 pm and 6 pm on the quarter hours and an injunction was refused on the grounds that the clock did not interfere with the enjoyment of adjoining property. It may have been an annoyance to the plaintiff and his wife who was ill but the clear evidence was that to most people in the parish it was not a nuisance and did not interfere with the enjoyment of their property. This

was a very significant factor in the Belton case as will be remarked upon later. So far as noise at night is concerned the leading authority on this aspect of noise nuisance is now Halsey v Esso Petroleum Co Limited [1961] 1WLR 683 where Veale J. remarked that night was the time when the ordinary man took his rest and the noise from boilers working continually and lorries going to and from an oil storage depot were an inconvenience materially interfering with the ordinary comfort physically of human existence. The ordinary man was entitled to sleep during the night in his own house. The persistence of the noise was emphasised, which marks this case out from those concerning bells and clocks and cockerels where the noise is intermittent.

2. The judgment in the Soltau case is also interesting because of Kindersley V-C's examination of the respective positions of the Roman Catholic Church and the Church of England as far as their bells and clocks were concerned. The learned judge seems to draw a distinction between a church of which there would be but one in a particular parish (in those days) and a building as in the instant case which was no more than a meeting house or chapel. The learned judge says (paragraph 161):

> "The law recognises the bells as an appendage to a parish church and by law the church wardens are to have the custody and care of the belfry in which the bells are suspended and tolled. Moreover with regard to churches, unless in special cases of churches founded by the Crown, or special cases of churches founded by an Act of Parliament not parish churches they are under the jurisdiction of the Bishop of the Diocese. There is but one Bishop of the Diocese. It is said that this building is under the jurisdiction of the Bishop of Winchester, in whose diocese Clapham is situated? Certainly not: it is but a chapel; it is no church; it has no legal privilege of having bells in the same way as a parish church has. I do not mean in what I say to intimate in the slightest degree that it is unlawful for Roman Catholics to have bells attached to their places of worship. I avoid that question entirely as I have hitherto done. But it seems to be assumed that this church stands on the footing of a parish church and therefore that it is as much privileged and entitled to have bells whether they are a nuisance or not as a parish church is: and for that reason I have made these observations."

The position generally is summarised by Kindersley V-C in Soltau v De Held citing with approval the language of Knight Bruce V-C in the case of Walter v Selfe (15 Jurist 416):

> "The important point next for decision may properly I conceive be thus put: Ought this inconvenience to be considered in fact as more than fanciful, or as one of mere delicacy or fastidiousness; as an inconvenience materially interfering with the ordinary comfort physically of human existence not merely according to elegant or dainty modes and habits of living; but according to plain sober and simple notions among the English people?"

From these cases and the case of common law nuisance generally it can be stated that the major factors affecting liability in cases of this kind arising

out of noise will be as follows:

1. The reasonableness of the usage by the Defendant. But the fact that bells have rung and cockerels have crowed since time immemorial will not be conclusive in favour of the defendant.

2. The regularity, duration and intensity of sound. But again this will not be conclusive because the courts have held that a temporary state of affairs may be an actionable nuisance. However the courts will ask if this noise interferes with the comfort of the average man.

3. The fact that the plaintiff came to the nuisance will not be a defence but only goes to the question of reasonableness.

4. Even if the defendants have rung bells for 20 years it does not seem that their conduct would have the element of certainty necessary to create an easement in their favour by prescription.

These are the legal principles but in every case the facts will be the deciding factor as to whether the judge in his discretion grants an injunction. Limits of noise are recommended by British Standard 8233 and these limits may well be decisive in the particular case.

However the story does not quite end there.

Under Section 79 Environmental Protection Act 1990 the local authority through its environmental health officer may serve a noise abatement notice if satisfied that noise is being emitted from premises so as to be prejudicial to health or a nuisance. In fact, therefore, the environmental health officer is making his own judgement as to whether a common law nuisance exists and he will be governed by the principles enunciated above. Where an individual is served with an abatement notice there is right of appeal against the notice to a magistrates' court.

Alternatively, the local authority may take action in the High Court for the purpose of securing the abatement, prohibition or restriction of any statutory nuisance where they are of the opinion that proceedings for an offence of contravening an abatement notice would not provide a sufficient remedy. The current fine in the magistrates court is £5,000 (level five). If the nuisance continues after conviction then a fine of one-tenth of the above level is payable for each day the nuisance continues. In the case of industrial trade or business premises the maximum fine is increased and is now a maximum of £20,000.

The writer understands from other practitioners in ecclesiastical law that local authorities have fairly widely threatened to use these powers in the case of clocks which strike through the night but that the matter is generally settled by the provision of a regulator on the clock or by having belfry windows soundproofed to reduce the noise level. Indeed in the Belton case soundproofing had already been provided when the matter was reported to the local authority and the local authority decided having made tests that they had no ground for complaint under the Environmental Protection Act 1990. Therefore the plaintiff was left with his remedy at common law. It was, of course, a considerable disadvantage to him when commencing proceedings that the local authority's environmental health officer had in effect decided against him; because the statutory principles and the

common law principles are the same. In effect the plaintiff would have had to show that the health officer had been unreasonable. Bells, clocks and cockerels have one thing in common namely that their noise is always intermittent, and therefore it is submitted that "cockerel" cases are instructive when advising on "bells" and "clocks" cases.

In a recent case in the Wakefield Magistrates Court (Daily Telegraph 9th December 1993) the local authority served a noise abatement notice on Mr Stead, a farmer, in respect of the alleged nuisance caused by two cockerels. The local authority relied on evidence of intermittent crowing by the cockerels between 4 am and 7 am on five days in April, July, October and November. Local residents gave evidence that the cockerels disturbed their sleep during these times in the early morning. The case is unreported so that the facts are not entirely clear except from newspaper reports but it appears that both sides relied on expert evidence that the crowing of the cockerels was sufficiently loud to disturb most normal people in their sleep. The farmer relied on evidence that the crowing was no louder than the normal sounds of nature to be found in the countryside. The magistrates dismissed the complaint after a three day hearing, apparently on the grounds that the crowing was not loud enough or constant enough to constitute a statutory nuisance. The question of cockerels crowing had already been examined in the case of Leeman v Montagu 1936 2AE1677. In that case it appeared that there was a very large number of cockerels kept on land which was in a largely residential district and the cockerels started to crow at 2 am in the morning until 7 or 8 am in October. The plaintiff and his wife were obliged to sleep with cotton wool in their ears. A witness described the noise as being "Like three cornets, two of which are out of tune". The court granted an injuction on the grounds that the poultry farm could be re-arranged so as to reduce the nuisance.

What therefore may ecclesiastical law practices conclude from all this? It is submitted that when the noise is intermittent then unless it is very loud with the plaintiff in close proximity the plaintiff will have great difficulty in establishing his case for an injunction. The Belton case had an interesting outcome because following an adjournment of the case on a temporary undertaking affecting certain hours of the night the parish council held a parish meeting which overwhelmingly and without any dissent decided to defend the litigation even if it meant a substantial parish rate levied to meet the costs. A defence was filed and the plaintiff seeing an overwhelming feeling of people against him in the locality appears to have taken fright and subsequently withdrew.