

13.6 Encroachment cases

If branches or tree roots cross onto a claimant's land, lawyers tend to refer to such intrusions as involving 'encroachment', rather than 'emanation'. The most significant difference between 'encroachment' cases and 'emanation' cases is that it seems that any encroachment which violates the boundaries of a claimant's land *automatically* amounts to an unreasonable interference with the claimant's use and enjoyment of land. (Though of course, in practice, many occupiers of land tolerate overhanging branches and straying roots.) This is not to say that a claimant will be automatically entitled to *sue* a defendant from whose land branches or roots are encroaching: the claimant will also need to show that the defendant is *responsible* for that encroachment, an issue we deal with below.⁷⁵ Moreover, the authority of *Lemmon v Webb* (1895) suggests that although any encroachment by branches or roots is a private nuisance which a claimant is entitled to *abate* by cutting off the offending protuberances, he will only be able to make a claim for damages if the encroachment has caused further damage.⁷⁶

13.7 Obstruction cases

A. Establishing a right

The summary at the start of this chapter stated that private nuisance not only protects a claimant from having the use and enjoyment of his land unreasonably interfered with, but also from unreasonable interferences with rights associated with his land. In obstruction cases – where a claimant is complaining that something has been obstructed from coming onto his land – the claimant will *only* be allowed to sue in private nuisance if the obstruction unreasonably interferes with some right that is associated with his land. If this condition is *not* satisfied, it will not matter that the obstruction reduces the claimant's enjoyment of his land, or even causes physical damage: the claimant will not be allowed to sue.

Bradford v Pickles (1895) and *Hunter v Canary Wharf* (1997) are examples of obstruction cases where the claimant could *not* show that the obstruction interfered with some right associated with his land. In *Bradford v Pickles*, water was percolating under the defendant's land through undefined channels and he obstructed it so that it never reached the claimants' reservoirs. It was unclear why the defendant did this: he may have simply wanted to harm the claimants, but, more likely, he was trying to persuade them to buy his land or to pay him a fee for allowing the water to continue uninterrupted through his land. The claimants' action against the defendant failed. As the water was flowing through undefined channels under the defendant's land, the claimants had no right to receive it, and could not therefore complain of its obstruction – whatever the defendant's reason for stopping it was.

In *Hunter v Canary Wharf*, one of the complaints was that the building of the Canary Wharf Tower interfered with the claimants' television reception because it stood between their homes and the Crystal Palace transmitter. In *Bridlington Relay Ltd v Yorkshire Electricity Board* (1965), Buckley J had suggested that interference with television reception

⁷⁵ See § 13.9.

⁷⁶ If a tree is protected by a 'tree preservation order' then the right to abate may be limited: see *Perrin v Northampton Borough Council* [2008] 1 WLR 1307.

Pernicious Ideas And Costly Consequences In Tellectual Roots Of Tort Crisis

IM Harris



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