been referred to any provision of law that it need be sworn. The latter part of the ground was not pressed.

I am also of opinion that the ground taken *ore tenus*, that the jury did not find that the heifer was the property of Buffett, also fails, as I consider that the jury, by the verdict of guilty of fraudulently branding, found that the heifer was the property of another person.

H. C. OF A. 1919. MENGES v. THE KING. Rich J.

Appeal dismissed.

Solicitor for the appellant, *W. D. McMahon.*

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

THE CO-OPERATIVE ESTATES LIMITED . APPELLANT; DEFENDANT,

AND

WILKINSON . . . . . RESPONDENT. PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

Nuisance—Injury caused by quarry—Acquiescence—Injunction—Damages.

In an action by the plaintiff, the owner of a house and land, against the defendant, from whom he had bought the land, claiming an injunction in respect of a nuisance caused by the working by the defendant of a quarry on adjoining land belonging to the defendant,

Held, on the evidence, that the plaintiff had not acquiesced in the nuisance so as to disentitle him to an injunction, and that an injunction was properly granted.

Decision of the Supreme Court of Tasmania (*Crisp* J.) affirmed.

H. C. OF A. 1919. SYDNEY, *August* 5. Isaacs, Gavan Duffy and Rich JJ.

H. C. OF A. 1919.

CO-OPERATIVE ESTATES LTD. v. WILKINSON.

APPEAL from the Supreme Court of Tasmania.

An action was brought in the Supreme Court by Thomas Washington Wilkinson against the Co-operative Estates Ltd., wherein the plaintiff by his declaration alleged that on land adjoining a block on which the plaintiff lived the defendant opened, managed, used and worked a stone quarry in such a way as to cause stones and dirt to be thrown on the plaintiff's land, to foul the air with dust, smoke and gases, and to cause undue and excessive vibration and noise; the plaintiff also alleged negligence in the carrying on of the quarry: and he claimed £500 damages and an injunction. The action was heard by *Crisp* J.

It appeared that some time prior to 1917 the defendant acquired a considerable area of land in a residential area which it cut up into building allotments and offered for sale. In April 1917 the plaintiff was negotiating for the purchase of one of the allotments, which he subsequently bought, and on which he built a house. On an adjoining block of land belonging to the defendant there was a quarry. The learned Judge found that in April 1917, when the negotiations for purchase were going on, the plaintiff knew of the existence of the quarry but was assured by the defendant that it would be worked very little, if at all. The building of the plaintiff's house began in June 1917, and he went into occupation of it in January 1918, and thereafter lived in it. The learned Judge also found that during part of the time from June 1917 until June 1918 operations were carried on at the quarry, though not continuously; that in the latter month the defendant began to open up the quarry more, making a large excavation for bins and installing an electric motor, and that from that time onwards the work was more continuous and on a larger scale; that the plaintiff rendered assistance in obtaining electric power and in getting certain poles for use in the quarry; that from June 1918 onwards the plaintiff frequently complained to the defendant's foreman about the annoyance caused to him by the work at the quarry, but that he never formally complained to the defendant until 13th September 1918, the writ being issued on 9th October 1918. The learned Judge then found that the quarry as worked constituted a nuisance to the plaintiff, and that he did not acquiesce in it. He also found that the defendant had

carried on operations at the quarry negligently so as to cause injury to the plaintiff. He therefore gave judgment for the plaintiff for £50, and granted an injunction restraining the defendant from using, or permitting to be used, the quarry in such a manner as, by the production of noise, vibration, dust or otherwise, to occasion nuisance or injury to the plaintiff as the owner of the house and premises in question.

From that decision, so far as it granted an injunction, the defendant now appealed to the High Court.

Clive Teece, for the appellant. There was sufficient acquiescence to disentitle the plaintiff to an injunction. All the injury suffered by the plaintiff, or likely to be suffered by him, could be compensated for by damages, and the case should be referred back for the assessment of damages.

[RICH J. referred to *West Leigh Colliery Co.* v. *Tunnicliffe & Hampson Ltd.* (1).]

In view of the small injury suffered by the plaintiff and the great hardship which an injunction would inflict on the defendant, an injunction should not be granted (*Shelfer* v. *City of London Electric Lighting Co.* (2)).

[RICH J. referred to *Jordeson* v. *Sutton, Southcoates and Drypool Gas Co.* (3) ; *Cowper* v. *Laidler* (4).]

James, for the respondent, was not called upon.

PER CURIAM. We do not think it necessary to say any more than that we do not see any reason for disturbing the judgment of *Crisp* J.

Appeal dismissed with costs.

Solicitors for the appellant, *Crisp & Crisp*, Hobart, by *Villeneuve Smith & Dawes*.

Solicitors for the respondent, *C. H. Elliston & Son*, Hobart.

B. L.

(1) (1908) A.C., 27.
(2) (1895) 1 Ch., 287, at p. 322.
(3) (1899) 2 Ch., 217, at p. 259.
(4) (1903) 2 Ch., 337, at p. 340.