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sive of the day on which he was dispossessed, in which to make his application. I hold, therefore, that the District Judge took a correct view of the law, and that his decree must be confirmed, with costs on the special appellant.

WARDEN, J., concurred.

Decree confirmed.

Note.—Upon a reference made by the Judge of Khándesh, in his letter No. 893 dated the 23rd of April 1866, submitting, under Act XXIII. of 1861, a statement of a case involving a question of law, and requesting to be informed whether the period of limitation prescribed for a suit based upon a bond should be computed according to the British or Maráthi calendar, the Court (COUCH, C.J., and NEWTON, J.) ruled, on the 27th of September 1865, that it should be computed according to the former.

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Special Appeal No. 443 *of* 1866.

MANISHANKAR HARGOVAN.....*Appellant.*
TRIKAM NARSI *et al.*.....*Respondents.*

Invasion of Privacy by opening doors and windows—Actionable Wrong —Usage of Gujarát—Injunction to restrain invasion of privacy.

Held, that, in accordance with the usage of Gujarát, an invasion of privacy is an actionable wrong, and that a man may not open new doors or windows in his house, or make any new apertures, or enlarge old ones, in a way which will enable him to overlook those portions of his neighbour's premises which are ordinarily secluded from observation, and so intrude upon his privacy.

Doctrine of English Law, which has been followed by the High Court of Madras, different.

THIS was a special appeal from the decision of J. R. Naylor, Senior Assistant Judge of Súrat, at Broach, in Appeal Suit No. 146 of 1864, reversing the decree of the Sadr Amín of Broach.

The plaintiffs sued to obtain an injunction directing the defendant to close up certain doors and windows, which he had recently opened out, through which he obtained an outlook into the plaintiff's premises.

The defendant answered that he could do whatever he liked with his own house, and that the opening of the doors and windows was no invasion of the plaintiffs' privacy, since

smaller gratings had always existed in the same positions in which the door and windows were now placed.

The Sadr Amín of Broach held that the defendant was at liberty to make what improvements he liked upon his own premises, and that if this caused an invasion of the plaintiff's privacy, he might make his own arrangements to prevent it.

The Assistant Judge adopted a different view, as appears from the following extract from his judgment :—"The vakíl for the respondent (defendant) has urged that a man has a right to do as he likes in his own house, and with his own property. But a general proposition like that is only admissible with the well-known reservation "*Sic utere tuo ut alienum non lædas*;" and where, as in this country, privacy is thought a matter of such consideration, everything that tends to lessen that privilege is *pro tanto* an injury, and must be held actionable. The true test of it is, that the injured party must incur the expense involved in an alteration of his own premises, or of his own domestic arrangements, in order to secure the same privacy that he enjoyed before. Otherwise he must submit to the annoyance of being constantly overlooked." He accordingly reversed the decree of the Munsif.

At the hearing of the special appeal, the High Court sent down the following issues to be tried by the Acting Senior Assistant Judge :—

(1) Is the space between the houses of the plaintiff and the defendants, upon which the new door and windows open, a public thoroughfare, or a passage to which a large number of persons have constant access ?

(2) Did the opening of the door and windows cause an invasion of the privacy of the plaintiff, having regard to the fact that grated apertures previously existed ?

(3) What are the dimensions of the door and windows complained of, and what were the dimensions of the former grated apertures ?

The Court further remarked that, with respect to the second

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issue, the mere enlargement of a previously existing aperture would not always amount to an invasion of privacy, as, if the size and position of the previous aperture were such as to give an easy and complete view of the premises which are alleged to have been in a state of privacy, it is obvious that no such state of privacy existed, and that, consequently, the extension of the opening would not amount to an invasion of privacy.

The Senior Assistant Judge, on the first issue found that the space between the houses of the plaintiffs and the defendant upon which the new door and windows opened, was not a thoroughfare, *i. e.*, it was only open at one end; but that it was a narrow lane, 4½ feet wide, to which the few persons who had any occasion to go to and from the houses, eleven in number, in it, had access, and that it was not a lane that would usually be frequented by any large number of persons, although there was nothing to prevent any one who wished to do so from going along the lane.

The finding on the second issue was, that the opening of the door and windows &c. did cause an invasion of the privacy of the plaintiff.

The finding on the third issue was, that the dimensions of the door &c. complained of were as follows:—

The door—5 ft. 7 in. high, 2 ft. 8 in. broad.

The grated apertures on either side of the door, each—1 ft. 3 in. × 1 ft. 4 in.

Windows—(1) 5 ft. 5 in. × 2 ft. 8 in.

(2) and (3) each—3 ft. 4 in. × 2 ft.

and the dimensions of the former apertures were about one foot high by one foot broad.

The appeal was heard before TUCKER and GIBBS, JJ.

PER CURIAM:—A series of decisions (*a*), extending over a long number of years, has settled the question, that, in accordance with the usage of Gujarát, a man may not open

(*a*) See 1 Borr. 272; *ibid.* 422; 7 Harington 212; 9 Harington 274; S. A. 278 of 1863.

new doors and windows in his house, or make any new apertures, or enlarge old ones, in a way which shall enable him to over look those portions of his neighbour's premises which are ordinarily secluded from observation, and in this manner to intrude upon that neighbour's privacy; and that an invasion of privacy is an infraction of a right, for which the person injured has a remedy at law. The rulings of the late Ṣadr Court and present High Court on this point have been founded on the long-established usage of the province, and, though opposed to the doctrine of the English Law, must be upheld and affirmed. The decision of the Madras High Court, *Komathi* v. *Gurunada Pillai* (Vol. III., Part II., p. 141), which has been cited to show that an invasion of privacy is not an actionable injury, is not an authority which we can follow in a matter of this kind, which is governed by the usage of the district, which has been frequently declared. The usage is not altogether singular, as a similar custom is recognised by the law of France.

The point to be determined in these cases is, whether new openings have been made, or old apertures enlarged, in a manner which will constitute a substantial invasion of privacy. In the present suit the lower appellate court has found that the new door and windows, which the defendant has made, do constitute a substantial invasion of the privacy hitherto enjoyed by the plaintiff. This is a determination of a question of fact, with which we cannot interfere; and this decision being good, the decree made by the Senior Assistant Judge, that the door and windows recently made by the defendant should be closed, was correct, and must be affirmed, the special appellant paying all the costs of the special appeal.

Decree affirmed.