

"The appellant's *vakil* has petitioned me to refer this case to the High Court. The question is a doubtful one, so I accede to his request."

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PER CURIAM (COUGH, C.J., and GIBBS, J.):—The Court is of the same opinion as the Principal Sadr Amin and the Acting Assistant Judge.

Special Appeal No. 252 of 1869.

Aug. 9.

Kuvarji Premchand *et al.*.... .. *Appellants.*
Bai Javer *Respondent.*

Invasion of Privacy—Custom of Gujrat—Opening of new windows overlooking a neighbour's premises.

When in Gujrat a householder's privacy is invaded by the opening of new doors and windows in his neighbour's house, his right of action is not altered by the fact that a public road runs between the dominians and the servient tenements.

Manishankar Hargovan v. Trikam Narsi followed.*

This was a Special Appeal from the decision of the District Judge of Ahmedabad in Appeal Suit No. 73 of 1866, reversing the decree of the Principal Sadr Amin.

Bai Javer instituted this action to cause the defendants to close four newly-opened windows,—two on the second and two on the third story, at the back of their house, which said windows overlooked the premises of the plaintiff, and the open court-yard at the entrance of her house where females bathed. The windows had been opened in 1865.

The defendants answered that there was a public road between their house and that of the plaintiff, and that no annoyance was caused to the plaintiff by the windows complained of.

The Principal Sadr Amin of Ahmedabad held that there was no reason shown for closing the windows. "The house of the plaintiff in this case is so low that it is not the house itself which is exposed to be overlooked from the defendants'

* 5 Bom. H. C. Rep. A. C. J. 42.

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windows; it is the open court-yard at the entrance which alone can be so seen. And though annoyance would be caused to any person who stood or remained uncovered in the open court-yard, as it was possible to see from the windows into it, yet the annoyance is not a sufficient reason to cause the windows to be closed, for the plaintiff could well prevent the annoyance otherwise."

The District Judge reversed, on appeal, the decree of the Principal Sadr Amin, observing, that as the windows in question were found to be newly opened windows, and caused annoyance by encroaching upon the plaintiff's privacy, they should be closed. In Gujarat, where alone this customary right obtains, it is not usual to have apertures in the back walls of houses overlooking the front of the houses on the opposite side. He relied upon the ruling in *Manishankar Hargovan v. Trikam Narsi (a)*.

From this decision, the defendants appealed.

The appeal was argued before WARDEN and LLOYD, JJ.

Dhirajlal Mathuradas for the Appellants: The circumstances of the present case distinguish it from the case relied upon by the Judge. The Judge has omitted to determine the important issue whether the road between the two houses is a public thoroughfare or a passage to which large numbers of persons have access. In that case an issue was found "that the space between the houses was not a thoroughfare; it was not a lane which would be usually frequented by any large number of persons." In this case the passage is admitted to be a public road, about seven *gaz* broad. That the distinction between a private passage and a public road was present to the minds of the learned Judges who tried the case cited by the District Judge is apparent from the fact that they sent down this particular issue, drawing the attention of the lower Court to the distinction. In all the other cases there was no public road between the houses. Every man has a right to see

what passes along a public road from his widow, and to enjoy the free light and air which comes from the public road; and if a private person is affected by this use of the public road he may prevent the invasion of his privacy by heightening his own wall. It is for the plaintiff to show that this customary right extends to public as well as private passages.

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Nanabhai Haridas for the Respondent: The main point in this case is to see whether the plaintiff's right of privacy has been invaded by the opening of new windows and apertures. That has been found in favour of the plaintiff, and the principle therefore of the reported case cited by the Judge embraces the present one also. The right has its foundation as between neighbours, and one neighbour may not look into the secluded apartments of another, whether a public road or a private passage lies between.

Dhirajlal Mathuradas in reply: There should be at least a fuller inquiry as to the alleged custom in the case of thoroughfares.

Per Curiam :—We see no cause to interfere with the decision of the Lower Court that the privacy of the plaintiff is invaded by the newly-opened windows. The existence of a public road between the houses makes no difference according to the custom of Gujarat. Taking the finding of the Judge that privacy has been invaded, we must confirm the decree appealed from with costs.

Decree confirmed with costs.