

Suit No. 233 of 1871.

RATANJI HORMASJI BOTTLEWALLA *Plaintiff.*
 EDALJI HORMASJI BOTTLEWALLA..... *Defendant.*

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Injunction—Mandatory Injunction—Easement—Light and Air—Obstruction of Light and Air—Door, Light admitted by.

Where two houses are held jointly by several owners deriving their title from a common source, and one of such houses enjoys a continuous, as distinguished from an occasional, easement over the other, such easement will, upon a partition of the premises, pass to the dominant tenement, both by implication of law, and under the usual general words contained in the deed of partition.

When the Court is asked to interfere by injunction to restrain the obstruction of light and air to a dominant tenement, the question to be determined is—is the obstruction such as seriously to interfere with the comfort or enjoyment of the owners of the dominant tenement, or such as to cause a material injury to it—an injury which cannot be completely compensated by damages.

English cases on the subject reviewed.

The Court will in such cases interfere, as well by mandatory as by preventive injunction, provided that in the circumstances of the case there is nothing inequitable in putting in force the former remedy.

The Court will look not merely to the use to which rooms, in a dwelling-house from which light is obstructed, are actually put at the time of the obstruction, but also to the use to which they may be put for all reasonable purposes of occupation.

It is immaterial whether light is admitted through a window or a door. In case of obstruction, the owner of the dominant tenement is in either case entitled to protection.

THIS was a suit brought by the plaintiff to obtain an injunction to restrain the defendant from continuing the erection of a building in a courtyard of the defendant between the respective houses of the plaintiff and the defendant, and to compel the defendant to remove the building already erected by him therein.

The circumstances of the case generally, the relative positions of the houses of the plaintiff and the defendant, and the nature of the new building complained of are described in the judgment of the court.

On the 27th of February 1871 a very small portion of the building complained of had been erected, and a notice was then served by the plaintiff upon the defendant, requiring

1871. him at once to desist from further proceeding with the building. The plaint was filed upon the 27th of March, when an injunction was obtained until the hearing.

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The cause came on for hearing before SARGENT, J., on the 28th of August 1871, and was heard on that and several subsequent days. The following issues were raised :—

1st—Whether the obstruction of light and air in the plaint complained of is one which diminishes the suitability of the plaintiff's premises for the purpose for which they were used at the time when the obstruction was erected.

2nd—Whether the said obstruction will materially diminish the value of the plaintiff's premises.

3rd—Whether the plaintiff has been entitled to uninterrupted passage and access of light and air over the courtyard mentioned in the plaint, to any portion of the plaintiff's premises, for the twenty years previous to the filing of the suit.

4th—Whether the access and passage of light and air as claimed by the plaintiff are necessary and requisite to the premises of the plaintiff, according to the dispositions contained in the will of the testator in the plaint and written statement named ?

5th—Whether, according to the true construction of the deed of partition in the pleadings mentioned or otherwise, the plaintiff is entitled to the said passage and access of light and air as grantee thereof, constructively or otherwise.

6th—Whether the said obstruction ought to be taken as amounting to a nuisance prejudicial or dangerous to health or life.

7th—Whether the plaintiff is entitled to a mandatory injunction.

8th—Whether the plaintiff is entitled to any, and what, damages for the alleged injury done to his premises.

9th—Whether the defendant is entitled to any, and what, damages for the injury arising from the injunction of 27th March 1871.

Anstey and Lang, for the plaintiff:—The deed of partition between the parties (dated the 30th of May 1869), and the general words contained in it, establish the plaintiff's title to the easement we claim, as an easement by grant, either express or implied: *Watts v. Kelson* (a), *Pyer v. Carter* (b), *Suffield v. Brown* (c). We also contend that the windows are ancient lights. The alteration of the premises does not affect our right to have the new windows in the position of the old windows unobstructed: *Latham on Window Lights*, p. 130; *Tapling v. Jones* (d). The nature of the obstruction in this case is such as the court will interfere to restrain: *Yates v. Jack* (e); *Latham on Window Lights*, p. 76; and by mandatory injunction: *Dent v. Auction Mart Company* (f), *Martin v. Headon* (g), *Stokes v. City Offices Company* (h), *Gale v. Abbott* (i).

The Honorable A. R. Scoble (Acting Advocate General) and *Latham*, for the defendant, contended that this was not a case for a mandatory injunction, but for temperate damages, which would be a sufficient compensation to the plaintiff. They cited *Isenberg v. East India House Company* (j), *Curriers' Company v. Corbett* (k), *Durell v. Pritchard* (l), *Jacomb v. Knight* (m). This is not even a case for a preventive injunction, as the damage suffered is not of a substantial nature: *Robson v. Whittingham* (n), *Buck v. Stacey* (o), *Jackson v. Duke of Newcastle* (p). The rooms of the defendant said to be darkened were, at the time of the obstruction, used as mere lumber-rooms, and are still for that purpose sufficiently lighted: *Martin v. Goble* (q), *Garritt v. Sharp* (r). They also cited *Lanfranchi v. Mackenzie* (s), and *Staight v. Burn* (t).

Cur. adv. vult.

- (a) Law Rep. 6, Ch. App. 166. (b) 1 H. & N. 916.
 (c) 33 L. J. Ch. 219. (d) 12 C. B., N. S., 826; 11 Ho. Lo. 290.
 (e) Law Rep. 1, Ch. App. 295.
 (f) Law Rep. 2, Eq. 238. (g) Law Rep. 2, Eq. 425.
 (h) 11 Jur., N. S., 560. (i) 8 *Ibid.* 987.
 (j) 33 Law J. Ch. 392. (k) 2 Dr. & Sm. 355.
 (l) Law Rep. 1, Ch. App. 244. (m) 32 L. J. Ch. 601.
 (n) Law Rep. 1, Ch. App. 442. (o) 2 Car. & P. 465.
 (p) 33 L. J. Ch. 698.
 (q) 1 Camp. 320. (r) 3 Ad. & E. 325. (s) L. R. 4, Eq. 421.
 (t) L. R. 5, Ch. App. 163.

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SARGENT, J.:—The plaintiff in this suit asks for the removal of a building newly erected by the defendant, and which, he says, will be an encroachment upon the plaintiff's ways of egress and ingress from and to the plaintiff's premises, will obstruct the hitherto uninterrupted access and passage of light and air for more than the last twenty years, over a certain courtyard, to the plaintiff's premises, and will render the plaintiff's house uninhabitable, and greatly deteriorate its value.

The defendant filed a written statement denying that the building in question would have the effect attributed to it by the plaintiff, and submitting that if the plaintiff's premises have received any appreciable injury by the new building, such injury will be amply compensated by moderate damages.

On the 27th of March 1871 an injunction was obtained until the hearing, restraining the defendant from further proceeding with the building, upon the terms of the plaintiff submitting to obey any order the court might make as to loss or damage that might be caused to the defendant by making such order.

At the hearing the plaintiff abandoned his objection to the building on the ground of its interrupting his right of egress and ingress to his premises, and the following issues were raised. [His Lordship read the issues and proceeded.]

The parties to this suit are two of the five sons of one Hormasji Pestanji Bottlewalla, who died in 1865, having made his will and thereby devised all his immoveable estate to his five sons.

About a year after the testator's death the brothers would appear to have proceeded to a division of the property, which was considerable, and to have taken possession of their respective portions, but the deed which effected a formal partition between the sons was not executed until the 30th of May 1869.

By that document the five sons conveyed the hereditaments and premises set out in the 2nd and 3rd schedules thereto,

together with all the rights, easements, and appurtenances to or with the same thereby granted, or any, or any part of any of them, now or at any time belonging, or reputed to belong, or enjoyed, unto Jamsedji Hormasji and his heirs, as to so much of the same hereditaments thereby granted, with their appurtenances, as were in the 8th schedule thereto specified, to the use of the plaintiff, his heirs and assigns. The premises specified in the 8th schedule, and so conveyed to the plaintiff, are, it is admitted, or at least it is not denied, the premises now occupied by the plaintiff or his tenant. The premises so conveyed to the plaintiff consisted of two dwelling-houses looking on to a small courtyard, the other three sides of which were occupied by the property which fell to the lot of the defendant. The most southern of the two houses had been built by the testator, about two years before his death, in the place of one which he had purchased and pulled down. There is no evidence to show that there were ancient lights in the house so pulled down, or that the apertures in the new house occupied the place of such lights (if any) as there were in the old house; and there is, therefore, no case established here of the existence of ancient windows before the house came into the possession of the testator. It is, however, not denied that during the testator's life, and up to the date of the deed, the two dwelling-houses which were conveyed to the plaintiff enjoyed uninterrupted light and air across the defendant's premises through the apertures which existed in the side of the houses looking towards the courtyard.

That being so, it is clear, upon the authority of *Watts v. Kelson (u)*, decided by the Lords Justices, that the easement, being of a continuous nature, passed both by implication of law and by the general words of the conveyance. Their Lordships in that case distinguished such an easement from rights of way which are only used from time to time, and which were the matters in dispute in *Thomson v. Waterlow (v)* and *Langley v. Hammond (w)*.

(u) Law Rep. 6, Ch. App. 166. (v) Law Rep. 6, Eq. 35.

(w) Law Rep. 3, Ex. 161.

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Now the Court of Chancery in England has, in the course of the last seven or eight years, had frequently to consider the question of obstruction to light and air; and the principles upon which the court will interfere by injunction either to prevent, or prohibit the continuance of, the alleged obstruction. The perusal of those cases beyond question leads to one conclusion—a conclusion referred to by the present Lord Chancellor, when sitting as Vice-Chancellor Page Wood, in the case of *Dent v. Auction Mart Co. (x)*, namely, “That there are many obvious cases of new buildings darkening those opposite to them, but not in such a degree that an injunction could be maintained, or an action upon the case, which, however, might be maintained in many cases which would not support an injunction.” When, however, we pass to the application of that proposition to the varying circumstances of alleged obstructions, we find that the learned Judges, be they Vice-Chancellors or Chancellors, have differed materially both in their mode of stating the principles upon which that doctrine is to be applied, and still more, perhaps, in the application of the doctrine to the actual circumstances before them.

• Now the earliest of the recent cases in which the matter has been fully considered is that of *Jackson v. The Duke of Newcastle (y)*, before Lord Westbury. His Lordship, after referring to the judgment of Lord Eldon in *The Attorney General v. Nichol (z)*, says: “The foundation of the jurisdiction appears to be, that injury to property which renders it in a material degree, unsuitable for the purposes to which it, is now applied, or lessens considerably the enjoyment which the owner now has of it. The court considers that injury of this nature does not admit of being measured and redressed by damages.” In *Johnson v. Wyatt (a)* before the Lords Justices, the Lord Justice Turner says: “I think that at all events a plaintiff coming to this court for its interference in a case of this nature is bound to show that the obstruction is such as will render the house occupied by him, if not of

(x) Law Rep. 2, Eq. 238.

(y) 33 L. J. Ch. 698. (z) 16 Ves. 342. (a) 33 L. J. Ch. 394.

less value, less fit, or at least substantially less comfortable, for the purposes of occupation.”

In *Dent v. Auction Mart Co.* (b) the present Lord Chancellor, then V. C. Wood, having, as he says, considered the question in every possible way, arrived at the conclusion that when substantial damages would be given at law, as distinguished from some small sum—£5, £10, or £15—the court would interpose by injunction. However, he admits that he feels some difficulty with reference to recent authorities, and that the decision of the Lords Justices in *Robson v. Whittingham* is scarcely reconcilable with such a principle.

In *Martin v. Headon* (c), V. C. Kindersley says that whenever it is shown that the comfort or enjoyment of a man of his family in the occupation of his house is seriously interfered with, there is sufficient ground for the interference of the court; and lastly, in *Staight v. Burn* (d), Lord Justice Giffard says: “I take the course of this court to be, that when there is a material injury to that which is a clear legal right, and it appears that damages, from the nature of the case, would not be a complete compensation, this court will interfere by injunction.”

The statements of the learned Judges in the two last cases taken together seem to me to be as lucid and complete an exposition of the principle on which the court interferes in cases of this nature as the subject admits of.

It is to be remarked that in both those cases the learned Judges said they would have granted a mandatory injunction, had it been asked for in the first case, and had the question been before the court at the hearing in the latter.

In *Dent v. Auction Mart Co.* an injunction both preventive and mandatory was granted; and in *Johnson v. Wyatt* the question before the court involved the right to an injunction of either description. It is clear, I think, therefore, that the learned Judges had the remedy by mandatory injunction in contemplation when they laid down the principle upon which

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(b) Law Rep. 2, Eq. 238.

(c) Law Rep. 2, Eq. 425.

(d) Law Rep. 5, Ch. App. 163.

1871. the court interferes. This is clearly so with respect to Lord Westbury, from his Lordship's remarks in *Isenberg v. East India House Estate Company*. He says: "The remedy given by the Common Law for a grievance of this description is an action for damages—that action is liable to be resorted to so long as the cause of damage continues. Upon that ground, and by reason also of the damage in many cases not admitting of being estimated in money, this court has assumed jurisdiction. Now this jurisdiction, so far as it partakes of the nature of a preventive remedy—that is, prohibition of further damage, or an intended damage—is a jurisdiction that may be exercised without difficulty, and rests upon the clearest principles. But there has been superadded to that the power of the Court to grant what has been denominated a 'mandatory injunction,' that is, an order compelling a defendant to restore things to the condition in which they were at the time when the plaintiff's complaint was made. The exercise of that power is one that must be attended with the greatest possible caution. I think, without intending to lay down any rule, that it is confined to cases where the injury done to the plaintiff cannot be estimated and sufficiently compensated by a pecuniary sum"—that is, according to his Lordship's remarks in *Jackson v. Duke of Newcastle*, "when the interference with the light and air renders it in a material degree unsuitable for the purposes to which it is applied."

In *Direll v. Pritchard* (e) Lord Justice Turner says: "The authorities upon this subject lead, I think, to these conclusions, that every case of this nature must depend upon its own circumstances, and that this Court will not interfere by way of mandatory injunction, except in cases in which extreme, or at all events very serious, damage will ensue from its interference being withheld." The language used by Lord Westbury and Lord Justice Turner is undoubtedly somewhat stronger than that employed by the learned Judges in the more recent decisions, in 1866, of *Dent v. Auction Mart Co.*, *Martin v. Headon*, and *Staight v. Burn*, and shows doubtless that the tendency of the decisions is towards a less

(e) Law Rep. 1, Ch. App. 244.

sparing exercise of the jurisdiction than formerly prevailed, and that too on the ground that the interference with light and air is not merely a nuisance, but an interference with that which, as V. C. Kindersley says in *Martin v. Headon*, is, as a matter of principle, just as much part of the property of a man as his land or his house, and just as much entitled to protection as any other property.

Now the circumstances of the present case are these.

The premises belonging to the parties to this suit are, as has been stated, built round an inner courtyard, the west side being occupied by those of the plaintiff, and the other three sides by those of the defendant.

This yard is about twenty-one feet wide on the south side and twenty on the north, and covers, exclusively of a small recess in the defendant's premises, about 295 square feet. And the surrounding wall on the north, east, and south sides was about forty-five feet high. The obstruction in question is a building on the south side of the court, joining the defendant's premises on that and the east side of the court, and continued up to the top of the defendant's wall, but with a roof sloping inwards to towards the courtyard. It projects six feet, exclusive of the eaves of the roof, from the defendant's wall, against which it is built, and is carried westward till its outer wall is within eight feet of the plaintiff's wall. It is said by the plaintiff's surveyor and architect to cover a hundred square feet. But it is clear, I think, from simple calculation, that this can scarcely be the case, and that 82 sq. ft. 10 in., as stated by the defendant's surveyor, is nearer the truth. In any case it occupies between a fourth and one third of the entire yard. Now the plaintiff's premises consist of two houses communicating by a common exterior verandah on the side of the courtyard on the first and second floors. On each verandah there are two doors leading into the two houses; and the new building projects as far as the northern side of the door on either verandah nearest to the south-west corner of the court. The southernmost of these houses was, as I have stated, rebuilt by the plaintiff's father before his death, and I shall, therefore, for

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convenience sake, speak of it as the new house, and the other as the old house.

Now, so far as light is concerned, I do not think it was contended that the old house was materially affected, although some amount of lateral light must doubtless be intercepted. As to the new house, the same remark applies to the third and fourth stories both as to light and air, independently of the question, which I omit for the present, as to the particular use to which the new building is intended to be put by the defendant. This was not, I think, attempted to be denied by the plaintiff's own witnesses, and I was enabled, by inspection of the premises, to ascertain that this was the case beyond all doubt.

I now pass to the second story of the new house.

The light and air are here admitted by keeping the door open which leads into the exterior verandah. It was contended that this was not a window. But I conceive that the only question is whether there is an aperture capable of admitting light and air, and that such aperture will confer the same legal right, whether it be used exclusively for the passage of light and air and termed a window, or intended to be used as a means of communication and called a door. This is more particularly the case in this country, where, perhaps, except during the monsoon, a door and a window are almost the same, so far as the admission of light and air is concerned. There is a roof to the verandah extending to within three feet of the defendant's new building. The effect of this is to intercept the direct sky-light, so that, according to Mr. Assheton, the plaintiff's architect, it only entered about three feet into the room. This light is now entirely intercepted by the new building.

It was contended by the defendant that, as the plaintiff has diminished his light and air by his own act, the question of material diminution of comfort must be determined with regard to that diminished light. It appears, however, that the roof—although, according to the evidence of the carpenter, Jamsedji Fardunji, it was built by the orders of the plaintiff himself—is not of a permanent character. This is admitted

by Mr. Morris, the defendant's architect, who saw it in April, and says it had no covering then, and that it now has plates of corrugated iron, and is not of a permanent character. It is plain, then, that the plaintiff has put a covering to the wooden rafters which can be placed or removed according to circumstances, and has certainly done nothing which can be deemed equivalent to a surrender of his right, or disentitle him to the same amount of light and air as he enjoyed when he first took possession of the property. The remarks of V. C. Wood in *Dent v. Auction Mart Co.* at page 251 are applicable to this case:—"They may wish to accommodate the light and air to the season of the year. That is no reason they should be deprived of it at all times."

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Now the direct sky-light, supposing the covering to be removed, must have penetrated into the room some eight feet, and now will penetrate only three and four inches. I take these figures from Mr. Assheton's diagram, but Mr. Morris's diagram would show quite as great a difference. In any case it is obvious it must be considerable. The same remark applies with still greater force to the first floor. Here the direct light only enters, Mr. Assheton says, two and a half feet, instead of nine feet.

Again, there will be a considerable loss of sky-light in azimuth, extending to 9° according to Mr. Morris. No doubt, the doors will still continue to receive light from the north and north-east; but that light, besides coming from the sunless side of the heavens, will fall principally in the corner of the rooms where the well and privies are, and not diffuse itself over the rooms.

It was said also that there will be reflected light from the wall of the new building when it is whitewashed. But, as was said by Lord Justice Giffard in *Staight v. Burn*, they are not bound to put up with reflected light, even if it would not be incomparably less than the direct sky-light; and again, as was said in *Dent v. Auction Mart Co.* with respect to glazed tiles, who is to ensure the wall being kept whitewashed, or in a state to reflect light? The plaintiff is entitled to stand on his right, and not to depend upon the degree of

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Dinshá, who is at present the occupant of the new house, says it is darkened to a great extent—the degree increasing as you descend. There is the usual difference of opinion amongst the professional witnesses; but as it is not on a matter peculiarly within their knowledge, I have paid but little regard to it. After a personal inspection of the premises, and examination of the diagrams of the surveyors on either side, I can come to no other conclusion than that there will be a considerable diminution of light on the first and second floors.

It is said, however, that this diminution of light will not seriously or materially affect the enjoyment of the house as a dwelling-house, having regard to the use which is made of the rooms, the quantity of light which still remains, the habits of the occupants, and what people can reasonably expect in a crowded city like Bombay.

The latter argument was undoubtedly adopted by Lord Cranworth in *Clarke v. Clark*. His Lordship's remarks in that case seem to amount to this—that if a man has as much light as falls to the lot of the inhabitants of towns generally, he cannot be said to suffer any material inconvenience. His Lordship would appear to have abandoned his own principle in *Yates v. Jack*; and in *Dent v. Auction Mart Co.* the present Lord Chancellor expressed his disapprobation of it, and that too quite independently of the effect of the English Prescription Act; and this view was adopted by V. C. Kindersley in *Martin v. Headon*. Until the Legislature thinks proper to deal with the question, the only one which the court has to decide is whether the enjoyment has been seriously interfered with by the obstruction of the light and air.

With respect to the argument based on the present use made of the rooms, the right to light and air which was appurtenant to the new house, and which was granted by the deed of conveyance, must be at least a right to such light and air as was necessary for the enjoyment of the rooms as part of a dwelling-house, and for such purposes

as they might reasonably be put to. That purpose will vary from time to time according to the exigencies of the family; but the mere circumstance that the room is used as a lumber-room or godown at the present time cannot, I conceive, affect the question of enjoyment, which is the right to its enjoyment for all reasonable purposes to which it may be put as a room in a dwelling-house; and we have not here the difficulty which seems to have presented itself to Lord Westbury in *Jackson v. Duke of Newcastle*, namely, whether the court could take into consideration the possibility of the room being used for some special purpose requiring an extraordinary amount of light.

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With respect to the room on the first floor, it would appear to have been used as a godown for storing grain and the necessaries of life. The defendant says it was so used in his father's lifetime, and Dinshá says he has always used it for that purpose; but there is nothing to prevent its being used for a bedroom; and if the house were let in floors such would probably be the use made of it. The first floor, Dinshá says, he has always used as a sitting-room; and that is not denied by the defendant, although the defendant says he used it as a lumber-room when he lived on the second floor. In any case it could clearly be used for such a purpose.

With respect to the light which enters the rooms independently of that admitted by the doors, the rooms are dependent on two windows looking into an inner court or rather well of about a yard wide and three or four yards long, continued up to the roof and having a sky-light on it, and also on such light as they receive from the windows looking into Bohrá Bazar Street. The light from both these sources is necessarily very small. Indeed, the light could never have been more than was positively necessary for the ordinary purposes of life.

I have hitherto considered the question with reference to light; but the plaintiff was equally entitled to the free passage of air through the door, and also the apertures on

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the groundfloor of the new house. There must always have been an imperfect circulation of air in so confined a court. But it is impossible that the filling up nearly one-third of it by a building reaching to the top of the surrounding walls, and placed only eight feet from the plaintiff's house, should not greatly diminish the air entering the house, and sensibly affect the proper ventilation of it. This is still more so from the circumstance of the building being on the south side, from which the air comes during the hottest season of the year. Dinshá, who occupies the new house, says the air from the privies in his house cannot escape, owing to the new building. It is further to be remarked that the new building will tend to create a stagnation of air in the corner formed by it, the plaintiff's house, and the portion of the defendant's house, where all his privies are opening into the courtyard. The purpose to which the defendant is going to put the new building may not be in itself a nuisance; but I cannot but think, as the Lord Chancellor held in *Dent v. Auction Mart Co.*, under somewhat similar circumstances, that the creation of this confined space, with kitchens and privies on two sides of it, in the vicinity of the doors leading into the plaintiff's house, is an interference with air, which the court will recognise as a nuisance.

Under all these circumstances I should have little or no difficulty in concluding that the defendant's new building will seriously diminish the enjoyment of the new house. But the case does not rest there. By the deed of partition the defendant expressly covenanted with the plaintiff, as far as his own acts were concerned, that the hereditaments and premises thereby conveyed to the plaintiff should at all times thereafter be peaceably and quietly held and enjoyed without any interruption or disturbance whatsoever from or by the defendant.

The building in question is beyond all doubt an interruption of the plaintiff's enjoyment of the right to light and air, which, either expressly or by implication of law, was part of the hereditaments and premises granted to the plaintiff by the above deed; and the court will, in the absence of special

circumstances, compel the defendant to perform his covenant without looking minutely into the nature or extent of the interference. The circumstances here are precisely the same as those in *Davies v. Marshall* (l), where the remarks of V. C. Kindersley at page 562 are strictly applicable to the present case. "The defendant is materially obstructing the light and air which the plaintiff was entitled to, and the court will not go into the question whether or no it seriously affects his enjoyment of the house." So again, in *Low v. Innes* (m), the simple question was whether the covenant had been violated by the defendant, and the mandatory injunction was refused only because the defendant made such an offer as would put the plaintiff in as favourable, if not more favourable, a position than if the defendant had acted up to his undertaking. As to special circumstances that would render the interference of the court inequitable, I can discover none. There was an attempt at arbitration, at which no conclusion was come to according to Sorábjí, who acted as arbitrator for the plaintiff. The defendant and Jamsedjí, his arbitrator, say the plaintiff agreed to the building being erected in its present position two feet further from his house than was originally intended. Jamsedjí's evidence is quite untrustworthy—is contradicted by the evidence of the independent witness, the *mestri*, who says the foundations were never changed; and the defendant, by the reckless manner in which he swore as to the state of the building in his affidavit (exhibit S), is certainly not a reliable witness.

The plaintiff and Sorábjí are corroborated in their evidence by the course the plaintiff took only a few days afterwards, when the foundations were commenced. A notice was at once served on the defendant, warning him against proceeding with the building; and Sorábjí says that a further attempt was made to persuade the defendant to buy the plaintiff out before the bill was filed, which was delayed, as Mr. Jefferson says, by his advice, in the hopes that the parties might come to terms.

(l) 1 Dr. & Sm. 557.

(m) 10 Jur., N. S., 1037.

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1871. This notice removes, as Lord Justice Knight-Bruce says in *Jacomb v. Knight (n)*, all objections to the mandatory form of the injunction—by which I understand the learned Judge to mean, deprives the defendant of all right to complain of its particular form.

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I, therefore, find the fourth, fifth, sixth, seventh, and ninth issues for the plaintiff, and order that an injunction issue, restraining the defendant from allowing the building in question to remain. The defendant to pay the costs of the suit.

Attorneys for the plaintiff: *Jefferson and Payne.*

Attorneys for the defendant: *Keir, Prescott, and Winter.*



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Dec. 4.

PURSHOTAM SHA'MA' SHENVI *Plaintiff.*
VA'SUDEV KRISHNA' SHENVI *Defendant.*

Adoption—Adopted Son—Purchaser for Value—Right of Father to will away self-acquired Property from Adopted Son.

An adopted son does not stand in a better position, with regard to the self-acquired immoveable property of his adoptive father, than a natural-born son would occupy; and there is nothing in the Hindú law in this Presidency to prevent a father from disposing by will of his self-acquired immoveable property, and so defeating the rights by inheritance of his adopted son.

THE plaint in this suit alleged that one Shámá Shivrám Shenvi died, on the 6th of October 1869, possessed of considerable property both moveable and immoveable; that in the year 1848 the deceased and his wife, Sakhubái, had adopted the plaintiff as their son; that Sakhubái died in 1863 intestate, leaving the plaintiff her only son and personal representative; that the deceased and Sakhubái his wife had performed the *munj* and *lagna* ceremonies of the plaintiff, and had always treated him as their son; and that the defendant had, upon the death of Shámá Shivrám Shenvi, possessed himself of all Shámá's property, immoveable as

(n) 32 L. J. Ch. 601.