

13 B. 674.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*KADARBHAI (Original Plaintiff), Appellant v. RAHIMBHAI AND OTHERS
(Original Defendants), Respondents.* [12th March, 1889.]*Obstruction of light and air—Injunction—Specific Relief Act I of 1877, s. 54, cl. (c).—
Limitation Act XV of 1877, s. 26—Mandatory injunction.*

The plaintiff complained that the defendants intended to build so as to obstruct the passage of light and air through an ancient window in his house, and render a room therein unfit for use and prayed for a perpetual injunction restraining the [676] defendant from so building. It was proved that the wall intended to be built would so shut out the light and air as to render the room completely dark and unfit for use. The Subordinate Judge granted the injunction as prayed. The defendants appealed to the Joint Judge who amended the lower Court's decree by ordering the removal of the injunction, and directing in its stead, a new window to be opened in the plaintiff's house to the east of the window in question. On appeal by the plaintiff to the High Court.

Held, reversing the decree of the lower appellate Court, that the plaintiff had an absolute and indefeasible right to the easement he had acquired; and the only possible question was whether injunction or damages was the appropriate remedy under the circumstances of the particular case.

Held, also, that, as the evidence established that, after defendant's wall was built, plaintiff's room would not remain substantially as useful to him as before, the plaintiff was entitled to an injunction.

The High Court also directed a mandatory injunction to issue to the defendants to remove the wall they had raised after the lower appellate Court had passed the decree in their favour and pending the plaintiff's appeal to the High Court.

[R., 7 Bom. L.R. 352 (362) ; 19 Ind. Cas. 843=6 S.L.R. 255.]

SECOND appeal from a decision of G. Jacob, Joint Judge of Ahmedabad.

This was a suit brought by the plaintiff against the defendants for a perpetual injunction restraining the defendants from building a wall on their premises in such a manner as to obstruct the light and air which the plaintiff had acquired as an easement through a window in the southern wall of the plaintiff's house.

The Subordinate Judge found that the window in the plaintiff's wall was an ancient window, and that the wall which the defendants intended to put up would render the room, in which the window stood, so dark as to make it "impossible to walk about or to do anything in it." He, therefore, awarded the plaintiff's claim.

The defendants appealed to the Joint Judge, who amended the lower Court's decree by rejecting plaintiff's claim to injunction, and ordered a new window to be opened to the east of the window in question at the cost of the defendants.

From this decision the plaintiff preferred a second appeal to the High Court.

[676] *Gokuldas Kahandas*, for the appellant:—It has been found by the Court of first instance that the window in the plaintiff's wall was an ancient window, and that the room was so shut out from light and air as to be unfit for use. Under these circumstances the plaintiff was entitled to injunction. Pecuniary compensation here would not afford

* Second Appeal No. 339 of 1887.

1889

MARCH 12.

APPEL-
LATE
CIVIL.

13 B. 674.

1889
MARCH 12.
—
APPEL-
LATE
CIVIL.
—
13 B. 674.

adequate relief. The lower appellate Court had no power to order the opening of another window in place of the one blocked up. Subsequently to the decree of the lower appellate Court removing the injunction the defendants have run up their wall; a mandatory injunction should now issue ordering it to be pulled down.

Manekshah Jehangirshah, for the respondent.

JUDGMENT.

SARGENT, C. J.—It is not in dispute that the window in the south wall of the plaintiff's house is an ancient window into which the light passed without any obstruction before the defendants built their present wall. It is found by the Subordinate Judge, who visited the plaintiff's house, that the effect of the new wall will be to render the back room so dark as to render it "impossible to walk about or do anything in it." The only question is, therefore, as to the form of relief to which the plaintiff is entitled. The Joint Judge considers that the plaintiff will be adequately indemnified by the defendants' opening another window for him to the east of the window in question, the light into which will not be interfered with by the defendants' house. This, however, is a form of relief which the plaintiff cannot be compelled to accept. He has an absolute and indefeasible right under s. 26 of the Limitation Act XV of 1877, to have substantially the same amount of light enter his room through the particular aperture through which it had always passed, or to be indemnified for the diminution of light caused:—see *Tapling v. Jones*(1). Whether the relief should be by injunction or damages is a question of no little difficulty in cases of this description. Section 54, sub-clause (c) of Specific Relief Act provides that a perpetual injunction is only to be granted where "pecuniary compensation would not afford adequate relief." In determining whether pecuniary compensation is sufficient in any particular [677] case, it has been the practice on the original side of this Court and the practice would appear to be equally adapted to the special circumstances of towns in the mofussil, to follow the ruling in the English case of *Holland v. Worley* (2), "that damages should be given where the injury is not so serious that the property might not still remain the plaintiff's and be as substantially useful to him as before." Applying that rule to the facts as found by the Subordinate Judge, and which were not disputed on appeal, and treated as correct by the Joint Judge, it is beyond all question that the room, after the defendants' wall has been built, will be clearly not as substantially useful as before and that damages would, therefore, not be an adequate compensation. We must, therefore, reverse the decree of the Court below, and grant a perpetual injunction restraining the defendants from raising their wall so as to obstruct the passage of light into the window in question; and as the defendants have thought fit to carry up the wall since the decree of the Court below, notwithstanding the appeal to this Court, mandatory injunction must issue directing them to remove it. Appellant must have his costs throughout.

Decree reversed.

(1) 11 H. L. C. 290 (305).

(2) L.R. 26 Ch. D. 578 (585).