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properly read as covering more than those claims. Moreover, as there was no decision come to whether Fatmabai was the widow of Haji Adam, the general language of the release may well be explained by the natural anxiety of the arbitrators to prevent the possibility of the plaintiff, notwithstanding the award of Rs. 55,000, still preferring a claim to share in the estate on the basis of their being the widow and daughter of Haji Adam.

Much stress was laid, in argument, on the final direction in the award that Aishabai is entitled absolutely to all the rest of the estate and effects of the said Haji Adam as her sole property as against the said Fatmabai and Mariambai; but these words under the circumstances must be read with reference to the character in which the parties were litigating as widows of the deceased Haji Adam claiming to succeed to his property on his decease. The case of *Sreemutty Rabutty* v. *Sibchunder Mullick*(1) **[252]** shows that such general language may be controlled by the circumstances of the case.

Upon the whole we are unable to come to the conclusion—and it is necessary, we apprehend, to do so in order to decide in favour of the defendants—that upon the proper construction of the award there is such a clear intention shown to include in the settlement effected by them a future contingent claim of the special nature now under consideration as to preclude the plaintiff from setting it up in the present suit; and it is worthy of remark that though Mr. Bhaishankar, solicitor for the defendant in that suit and one of the arbitrators, is the solicitor for the defendant in this case, he has not taken the objection in the correspondence which preceded the filing of the plaintiff's suit.

We must, therefore, reverse the decree, and send back the case for disposal on the merits. Costs to abide the result.

Decree reversed.

Attorneys for appellant:—Messrs. *Tyabji and Dayabhai.*
Attorneys for respondent:—Messrs. *Jafferson, Bhaishankar and Dinsha.*

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Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice Bayley.

DHUNJIBHOY COWASJI UMRIGAR (*Original Defendant*), *Appellant v.* LISBOA (*Original Plaintiff*), *Respondent.**
[11th and 21st December, 1888].

Easement—Light and air—Obstruction—Injunction or damages—Lord Cairns' Act (21 *and* 22 *Vic. C.* 27)—*Specific Relief Act I of* 1877.

The plaintiff owned a house in Girgaon road, Bombay, in which he had resided with his family for twenty-four years. Through certain windows in the south wall of his house, numbered respectively 3, 5, 7 and 8, he had during all that time enjoyed free access of light and air. In 1887 the defendant purchased the land to the south of the plaintiff's house, pulled down the building that then existed upon it, and preceeded to build a new one on the same site, the north wall of

* Suit No. 515 of 1887.

(1) 6 M.I.A. 1.

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which was about six feet distant from the south wall of the plaintiff's house, and was intended to be sixty four feet high, *i.e.* about twenty feet higher than the plaintiff's windows Nos. 7 and 8, which were in the plaintiff's loft.

The plaintiff sued for an injunction.

Held, that the plaintiff was entitled to damages, but not to an injunction.

[F., 20 B. 704(710); 19 Ind. Cas. 908=6 S. L. R. 265; R., 19 A. 259 (260); 22 M. 251 (254); 36 M. 11=11 Ind. Cas. 642=21 M.L.J. 742=10 M.L.T. 121=(1911) 2 M. W.N. 89; 7 Bom. L.R. 73 (76); 7 Bom. L. R. 352 (362); 1 Ind. Cas. 958=3 S. L.R. 30 (33); 9 Ind. Cas. 427=21 M.L.J. 323=9 M. L.T. 383=(1911) C.M.W. N. 251; 3 N.L.R. 114 (122, 128); 24 Ind. Cas. 313; **Cons.**, 18 B. 474 (483).]

[253] SUIT for injunction. The plaintiff owned a house in Girgaon road in Bombay in which he resided with his family. The house consisted of two blocks (front and rear) connected together. The front block abutted on Girgaon road, and consisted of a ground floor, one storey, and a loft.

In the south wall of the front block of the house there were on the second floor three ancient windows, marked on the plan, annexed to the plaint, Nos. 3, 5, 6 respectively, and in the loft two ancient windows marked Nos. 7, 8. In the rear block of the house there were also, in the southern wall, two ancient windows marked, respectively, Nos 9 and 10. There were other openings in the said wall in respect of which the plaintiff made a claim in this suit, which, however, it is unnecessary to specify for the purposes of this report.

The plaintiff purchased his house in 1863, and had ever since resided in it with his family. He alleged that during all that time he had enjoyed free access of light and air through all the above windows in the south wall of his house.

In April, 1887, the defendant purchased the land lying to the south of the plaintiff's house. At that time and for many years previously there was a building upon that land consisting of a ground floor, one storey and a loft the height of the building being in all about 29 feet. The north wall of this building was about 2 feet 6 inches distant from the south wall of the plaintiff's house. It was not high enough, however, to interfere with windows Nos. 3 and 6 on the second floor. Window No. 5, which was a staircase window on that floor was partially obstructed by the slanting roof of the defendant's house. But from windows Nos. 3 and 6 on the second floor, and Nos. 7 and 8 in the loft there was an unobstructed view over the defendant's house to the sea.

In the monsoon of 1887 the defendant pulled down his house and began to build a new one on the same site but much higher than the old house. It was to consist of four storeys. The north wall of this house was about 6 feet distant from the south wall of the plaintiff's house, and was to be 64 feet high, *i.e.*, about **[254]** 20 feet higher than the windows Nos. 7 and 8 in the plaintiff's loft.

The plaintiff filed this suit, praying for an injunction against the defendant.

The defendant alleged that the plaintiff had acquiesced in his erecting the new building as proposed, and contended that a sum of Rs. 600, which he paid into Court, was ample compensation for the damage suffered by the plaintiff.

At the hearing the plaintiff abandoned his claim in respect of window No. 6 as having been based on a misunderstanding of the defendant's new building plan. The main contest between the parties was with reference to windows Nos. 3 and 5 on the second floor and Nos. 7 and 8 in the loft.

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Window No. 3 was a window in a room used by the plaintiff as his study. The plaintiff was a medical practitioner of some reputation, and devoted much time and attention to scientific investigations with the microscope. He stated in his evidence that for microscopic examination a good light was required; that he had found the light at window No. 3 suitable for the purpose, and that he had accordingly for years had his table close to this window. It was the only window in the room that looked to the south. There were other windows in the room looking towards the east. As to these he said: "To use the windows to the east would be inconvenient, the sun beating in direct. They cannot be used in the rains or when in January the wind comes and blows away my spores, &c. So when working at window No. 3, I often had to close the others. If window No. 3 were closed, I would not be able to do my examinations."

In cross-examination he said: "As to room containing window No. 3, my objection to using the other windows is the great light and strong sun. It is important to have no wind when using the microscope. When the south or south-west wind blows, more wind comes to window No. 3 than to the others. The rain is more likely to come to No. 3 than the others. I kept window No. 3 shut in the rains. For several monsoons I was not in Bombay. For four years I have dined and supped in that room. But for that I could not have used other parts of [255] the room equally well for the microscope. For certain hours of the day I could have used other parts equally well with window No. 3, *i.e.*, after 11 o'clock, when the sun is strong. Before 11 A M. I could have used interior parts equally well for the microscope with window No. 3. It cannot be moved about easily, and I used other parts of the room for other purposes. When at window No. 3, if the glare is very strong, I shut some other windows. The glare at them is very strong at certain hours even if window No. 3 is shut."

The witness also stated that he used this room for receiving and examining patients, and that as people in the adjoining house could see into the room through the other windows, it was important to him to have the use of window No. 3.

As to the window No. 5, the plaintiff stated that the staircase was lighted by it, and that it would be much darkened by the high wall of the defendant's new house.

As to the window Nos. 7 and 8 in the loft, the plaintiff stated that the loft was frequently used a as bed-room by his children; and that if the windows were blocked up, as they would be, by defendant's wall, the loft could not be used for that purpose.

The case was heard by Jardine, J., who granted an injunction as regards windows Nos. 5, 7 and 8, and awarded Rs. 250 as damages sustained in regard to window No. 3. The following are the material parts of his judgment with respect to these windows:—

"As regards windows Nos. 7 and 8, the evidence shows that the loft to which they belong is used as a store-room and an occasional bed-room. Defendant means to erect his new building 30 feet higher than the sill, and to obstruct the present full southern light to an amount of 5 degrees only. I am quite satisfied that the present comfortable use of this room will be injured materially if the new building is erected, but its further possible use must also be considered by the Court—*Moore* v. *Hall* (1) and Goddard on Easements, pp. 225 and 337. The fact that window No. 8 is

(1) L. R., 3 Q. B. D. 178.

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not often opened, and that in the monsoon these windows [256] are closed at the foot by dammar and tiles to keep out the wet, seems to me not very relevant, as plaintiff may regulate his use of the windows any way he likes. Nor is he obliged to be content with reflected light, nor to concern himself with his neighbour's keeping a wall white-washed. I am, therefore, of opinion, that plaintiff ought to be relieved by an injunction to restrain defendant from building to his injury as regards windows Nos. 7 and 8.

"The staircase window No. 5 is larger and more important. Heretofore only 14 degrees of light from the sky came thereto, the veranda roof above excluding much direct light. The effect of defendant's building will be to deprive plaintiff of the whole of the 14 degrees. The staircase is hardly lit sufficiently at present. On the whole, after considering the use of the staircase, I am of opinion that the plaintiff will sustain both injury and discomfort if the light coming to window No. 5 is interfered with, and I, therefore, grant the relief by injunction.....

"It is very clear that plaintiff places great value on his window No. 3, and that he has used the room as his study, and found the window very suitable for the examination of plants with his microscope. It opens on the south, and affords a pleasant prospect of which he is fond. I have considered with care whether the relief to which he is entitled is by injunction or award of damages, the defendant having offered compensation and the new house not yet having been built opposite this window. I have considered the judgment in *Dyers' Company* v. *King* (1), which Mr. Farran relies on. *Staight* v. *Burn* (2) has also been cited. But the doctrine which is consistent with these cases, and which I think most applicable to Bombay, as it has already been held applicable to Calcutta, in *Bagram* v. *Khettranath Karformah* (3), is that laid down by Lord Cranworth in *Clarke* v. *Clark*(4).

"On the evidence I am of opinion that the injury done to the comfortable and convenient use of the room will be slight, however much the delight of the owner and his family may be [257] marred : and this is my own impression also after seeing the house and making myself acquainted with the lights. The microscope can be used in other parts of the room.

"For these reasons, and considering that defendant has offered compensation for the injury done to this part of the house, I award Rs. 250 as damages in regard to window No. 3. Although plaintiff has not succeeded on every point, I am of opinion that he has a substantial cause of action, and after giving counsel opportunity of stating their views, I direct that defendant pay all the costs, including those of the rule."

The defendant appealed on the grounds:—

(1) That the Judge was wrong in granting an injunction and not damages in respect of the injury to windows Nos. 5, 7 and 8.

(2) That the Judge ought to have held that the damages paid into Court were sufficient.

(3) That the Judge was wrong in the order as to costs.

The plaintiff also filed objections to the decree under s. 561 of the Civil Procedure Code (Act XIV of 1882), contending that an injunction

(1) L.R., 9 Eq. 438.
(2) L. R., 5 Ch. Ap. 163.
(3) 3 B. L. R. O. C. J. 18 (46, 47).
(4) 1 Ch. Ap. 16.

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and not damages should have been granted in respect of window No. 3, and that in any event the damages awarded were inadequate.

Inverarity and *Anderson*, for the appellant (defendant).—The injunction as to windows Nos. 5, 7 and 8 ought not to have been granted. This is a case for damages only, and the amount paid into Court by the appellant is sufficient. Although the windows in the south wall of the plaintiff's house will be obstructed, the plaintiff will still have ample light and air through other windows. There will be no material interference with his comfort in using his house. They relied on *Holland* v. *Worley* (1) and *Allen* v. *Ayers* (2); Kerr on Injunction (1888), p. 40; Specific Relief Act, I of 1877, s. 54, cl. (*c*).

Kirkpatrick (with *B. Tyabji*), for respondent (plaintiff).—The Court below was right in granting an injunction as to Nos. 5, 7, 8. It should also have granted an injunction as to No. 3. The plaintiff is declared to have an "absolute and indefeasible right" to the [258] light and air he has enjoyed for twenty-four years—Limitation Act (XV of 1877), s. 26. It is an absolute right to all the light and air so enjoyed, not only to a part.

It cannot be disputed that a wall only a few feet distant and much higher than the plaintiff's house will materially diminish the light and air through the windows in the plaintiff's south wall. The fact that there are windows in the east wall is no reason why the plaintiff should be forced to part with his windows to the south, in which he has acquired an equal right. If a man is the legal owner of two houses, his neighbour cannot compel him to part with one of them, simply because he possesses the other. The right acquired by the plaintiff in each window is an independent right. If that is not so, he is at the mercy of his neighbours. One neighbour may block up one window, another may block a second, and so on. When does the interference with right become material? The last interference would possibly not be at all material if it were not for the previous similar acts of others. Why, then, is the last interference alone to be prevented if the earlier ones are to be permitted? The effect will be to give an advantage to the person who first infringes the "absolute and indefeasible right" given to his neighbour by law, (Act XV of 1877, s. 26). His act will be permitted. But those who subsequently attempt to do precisely what he has done will be restrained,—not because their acts are wrongful in themselves, but only because they are too late in doing them. That rule destroys the "absolute and indefeasible right" given by s. 26 of the Limitation Act (XV of 1877) and makes the right to light and air, so far as it can be said to exist at all, uncertain and contingent upon the acts of other persons. We submit that the question is whether there is a material interference with the right acquired in the particular window which it is sought to obstruct without reference to the existence of other windows? The plaintiff should not be forced to sell his rights by giving him damages. All the cases are in our favour, except *Holland* v. *Worley* (1).

Plaintiff owns the land to the east of his house on which he might wish to build. But if defendant blocks up his southern [259] windows, plaintiff cannot build to the east, for a building there would block up the eastern windows, and he would then be left altogether without light. The effect of the defendant's new building, therefore, is seriously to affect the plaintiff's right to use his property as he may think desirable.

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(1) 26 Ch. Div. 578.

(2) Weekly Notes (1884), p. 242.

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The following cases were referred to by counsel:—*Durell* v. *Pritchard* (1); *Yates* v. *Jack* (2); *Dent* v. *Auction Mart Co.* (3); *Martin* v. *Headon* (4); *Staight* v. *Burn* (5); *Aynsley* v. *Glover* (6); *Smith* v. *Smith* (7); *Moore* v. *Hall* (8); *National Provincial Plate Glass Insurance Company* v. *The Prudential Assurance Co.* (9); *Krehl* v. *Burrell* (10); *Holland* v. *Worley* (11); *Scott* v. *Pape* (12); *Greenwood* v. *Hornsey* (13).

JUDGMENT.

SARGENT, C.J.—In this suit the plaintiff sues for an injunction restraining the defendant from erecting a building which will interfere with the access of light and air through certain windows and apertures in the south wall of the plaintiff's house, or, in the alternative, for damages. It is admitted that the windows in question are ancient windows, and it is also admitted that the building now in course of erection by the defendant will largely diminish the amount of light and air which until now has passed through these windows into the rooms of the plaintiff's house. The important question which arises is whether the Court will grant an injunction or damages to the plaintiff.

The power of the Courts of India to grant a perpetual injunction is determined by the Specific Relief Act I of 1877, s. 54, which provides that the Court may grant such an injunction "when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property;" and "where the invasion is such that pecuniary compensation would not afford adequate relief." It is to be remarked that this limitation of the power of granting an injunction is identical with the conditions upon [260] which the Court of Equity in England has always asserted the jurisdiction of granting preventive relief in cases of this nature. In *Attorney-General* v. *Nichol* (14), Lord Eldon says "that 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 *Staight* v. *Burn* (5) 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, the Court will interfere by injunction." By Lord Cairns' Act, 21 and 22 Vic. C. 27, the Court of Chancery is empowered, if it thinks fit, to award damages instead of granting an injunction in cases falling within its jurisdiction, and since that Act, has had to exercise the same discretionary power when the question has arisen whether damages or preventive relief should be granted. The particular effect of that Act does not appear to have received much consideration until the entire question of the right to ancient lights and the appropriate relief in cases of obstruction was examined by Sir G. Jessel in *Aynsley* v. *Glover* (6). The full discussion it then received makes it unnecessary to refer to earlier authorities. The Master of the Rolls in that case, after discussing the earlier decisions, which doubtless reveal a great variety

(1) 1 Ch. App. 244. (2) 1 Ch. App. 295. (3) L.R., 2 Eq. 238 (246).
(4) L.R. 2 Eq. 425. (5) 5 Ch. App. 163 (167).
(6) L.R., 18 Eq. 544, 546, 553, 554 & 555=10 Ch. App. 283.
(7) L.R. 20 Eq. 500. (8) 3 Q.B. D 178. (9) 6 Ch. Div. 757.
(10) 11 Ch. Div. 146. (11) 16 Ch. Div. 578. (12) 31 Ch. Div. 554.
(13) 33 Ch. Div. 471. (14) 16 Ves. Jun. 342.

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of opinions, expresses his own view to be "that wherever an action can be maintained at law and really substantial damages, or perhaps I should say considerable damages, can be recovered at law, there the injunction ought to follow in equity; generally, not universally." He then refers to Lord Cairns' Act, and points out that the Act "gives a new power to the Court purely discretionary, to substitute damages" in cases in which "before the passing of the Act this Court would have granted an injunction", expressing an opinion that it is "a reasonable discretion and must depend upon the special circumstances of each case whether it ought to be exercised;" and as an [261] illustration of its application he refers with approval to *Curriers' Company* v. *Corbett* (1) as showing that where the defendant's building has been already erected, the Court will take into consideration the fact of the injury to the plaintiff being of a slight nature (although sufficient to sustain an injunction) as contrasted with the serious damage to the defendant. The subsequent decisions by the Master of the Rolls, *Smith* v. *Smith* (2) and *Krehl* v. *Burrell* (3), afford further illustrations of the principle on which the discretion vested in the Court of Equity of awarding damage in lieu of an injunction should be exercised. In *Holland* v. *Worley* (4) Mr. Justice Pearson, after referring to the above decisions by Sir G. Jessel, laid down the rule, which he said he thought would be in accordance with the view of the Master of the Rolls, that in those cases where the injury would not be so serious, where the property might still remain the plaintiff's and be as substantially useful to him as it was before, the Court may, if it thinks fit, exercise the discretion given it by the Act; and in that case, after pointing out that the property would not be useless for the purpose for which it was employed, he held that, "looking at the nature of the property, and considering its situation in the heart of a great city like London," he would not be wrong in exercising his discretion by giving the plaintiff damages. This case has been referred to in terms of implied disapproval by Bacon, V. C., in *Greenwood* v. *Hornsey* (5), and it may be that Mr. Justice Pearson's ruling, which undoubtedly modified the generally received practice of the Court of Equity, may not be followed in England.

The question, however, whether damages are a sufficient compensation does not, we think, present itself to the Courts of this country in precisely the same manner and form as it does to a Court of Equity in England. This latter Court in awarding damages under Lord Cairns' Act exercises a discretionary power in departing from the specific relief which it had hitherto exclusively afforded; and could scarcely be expected to take so broad a view of the subject as the Courts of this country whose "duty" it is under [262] the Specific Relief Act not to grant an injunction where damages afford adequate compensation. The result has been that this Court has in several cases adopted the view taken by Pearson, J., as being one which if applied with caution is suited to the circumstances of this city, which from its nature can in most parts of it only extend itself vertically upwards; and we think, therefore, that it ought to be considered as the general practice of this Court, although doubtless one to be administered with much care and with due regard to the special circumstances of each case.

Now in the case before us the dispute between the parties is with reference to the amount of injury which the defendant's new building will

(1) 2 Dr. & Sm. 355.
(2) 10 Eq. 500 (505).
(3) 7 Ch. Div., 551 (554).
(4) 26 Ch. Div. 585 (587).
(5) 33 Ch. Div. 471 (476).

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do to four windows of the plaintiff's house. The first and perhaps the most important of these is the window marked No. 3. The plaintiff has been awarded damages for the injury done to this window, but he wishes to obtain an injunction. It appears that the defendant's wall, which it was originally intended to build at a distance of only three and a half feet from the window, has now been thrown back to a distance of eleven feet at the part opposite the window. We have visited the house, and it is quite plain that, notwithstanding this alteration, there will be a great diminution of the light coming through that window. Before the wall was built there was free direct uninterrupted light. For the future all the light passing into the room through that window will be reflected light. We think, however, that we must have regard to all the circumstances and the whole character and construction of the room. The room is not a large one. There is this one window (No. 3) in the south wall, but in the east wall there are several windows through which ample light is obtained. These eastern windows are also ancient windows; and although the light through window No. 3 is seriously diminished, it is impossible to say that there is a material diminution of comfort in the use of the room.

It has been contended that the question for the Court to consider is exclusively whether in consequence of the defendant's new building there will be a material diminution of the light and air through window No. 3 without taking into consideration the light [263] and air afforded to the room by the other windows in it. No authority, however, has been cited in support of this contention: on the contrary in cases like the present the Courts have always recognized, as the important point for inquiry, whether the comfort of the plaintiff in the use of the room has been materially diminished, and in coming to a conclusion as to that it is impossible to disregard the fact that there are other windows in this room through which light and air are obtained. See the discussion of the evidence by Lord Westbury in *Jackson* v. *Duke of Newcastle*(1). No doubt the plaintiff will have to use his microscope in some other part of the room, but we think he will be able to do this and to pursue his scientific studies without any material inconvenience. We cannot, therefore, hold that with regard to No. 3 the plaintiff has shown a case for an injunction, but we are of opinion that he is entitled to substantial damages.

As to window No. 5, the Court below has granted an injunction. It is a window which opens upon a staircase in the plaintiff's house. The light coming through it could never have been very bright, because the slanting roof of the defendant's old house partially blocked up this window and obstructed the light. Moreover, this window is almost on a level with a landing place at the top of the staircase upon which three rooms open. All these rooms are well lighted, and sufficient light for the staircase can be obtained from them. Under these circumstances, and considering the fact which I have mentioned, that the window No. 5 has always been partly obstructed, we think that the additional diminution of light through this window, which no doubt will be caused by the defendant's new building, will be sufficiently compensated by damages, and that he ought not to get an injunction. We do not think that the plaintiff's comfort in the use of this staircase will be materially affected.

Finally, with regard to windows Nos. 7 and 8. These are windows in a loft which is chiefly used as a lumber-room, but sometimes as a

(1) 3 D.G. & S. 275 (287).

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bed-room. It is clear from its construction that it was intended as a lumber-room, although no doubt it has been frequently used as a bed-room by members of the plaintiff's family. The defendant's new wall will be about six feet distant from windows [264] Nos. 7 and 8. Having regard to the use which is now or can be fairly expected to be made of this loft, we do not think that defendant's wall will so materially interfere with the comfort of the plaintiff in using it that the Court ought to grant an injunction with respect to the windows. We think that for the injury done the plaintiff can be sufficiently compensated by damages.

On the whole, then, we are of opinion that no injunction should be granted to the plaintiff in this case, but we think it is certainly a case in which he is entitled to substantial damages, and we award him a sum of Rs. 2,000. With regard to costs, we shall not disturb the order of the lower Court, which directed the defendant to pay the plaintiff his costs, but each party must pay his own costs of appeal. The injunction is discharged.

Decree reversed. Injunction discharged. Defendant to pay to the plaintiff Rs. 2,000 damages and his costs of suit. Each party to pay his costs of appeal.

Attorneys for appellant:—Messrs. *Little, Smith, Freve, and Nicholson.*
Attorney for respondent:—Mr. *Mirza Hussein Khan.*

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13 B. 264 = 13 Ind. Jur. 342.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

NIZAMUDIN GULAM AND OTHERS (*Original Defendants*), *Appellants* v. ABDUL GAFUR VALAD MAINUDIN AND OTHERS (*Original Plaintiffs*), *Respondents.** [11th June, 1888.]

Mahomedan law—Wakf—*Settlement in favour of the settlor's family without any ultimate trust for charity—Such trust must be express, and not implied—Grant of life estate invalid.*

A Mahomedan cannot settle his property in *wakf* on his own descendants in perpetuity without making an *express* provision for its ultimate devolution to a charitable or religious object.

A grant of a life estate is invalid under the Mahomedan law. The grantee in such a case would take an absolute estate.

[265] A Mahomedan executed a deed, called a *wakfnama*, by which he settled his property in *wakf* on his two wives and daughters and their descendants in perpetuity. For the management and devolution of this property he laid down the following rules:—(1) that if one of the *aulad* (or daughters) of either wife died, the share of that person should go to the wife and the survivors of her *aulad*; that after the death of a wife her share should go to her surviving *aulad*; that if a wife and her *aulad* ceased to exist, their share should go to the other wife and her *aulad*; that on the failure of *aulad* and *aflad* of both wives, the next of kin of the settlor should receive the property; and he added that in this way the management should go on from generation to generation; (2) that neither of the said two wives nor any one of the *aulad* of the wives should alienate by sale, gift or mortgage either their shares or any part of the property.

* Second Appeal, No. 172 of 1887.