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We must, therefore, in the exercise of our extraordinary jurisdiction reverse the decree of the Court below and restore that of the Joint Subordinate Judge. Applicant to have his costs here and in the Court below.

Decree reversed.

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Before Mr. Justice Candy and Mr. Justice Fulton.

CHUNILAL MANCHARAM (*Original Defendant*), *Appellant v.*
MANISHANKAR ATMARAM (*Original Plaintiff*), *Respondent.**
[16th October, 1893].

Easements—Easements of necessity—Light and air—Severance of tenements by grantor—Implied grant—Implied reservation of easement—Derogation of grant—Reservation of easements of necessity—Injunction—Easement Act V of 1882, s. 13.

One Wallabh was the owner of a certain house behind which was a courtyard or *chok*, half, of which belonged to him and the other half to one Mancharam (the defendant's father), who owned a house close by. Two of the rear rooms of Wallabh's house abutted upon his portion of the *chok*, and had two doors opening out into the *chok*. In 1861, Wallabh sold (*inter alia*) his half of the *chok* to Mancharam. The conveyance contained no reservation of any rights over the [617] *chok*. Wallabh having died in 1875-76, his widow Jamna sold his house to the plaintiff, and shortly afterwards the defendant (Mancharam's son) put up a boarding on the *chok* which blocked up the above-mentioned doors of the plaintiff's house, and obstructed the light and air passing through them into the said two rear rooms. The plaintiff sued for an injunction.

Held, that as Wallabh had made an absolute sale to Mancharam of his portion of the *chok*, expressly reciting that he had reserved no interest in the *chok*, it would in the circumstances of this case be contrary to equity and good conscience to hold that he impliedly reserved a right of light and air over the *chok*, so as to prevent B. from building on the *chok* and thus obstructing the windows and doors in Wallabh's house overlooking the *chok*.

Held, also, that the case was not governed by s. 13, cl. (c) of the Easements Act (V of 1882), which was not extended to the Bombay Presidency till Act VIII of 1891 was passed.

[R., 16 C.L.J. 417 = 17 Ind. Cas. 966.]

SECOND appeal from the decision of J. B. Alcock, District Judge of Surat, in appeal No. 38 of 1891 of the district file.

Certain land which originally belonged jointly to Wallabh and Brijkuver was in 1839 partitioned equally between them. On the half share allotted to Wallabh stood his house which he had built two years before, *viz.*, in 1837, and immediately behind the house was a *chok*, or a courtyard, half of which came to him on the partition and the other half went to Brijkuver.

Subsequently Brijkuver sold her half of the land, including her share of the *chok*, to Mancharam (the defendant's father).

In 1861 Wallabh sold (*inter alia*) to Mancharam his (*i.e.*, the remaining) half of the *chok*, so that Mancharam was now owner of the entire *chok*. Wallabh, however, still retained the rest of the land and his house which he got at the partition. Two rear rooms of his house abutted on the *chok* and had two doors opening into it. The conveyance of his half

* Second Appeal No. 81 of 1892.

of the *chok* executed by Wallabh to Mancharam did not reserve any rights over the *chok*. The material part of the conveyance was as follows:—

"I have sold to you half the said *chok* appertaining to my share together with my interest in the *tanka* and the well, and put the same into your possession, for Rs. 50. From this day, therefore, you are to take into your possession the whole of the said *chok*, and use the said *chok* with the *tanka* and the well (therein). From this day I have nothing whatever to do with the *chok*, the *tanka*, and the well aforesaid."

In 1871 the defendant (Mancharam's son) built a shed on the part of the *chok* which had been brought from Wallabh in 1861, and subsequently built a loft over this shed.

[618] Wallabh died in 1875-76, and in 1883 his widow Jamna sold his house to the plaintiff.

The defendant subsequently put up a boarding on the *chok* which completely barred the two doors of the above-mentioned two rear rooms of the plaintiff's house, which opened upon the *chok*.

In 1888 the plaintiff brought this suit praying that the defendant should be ordered to remove the boarding and loft which obstructed the light and air passing to the northern door.

The defendant pleaded (*inter alia*) that neither the plaintiff nor his predecessors had ever acquired any title to the enjoyment of light and air through the doors and windows, and that the suit was time-barred.

The Subordinate Judge held that the plaintiff had not established a prescriptive right to the easement claimed, and rejected the plaintiff's claim *in toto*.

On appeal the District Judge found that what was claimed by the plaintiff was really an easement of necessity; that the use of the doors in question and the enjoyment of light and air through them was necessary for the enjoyment of the plaintiff's house; that Wallabh had been entitled to the easement claimed although he had sold his portion of the *chok* without reserving his rights, and that the plaintiff, who now stood in Wallabh's shoes, had the same rights. He, therefore, granted the relief sought by the plaintiff. In his judgment he said:—

"In his plaint plaintiff claimed a right of easement by prescription but in respect of any such right his suit would be barred under s. 26 of the Limitation Act. So at a subsequent stage he set up a claim of easement of necessity, and to that he is clearly entitled under s. 13 of the Easements Act, cl. (c).

"I have visited the place in dispute and found that light now enters the lower rooms of plaintiff's house only from the front door, there being houses on either side, and consequently no side windows. I happened to visit the house on a cloudy morning and found that it was scarcely possible to see at all in the two [619] inner rooms. Of course the opening of the two back doors, which are in dispute, would make a very material difference in the amount of light available, and these two doors are absolutely necessary for the proper use of plaintiff's lower rooms.....

"The two back doors being necessary for the enjoyment of the house after half of the (court) yard was sold, the transferor (Wallabh's widow) was entitled to the easement of light through these doors, and plaintiff, who stands in his shoes, is entitled to the same.

"I, therefore, vary the decree of the lower Court and award the relief asked for in respect of these two doors, *viz.*, injunction and removal of the boarding only."

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Against this decision the defendant appealed to the High Court. The question argued in appeal was whether the right to light and air over the *chok* was not impliedly reserved to himself by Wallabh in 1861 when he sold his half of the *chok* to the defendant's father Mancharam.

Govardhan M. Tripathi, for appellant (defendant).—The Easements Act (V of 1882) has no application to the present case. The Act was not extended to this Presidency till 1891, and by s. 2 of the Act it is expressly declared not to be retrospective. Prior to the Easements Act the rule was the same here as it is in England, that a vendor does not reserve easements of necessity by implication. He reserves them only if he does so in express terms—*Wheeldon v. Burrows* (1). *White v. Bass* (2); *Ellis v. Manchester Carriage Co.* (3); *Chunilal Nyahalchand v. Husein valad Habibula* (4); *Goddard on Easements*, pp. 258, 260 and 328. In the present case there is no express reservation of the easement claimed.

Motilal M. Munshi, for respondent (plaintiff).—The lower Court has found that the defendant has blocked up our windows and doors, and thereby completely darkened our inner rooms. The two back doors which open into the *chok* are absolutely necessary for the enjoyment of the house. We are, therefore, entitled to the easement claimed. The cases show that upon a severance of [620] tenements, easements used as of necessity will pass by implication of law—*Purshotam Sakharam v. Durgaji Tukaram* (5); *Ratanji v. Edalji* (6); *Morgan v. Kirby* (7). This being so, it must be held that when our portion of the *chok* was sold in 1861 to the appellant's father, our right to light and air over the *chok* was impliedly reserved to our vendor.

JUDGMENT.

CANDY, J.—Respondent not having pressed his cross-objections, the question before us is confined to the rear doors of plaintiff's house.

The land, on which the houses of the parties stand, originally belonged jointly to Brijkuver (defendant's grandmother) and Wallabh (husband of plaintiff's vendor). In June, 1839, Wallabh passed a release to Brijkuver in respect of a partition of the property. The *chok* or courtyard between the premises allotted to either party was divided half and half, but a small reservoir and well in the half share of the *chok* falling to Wallabh were kept joint. Brijkuver's son Mancharam (defendant's father) soon after 1839 purchased his mother's share of the property and built a house thereon. Wallabh's house was apparently built in 1837, and the two rear rooms abutting on his share of the *chok* had two doors opening out into the *chok*.

On 24th November, 1861, Wallabh sold to Mancharam his half share of the *chok* together with his interest in the reservoir and well. The conveyance contained no reservation of any rights whatever beyond that Mancharam might allow Wallabh to take water as long as he (Mancharam) pleased. Wallabh and Mancharam lived on amicable terms with each other, and it is not disputed that the latter allowed the former to open his rear doors and come into the *chok* and draw water.

About 1871 to 1873 (according to plaintiff's deposition in the present case) defendant built a shed over the portion of the *chok* purchased by him in 1861, and about 1875-76 he cut off the roof over the southern portion of

(1) 12 Ch. D. 31.

(3) 2 C.P.D. 13.

(5) 14 B. 452.

(7) 2 M. 46.

(2) 31 L. J. Ex. 283=7 H. & N. 722.

(4) P. J. (1886), p. 128.

(6) 8 B.H.C.R. O.C.J. 181.

this shed and built thereon a loft. Wallabh died about 1875-76, and his widow Jamna had disputes with defendant. Jamna accordingly in 1878 sued defendant for [621] possession of the half share of the *chok* next to her house, and for the removal of the shed erected by defendant. She failed in that suit, being met by the sale-deed executed by Wallabh in 1861. She then in 1883 sold her house to plaintiff, who was then sued by defendant claiming a right of pre-emption. Defendant lost that suit, and subsequently appears to have put up a hoarding completely barring the doors of plaintiff's rear rooms. Plaintiff then brought the present suit for an injunction, as regards the doors now in dispute, that defendant should remove the hoarding and the loft which obstruct the light and air passing to the southern door, and should remove the hoarding which obstructs the light and air passing to the northern door.

In the plaint plaintiff claimed to have a prescriptive right to light and air passing through both the doors; and his pleader also argued, in the course of the trial, that the severance of the tenements implied an easement of light and air to the doors.

The Subordinate Judge rejected the plaintiff's claim *in toto*, holding that no easement by prescription had been proved in respect of both the doors, and that on partition of the open land no equity had arisen in favour of the right of either party to any easement of light and air, the houses then not being in existence. The Subordinate Judge also found that (a) both doors had been effectively darkened by the shed and loft; (b) the hoarding still further darkened to a slight extent the northern door, but made no practical difference as regards the southern door, and that to allow plaintiff to open this southern door would practically give plaintiff ingress to a room of defendant's house; (c) defendant's witnesses were right when they spoke of the doors being chained on defendant's side since a long time; and plaintiff's witnesses were also right when they spoke to the doors having been opened, Wallabh having used the same as means of ingress and egress occasionally merely by the courtesy of his relative the defendant; (d) Wallabh had not claimed any right to light and air through these doors.

On appeal made by plaintiff to the District Court he urged: "My claim is not based on the right of continuous and apparent and necessary easement. Should the appeal Court hold necessary [622] to make an amendment accordingly, I should be allowed to do so, inasmuch as there is an admission of the defendant in the matter."

The District Judge found that "in his plaint plaintiff claimed a right of easement by prescription, but in respect of any such right his suit would be barred under s. 26 of the Limitation Act (XV of 1877). So at a subsequent stage he set up a claim of easement of necessity, and to that he is clearly entitled under s. 13 of the Easements Act, cl. (c)." The District Judge on a visit to the house on a cloudy morning found that it was scarcely possible to see at all in the two inner rooms. "Of course" (he said) the opening of the two back doors which are in dispute would make a very material difference in the amount of light available, and these two doors are absolutely necessary for the proper use of plaintiff's lower rooms."

The District Judge also found that there was no satisfactory evidence of the two back doors having been closed from defendant's side for a long period, "and, as the Subordinate Judge has remarked, there is no mark on the doors to show for certain that there was ever any fastening on them. Defendant admits in his deposition that the doors were used for years after his father bought up that half of the court-yard which did not fall to

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his share. The two back doors being necessary for the enjoyment of the house after that half of the yard was sold, the transferor was entitled to the easement of light through these doors, and plaintiff, who stands in his shoes, is entitled to the same." The District Judge, therefore, varied the decree of the lower Court and awarded part of the relief asked for in respect of the two doors, *viz.*, injunction and removal of the hoarding only. It is against this decree that defendant has made second appeal.

I am of opinion that the decree of the Subordinate Judge rejecting the plaintiff's claim was correct, and should be restored.

It seems clear that the District Judge was in error in disposing of the case under the Easements Act (V of 1882) which did not become law in the Bombay Presidency till Act VIII of 1891 was passed. By s. 2 of the Easements Act nothing contained in the Act shall be deemed to derogate from any right acquired, or [623] arising out of a relation created before the Act comes into force. We must, therefore, deal with the case quite apart from the provisions of the Easements Act. If the defendant in this case, before the suit was filed in 1888, had the right to deal as he liked with the portion of the *chok* purchased by him in 1861, then the plaintiff's case must fail. It is unnecessary to quote authority for the proposition that there being no special custom involved, we must be guided by the law of England. Mr. Whitley Stokes in his Introduction to the Easements Act (the Anglo-Indian Codes, Vol. I, p. 878) states that the law of England, being just, equitable and almost free from local peculiarities, has in many cases been held to regulate the subject in India. Many cases could also be quoted in which the same proposition is laid down.

Now, the law of England as set forth by the Court of appeal in 1879 in *Wheeldon v. Burrows* (1) must be regarded as settled law (Gale on Easements, 6th ed., p. 133). That law is (p. 49) that on the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed if the grantor intends to reserve any right over the tenement granted, it is his duty to reserve it expressly in the grant. This rule (Thesiger, L.J., said) is subject to certain exceptions. "One of those exceptions is the well-known exception which attaches to cases of what are called ways of necessity; and I do not dispute for a moment there may be, and probably are, certain other exceptions, to which I shall refer before I close my observations upon this case." The Lord Justice showed that the rule in question was founded upon a maxim, which is as well established by authority as it is consonant to reason and common sense, *viz.*, that a grantor shall not derogate from his grant; and that the distinction between what has been called an implied grant and what is attempted to be established under the name of an implied reservation has existed almost as far back as we can trace the law upon the subject. The Lord Justice then showed that, putting aside the case of *Pyer v. Carter* (2), there has been no decision which in any way affects the principle laid down in clear and distinct terms by Lord Holt in *Tenant v. Goldwin* (3) that if the owner of a house and ground sells the ground and keeps the house, [624] without reserving the benefit of the lights, the vendee of the ground may build against the house. It was next shown by the Lord Justice that certain observations of the Judges of the Court of appeal in *Watts v. Kelson* (4) could not be taken as overruling the decision of Lord Westbury in *Suffield v. Brown* (5) which distinctly re-affirmed the rule as above stated. As illustrations,

(1) 12 Ch. D. 31. (2) 1 H. and N. 916. (3) 2 Lord Raymond, 1089-1093.
(4) L.R. 6 Ch. 166 (174). (5) 4 De Gex J. and S. 185.

of the exceptions to the rule the Lord Justice quoted *Pinnington v. Galland* (1) and *Davies v. Sear* (2), both of which were decided on the basis that the easement impliedly reserved was a way of necessity. It was also suggested that *Pyer v. Carter* (3) and *Richards v. Rose* (4), could be supported on a similar basis of exception to the general rule, the easements in those cases being reciprocal and mutual. *Swansborough v. Coventry* (5) and *Compton v. Richards* (6) were quoted as illustrating a further exception to the general rule, viz., where the conveyances of the land and houses were made as part and parcel of one transaction.

It is evident from a review of the above case of *Wheeldon v. Burrows* (7) that the exceptions to the rule, i.e., ways of necessity, and such like easements of necessity can never include an easement of light. In *Currier's Company v. Corbett* (8) Vice-Chancellor Kindersley said: "It has been determined that if a person having a house on his land, the windows of which have existed for more than twenty years, sells a portion of the land, the purchaser may erect any buildings he pleases upon the lands so sold to him *however much* they may interfere with the light coming to the windows of the vendor's house. That seems clearly to be the law, though it must be admitted that this law, if carried to an extreme, would in some cases produce great and startling injustice."

The case itself of *Wheeldon v. Burrows* was one of lights. In the Court of appeal defendant's counsel said: "We claim to protect them (the lights) from a blocking up which will make the defendant's building *absolutely useless*." And yet the Court of [625] appeal held that it was not one of the exceptions to the general rule that a grantor cannot derogate from his own grant.

Wheeldon v. Burrows being admittedly settled law, it seems unnecessary to quote cases which were decided on the authority of the now overruled case of *Pyer v. Carter*, or on a mistaken idea of what was really decided in *Watts v. Kelson*. It is clear that under the circumstances of such a case as *Wheeldon v. Burrows*, the right to prevent windows being absolutely blocked cannot be treated as an easement of absolute necessity. It clearly was not so in the present case. The District Judge did not express disapproval of the finding of the Subordinate Judge that the shed and loft erected by defendant (according to plaintiff's showing) from 1871 to 1873 "effectively darkened" the two rear doors of Jamna's house. The house was clearly not rendered uninhabitable by the darkness of the two rear rooms. It is evident that if the Easements Act could be applied, the case would have to be tried under cl. (d) of s. 13. It is only the easements mentioned in cls. (a), (c) and (e) of s. 13 which are called "easements of necessity." These are evidently confined to easements of absolute necessity; and the word 'absolutely' is to be found in the drafts of the Bills of 1879 and 1881. In the Statement of Objects and Reasons of the Bill of 1879 it is mentioned that 'easements of necessity' were intended to mean not only the rights which are absolutely necessary for enjoying property, but also apparent and continuous, and easements necessary for enjoying property as it was enjoyed when it was separated by grant. But the Law Commission recommended (*Gazette of India*, 17th January, 1880) that easements of necessity strictly so called

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(1) L.R. 9 Ex. 1 (12).
(3) 1 H. and N. 916.
(5) 9 Bing. 305.
(7) 12 Ch. D. 31.

(2) L.R. 7 Eq. 427.
(4) L.R. 9 Ex. 218.
(6) 1 Price 27.
(8) 2 Dr. and Sm. 360.

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should be separated from those apparent and continuous easements which arise when a transfer is made, which are necessary for enjoying the thing transferred, or other immoveable property of the transferor, as it was enjoyed when the transfer took effect. This was accordingly done in the Bill of 1881, which is practically the same as the Act which is now law. Therefore, if the District Judge was at liberty to refer to the Easements Act, it is clear that he should have decided the case under cl. (d) of s. 13, and then, after considering the facts and evidence noted by the Subordinate Judge, he should [626] have found whether an intention contrary to the reservation was necessarily implied, and whether the easement of light and air over defendant's *chok* so impliedly reserved in the conveyance of 1861 had been extinguished before the plaintiff's suit was filed in 1888, and if not, whether he could grant an injunction removing the obstruction which prevents plaintiff from enjoying the use of the rear doors as they were enjoyed by Wallabh in 1861. It is apparent that the District Judge did not approach the case from this point of view. But, as shown above, it was not open to the District Judge to rely on the Easements Act at all.

It is no doubt anomalous that the Easements Act should have introduced such a marked variance from the English law. This is apparently due to the fact that Mr. W. Stokes, who drafted and introduced the Easements Bill in 1878, was of opinion that the English law "rests on a doubtful doctrine of Lord Holt's (see 2 Drew and Smale, 360)." The judgment of the Court of appeal in *Wheeldon v. Burrows* had not then been delivered, showing that the doctrine of Lord Holt was not doubtful, but had been laid down in clear and distinct terms, and was as well established by authority as it is consonant to reason and commonsense. The reference to 2 Drew and Smale, 360, is to the case above quoted of *Curriers Co. v. Corbett* in which Vice-Chancellor Kindersley, though stating that the law if carried to an extreme would in some cases produce great and startling injustice, yet held the law to be in no way doubtful, but quite clear. Since the decision of *Wheeldon v. Burrows* there is no room for doubt. In *Allen v. Taylor* (1) Jessel, M.R., said that it is "settled law that if a man who has a house and land, grants the land first, reserving the house, the purchaser of the land can block up the windows of the house."

It is not difficult to see how the Easements Act, s. 13, cl. (d), has become law. It is apparently based on the judgment of Mr. Justice Field in *Charu Surnokar v. Dokouri Chunder Thakur* (2). Mr. Whitley Stokes acknowledged the assistance given to him by that learned Judge in drafting the Bill which [627] became the Easements Act. In the judgment in the case just quoted it was said that the right claimed, "though not absolutely necessary to the enjoyment of the defendant's tenement, might be necessary for its enjoyment in the state in which it was at the time of severance; and in this case, if the easement were apparent and continuous, there would be a presumption that it passed with the defendant's tenement. This latter case is discussed in the books under the principle of the disposition of the owner of two tenements (*destination du pers de famille*). See Gale on Easements, 5th ed., pp. 96, 97 and following pages; and as to right of way, p. 103 note, p. 124 note, and *Pyer v. Carter* (1. H. and N. 922). This principle is just and fair and accords with commonsense. It is in consonance with the rule of justice, equity, and good conscience,

(1) 16 Ch. D. 355.

(2) 8 C. 956.

which must guide the Courts in the absence of positive direction by the Legislature."

But Lord Westbury in *Suffield v. Brown* (1) showed that this comparison of the disposition of the owner of two tenements to the *destination du pere de famille* is a mere fanciful analogy from which rules of law ought not to be derived. "And the analogy, if it be worth grave attention, fails in the case to be decided, for when the owner of two tenements sells and conveys one for an absolute estate therein, he puts an end, by contract, to the relation which he had himself created between the tenement sold and the adjoining tenement; and discharges the tenement so sold from any burthen imposed upon it during his joint occupation; and the condition of such tenement is thenceforth determined by the contract of alienation and not by the previous user of the vendor during such joint ownership." The Lord Chancellor then went on to notice the fallacy in the judgment of the Court of Exchequer in the case of *Pyer v. Carter* (2) which case was finally overruled in *Wheeldon v. Burrows* (3).

Applying these principles to the present case, it seems clear that since in 1861 Wallabh sold out and out to defendant's father his portion of the *chok*, expressly reciting that he reserved no interest in the reservoir or well, it would be contrary to equity and good conscience to hold that he impliedly reserved a right [628] of light and air over the *chok*, which would effectually prevent the purchaser from building on the *chok* so purchased, and thus obstructing the windows or doors in the vendor's house overlooking the *chok*. For these reasons, I would reverse the decree of the District Judge and restore that of the Subordinate Judge, with all costs on plaintiffs.

FULTON, J.—As the Easements Act was not in force in 1861 when the severance of tenements took place out of which the easement claimed by the respondent in this appeal is alleged to have arisen, the only principle which can guide this Court in determining whether the right to light and air through the doors in question was by implication reserved by the vendor when he sold the courtyard adjacent to those doors, is, as pointed out by Field, J., in *Charu Surnokar v. Dokouri Okunder-Thakur* (4), that of equity and good conscience. In England it has been finally settled in *Wheeldon v. Burrows* (3) that on the sale of land adjoining a house, the right to light and air over that land to the windows of the house is not retained by the vendor unless expressly reserved. The law on the subject has been very lucidly explained by Jessel, M. R., in *Allen v. Taylor* (5) as follows:—"Where a man grants a house in which there are windows, neither he nor any body claiming under him can stop up the windows or destroy the lights. That is based on a principle that a man shall not derogate from his own grant; and it makes no difference whether he grants the house simply as a house or whether he grants the house with the windows or the lights thereto belonging. In both cases he grants with the apparent easements or *quasi* easements. All that is now I take it settled law. I take it also that it is equally settled law that if a man who has a house and land grants the land first reserving the house; the purchaser of that land can block up the windows of the house." In England thus the agreement under which the sale has taken place is construed more strictly against the vendor than against the vendee, but even

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(1) 4 De Gex. J. and S. 185.

(2) 1 H. and N. 916.

(3) 12 Ch. D. 31.

(4) 8 C. 956.

(5) 16 Ch. D. 355.

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there this principle was seriously disputed in *Pyer v. Carter* (1) and it is, as stated in *Wheeldon v. Burrows*, subject to an exception in regard to ways [629] of necessity which are always held to be reserved by implication and possibly to other exceptions.

In India, on the other hand, when the Easements Act was passed, the principle on which *Pyer v. Carter* was decided was adopted, and by cls. (a), (b), (c) and (d) of s. 13 transferors and transferees were placed on exactly the same footing as regard the implied reservation or grant of easements whether of necessity, or apparent continuous and necessary for the enjoyment of the premises as they stood at the time of the transfer; and although this Act cannot affect transfers which took place before its introduction, I think it is hardly safe to hold that all such transfers are on this point governed by English law albeit they were effected in a country in which that law was not in force and in total ignorance of its provisions.

The general principle that a vendor cannot derogate from his own grant, or, in other words, that a party to a contract of sale cannot escape from the express terms to which he has agreed, is, as pointed out by Thesiger, L.J., in *Wheeldon v. Burrows*, consonant to reason and common-sense, but when once it is admitted that this principle is subject to certain exceptions it becomes, in the absence of any fixed law on the subject by which those exceptions are specified, a question of extreme nicety to decide what are the easements so necessary for the enjoyment of the building reserved that it would be contrary to equity and good conscience to believe that it was not intended to reserve them at the time of the sale. In England the law has been established by a series of decisions subject to which sales take place, but that is not the case in India. Two Indian decisions—those of *Charu Surnokar v. Dokouri Chunder Thakur* (2) and *Chunilal v. Husein* (3)—appear to go further than the English cases in this matter. The former of these has, it is true, been recently criticised by the Allahabad High Court in the case of *Wutzler v. Sharpe* (4), but whether it was rightly or wrongly decided it seems to me to be conceivable that even in regard to light and air a case might arise where to hold that the vendee of an adjacent land was entitled to render useless the vendor's house by building up against his [630] windows might be so obviously contrary to what was contemplated at the time of the sale and be productive, in the language of Kindersley, V. C., (2 Drew and Smale at p. 360), of such "great and startling injustice" that a Court not bound by any positive rule of law on the subject might in the exercise of equity and good conscience think it necessary to hold that an easement had been meant to be reserved.

But while unwilling to decide that prior to the introduction of the Easements Act there were any positive rules in force on this subject, I think that a vendor or his successor in title claiming such a reservation as is claimed in the present case must show either by reference to the urgent necessity of the easement or the conduct of the parties to the sale that it cannot reasonably have been intended by either of them to do otherwise than reserve to the vendor the right which he claims. In the present case the finding of the District Judge does not show that access of light and air through these doors is so indispensable for the use of the house that it must necessarily have been reserved, nor has there been any attempt made to show any conduct of the parties from which

(1) 1 H. and N. 916.
(2) P.J. (1886), p. 128.

(2) 8 C. 956.
(4) 15 A. 270.

the intention to make and allow such reservation can properly be inferred. The most that can be said is that the closing, in 1888, of these two doors makes the back rooms very inconvenient; but it is impossible in the circumstances of the case to say what was the intention of the vendor and vendee in reference to them. Such being the case, I think the plaintiff has failed to establish his claim, and I, therefore, concur with my learned colleague in reversing the decree of the District Judge and restoring that of the Subordinate Judge, with costs on the plaintiff throughout.

1893
OCT. 16.
APPEL-
LATE
CIVIL.
18 B. 616.

Decree reversed.

18 B. 631.

[631] ORIGINAL CIVIL.

Before Mr. Justice Bayley (Acting Chief Justice) and Mr. Justice Farran.

SUCCARAM MORARJI SHETAY AND OTHERS (*Appellants*) v.
KALIDAS KALIANJI AND OTHERS, (*Respondents*).^{*} [29th June and
6th July, 1894.]

Hindu law—Joint family—Manager—Widow—Minor sons—Sale by widow of immoveable property left by husband—Family necessity—Minor sons bound by sale—Deed of sale—Effect of conveyance how ascertained.

Ramji Shiva, a Hindu, died in debt leaving two minor sons. His widow, who after his death was the manager of the family, borrowed money for family purposes, and as security mortgaged some of the immoveable property left by her husband. She subsequently sold it and the Court held that the evidence showed that it was sold to pay off the family debts.

Held, that the minor sons were bound by the sale.

Held, also, that the effect of a conveyance of property sold by the manager of a family depends on the intention of the parties as gathered from the terms of the instrument and from the surrounding circumstances.

[R., 17 Ind. Cas. 609=23 M.L.J. 638=12 M.L.T. 547.]

APPEAL from an order made by Starling, J., on the 19th March, 1893, apportioning among the claimants thereto the sum of Rs. 25,408-8-6, which was the amount assessed as compensation for certain land (7,685 square yards), situate at Byculla in Bombay, taken up under the Land Acquisition Act (X of 1870). The matter had been referred to the Court by the Collector under s. 15 of the Act, in order that the sum to be paid to each claimant should be determined.

One of the points raised in the case, and the only one dealt with in this report, was whether a sale of land by the widow of a deceased owner (a Hindu) bound the interests of his minor son.

Two of the claimants in the case were Tatia Ramji Dhoble and Govind Ramji Dhoble, who were the sons of one Ramji Shivji Dhoble, deceased. They alleged that part of the land in question belonged to them as heirs of their father, and as owners of the land they claimed a share in the compensation awarded by the Collector.

Their claim was, however, contested by one Kalidas Kalianji, who alleged that on 12th December, 1884, by a duly registered deed of that date, Chinnabai (the widow of Ramji Shivji [632] Dhoble and the mother of Tatia and Govind), had sold this particular portion of the land

Appeal No. 789.