

[A similar decision was given in Letters Patent Appeal, No. 23 of 1895, decided on the 20th of January, 1897, the judgment in which was as follows:—

EDGE, C.J., and KNOX, J.—The decree for pre-emption was complied with by the plaintiffs by depositing in Court the amount decreed. Unless that amount was reduced subsequently on appeal, it could only be paid out to the persons who were entitled to it under the decree for pre-emption, and neither the plaintiffs nor anyone else could withdraw a single anna of it unless the pre-emptive price were decreased by the order of the appellate Court. We dismiss this appeal with costs.]

1897

ABDUS
SALAM
v.
WILAYAT
KHAN.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Knox.

YARO (DEFENDANT) v. SANA-ULLAH (PLAINTIFF).*

Easement—Light and air—Injunction or damages—Act No. 1 of 1877

(Specific Relief Act) section 54.

It was not intended by section 54 of the Specific Relief Act, 1877, that a man should not have an injunction granted to him unless his property would otherwise be practically destroyed if the injunction were not granted.

Where the plaintiff had for over twenty years carried on the business of manufacturing a particular kind of cloth in a certain house, and the defendant built in the neighbourhood of that house in such a manner as to render the plaintiff's house practically useless for the purposes of his manufacture, it was held that the plaintiff was entitled to an injunction and not merely to damages. *Aynsley v. Glover* (1) and *Holland v. Worley* (2) followed. *Dhunjibhoj Cowasji Umrigar v. Lisboa* (3) and *Ghanasham Nilkant Nandkarni v. Moroba Ram Chandra Pai* (4) referred to.

The plaintiff was a weaver carrying on his business in the city of Benares. The defendant owned a house separated from the plaintiff's work-room by a narrow lane. The defendant proceeded to rebuild the wall of his house which was opposite to the plaintiff's house, and built it nearer to the plaintiff's windows than it had been before, whereby, according to the plaintiff, the light coming to the windows of the plaintiff's work-room was intercepted and the plaintiff's business was interfered with. The plaintiff accordingly sued for the demolition of the new wall which had been built by the defendant.

1897
January 21.

* Appeal No. 13 of 1896, under section 10 of the Letters Patent.

(1) L. R., 18 Eq. 544.

(3) I. L. R., 13 Bom., 252

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

(4) I. L. R., 18 Bom., 474.

1897

YARO
o.

ANA-ULLAH.

The defendant denied that the plaintiff had acquired any easement of light in respect of his work-room, and denied that he had built the wall in dispute nearer to the plaintiff's house than it was formerly, or that it in any way interfered with the access of light to the plaintiff's windows.

The lower appellate Court (Additional Munsif of Benares) found that the defendant had built his new wall closer to the plaintiff's house than the old one was, but that such action had not interfered with the plaintiff's light, and dismissed the suit.

The plaintiff appealed. The lower appellate Court (Subordinate Judge of Benares) found that the plaintiff had acquired an easement of light, which was materially interfered with by the defendant's new wall, and made a decree in favour of the plaintiff for the demolition of the defendant's wall.

The defendant appealed to the High Court, and his appeal, coming before a single Judge of the Court, was dismissed. The defendant thereupon appealed under section 10 of the Letters Patent.

Babu *Satya Chandar Mukerji*, for the appellant.

Mr. *Amir-ud-din*, for the respondent.

EDGE, C. J., and KNOX, J.—This was a suit for an injunction. The plaintiff had been entitled to light and air to the full extent of his window for over twenty years. He carried on the business of a manufacturer of kincob at Benares. The defendant proceeded to build a wall which would have the effect practically of reducing the plaintiff's light to such an extent that he could not carry on his business. The lower appellate Court granted an injunction. It is said in appeal here that the lower appellate Court had no jurisdiction to grant an injunction because it could have awarded damages; and the decision in *Dhunjibhoy Cowasji Umrigar v. Lisboa* (1) and *Ghanasham Nilkant Nadkarni v. Moroba Ram Chandra Pai* (2) were relied on. In our opinion the rule of law in such cases was correctly laid down by Sir George Jessel in *Aynsley v. Glover* (3) and by the late Mr. Justice Pearson in *Holland v.*

(1) I. L. R., 18 Bom., 252.

(2) I. L. R., 18 Bom., 474.

(3) I. L. R., 18 Eq., 544.

Worley (1). In our opinion it was never intended by the Legislature that a man should not get an injunction unless his property would be practically destroyed if the injunction were not granted. Here there was substantial injury and wrongful injury to the plaintiff's rights. The plaintiff was entitled to the injunction which he got. We dismiss this appeal with costs.

Appeal dismissed.

FULL BENCH.

1897

YARO
v.
SANA-ULLAH.

1897

January 22.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Knox, Mr. Justice Banerji, and Mr. Justice Aikman.

SRI KISHEN LAL (DEFENDANT) v. ATMA RAM (PLAINTIFF).*

Principal and agent—Lambardar and co-sharer—Lambardar collecting rents for co-sharer—Suit by pre-emptor to recover profits accruing between the date of his decree and the time when he obtained mutation of names.

Held that a pre-emptor who had obtained a decree for pre-emption in respect of a share in a pure zamindari village could not successfully maintain a suit against the judgment-debtor co-sharer for the profits of the pre-empted share accruing between the date of the original decree and the date of his obtaining mutation of names, such profits having been collected by the lambardar but not paid over to the judgment-debtor; inasmuch as neither could the lambardar be considered as an agent of the co-sharer, whose possession of the profits was the possession of his principal, nor was there any obligation on the co-sharer to collect the profits and hold them to the use of the plaintiff.

In this case Atma Ram, the plaintiff, brought a suit for pre-emption of certain property of which Sri Kishen the defendant was the vendee. The suit was decreed, and the decree became final in December 1891, when the case was decided by the appellate court. The plaintiff had, however, in March 1890 deposited in court the pre-emptive price according to the decree of the court of first instance.

The suit, out of which this appeal has arisen, was brought by the pre-emptor Atma Ram to recover from the vendee profits of

* Appeal No. 85 of 1895, under section 10 of the Letters Patent.

(1) L. R., 26 Ch. D., 585.