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that only crime, immorality or wilful neglect of duty would warrant dismissal. The cause given in Colebrooke's Digest, Vol. 1, page 377, is only a fault.

It is not, however, necessary for us to discuss this point, because we are of opinion that it is not open to a Civil Court, in the circumstances of the present case, to enquire into the validity or otherwise of the decision of the caste in this matter, and that the parties are bound by it, and that the plaintiffs cannot legally complain of the action of the defendant, who has done no more than obey that decision. We, therefore, reverse the decree of the District Judge and restore that of the Subordinate Judge, with costs on plaintiffs in this and the lower Appellate Court.

Decree reversed.

APPELLATE CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Parsons.

1895. September 5.

BA'LA BIN KESHAV BA'VA' AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS, v. MAHA'RU VALAD NA'GU PA'TIL AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 3 AND 4), RESPONDENTS.*

Easement—Right to light and air—Right to have water carried off over neighbour's land—Limit of—Order directing demolition of new building when Court will grant—Sufficient light, right to access of—Light at angle of 45°.

A right to have water carried away over the adjoining land does not give its owner any power to prevent the erection of buildings on the adjoining ground so long as the arrangements necessary to the preservation of his right are made.

An easement of light to a window only gives a right to have buildings that obstruct it removed so as to allow the access of sufficient light to the window.

SECOND appeal from the decision of Ráo Bahádur N. N. Nánávati, First Class Subordinate Judge of Dhulia with appellate powers, confirming the decree of Ráo Sáheb G. B. Koparkar, Subordinate Judge of Nandurbár.

Suit for an injunction. The plaintiff prayed for an order directing the defendants to remove a building recently erected to the south of his house, alleging that the said building obstructed his light and air and the passage of water from his roof and from a drain (*mori*) situate in the south corner of the terrace (*sajja*) of his house.

* Second Appeal, No. 277 of 1894.

The Subordinate Judge found that there had been vacant ground measuring six feet and five inches north to south and sixteen feet and four inches east to west to the south of the plaintiff's house; that the *mori* (drain) in the eastern part of plaintiff's *sajja* was more than twenty years old; that the plaintiff was entitled to discharge the waste water from his *mori* and rain water from the roof of his *sajja* over the vacant ground to the south of his house; that there were two windows in the plaintiff's house and he was entitled to receive light and air through them; that the defendants' house had obstructed and was likely to continue to obstruct the passage of light and air through the windows of the plaintiff's *sajja*; that the plaintiff was entitled to the removal of the defendants' house from the above-mentioned area, and that the perpetual injunction prayed for should be granted to the plaintiff.

On appeal by the defendants the Judge confirmed the decree.

The defendants preferred a second appeal.

Sitánáth G. Ajinkya, for the appellants (defendants):—We admit that some portion of the light and air enjoyed by the plaintiff is obstructed by our new building. The present case is governed by section 15 of the Easements Act (V of 1882). The lower Courts have not found the enjoyment of light and air by the plaintiff as of right. It was wrong to direct us to demolish the whole of that portion of our new house which obstructed the free passage of light and air to the plaintiff's house. We are entitled to build on our land in such a way as will not interfere with plaintiff's rights. The plaintiff did not give us notice while the work of our new building was in progress. He allowed the whole work to be finished and then brought the present suit. Under these circumstances it was wrong to grant to the plaintiff a mandatory injunction. At the most, damages should have been awarded—*Benode Coomaree Dossee* v. *Soudaminey Dossee*(1); *Dhunjibhoy* v. *Lisboa*(2); *Ghanashám Nilkanth* v. *Moroba Rámchandra*(3).

Daji Abáji Khare for the respondent (plaintiff):—There is a concurrent finding of the two Courts that we have established

(1) I. L. R., 16 Cal., 252. (2) I. L. R., 13 Bom., 252.

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

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our right to a free passage of light and air and to discharge our drain water over the ground in dispute. It is a finding based on evidence and cannot be interfered with. The question of damages and notice was not raised below, and no issue on the point was raised. The question is started for the first time in second appeal.

PARSONS, J.:—The decree in the present case cannot be sustained. The lower Appellate Court has ordered the defendants to remove the whole of their new building from the ground over a space of six feet five inches in breadth and sixteen feet four inches in length, in order to allow the water from plaintiff's *mori* and roof to fall on that ground, having held that plaintiff had acquired an easement to have that water carried off over defendants' land. But the plaintiff has no right to demand that the land shall be kept open and unbuilt on. Defendants can build on their land, provided only that they make the necessary arrangements to receive the water from the plaintiff's *mori* and roof and carry it away. They can, for instance, allow the water from the roof to fall on their own roof, and the water from the *mori* to run into their own drain. For the purposes of these easements the lower Court should not have ordered any demolition whatever, but only enjoined defendants to receive and carry off the water from the *mori* and roof.

Again, the Court has ordered the lowering of the whole of the new portion of defendants' house, so that no part of it shall ever be higher than the sills of the two windows to which it has found that the plaintiff has acquired an easement of light and air. But this is far too large an order. The Court could legally have ordered the lowering of so much only as prevents the access of sufficient light to the plaintiff's rooms through the windows in question. This is usually considered to be light at an angle of 45°. The Court below should have found what alteration, if any, in defendants' new building was necessary to ensure plaintiff's getting sufficient light. As it has not done so, we must leave it to be determined in execution.

We vary the decree by reversing so much of it as orders the demolition of any part of the defendants' building and by

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substituting for the other reliefs granted a declaration that the plaintiff has the right to discharge on to the defendants' premises the water from his *mori* and from the roof of his *sajja*, and an injunction that the defendants do not obstruct him in the use and enjoyment of that right, and a further declaration that the plaintiff has a right to an easement of free and uninterrupted light over the defendants' land to the two windows in the south wall of his *sajja*, and an injunction that the defendants be restrained from erecting or continuing any building on their land in such manner as to materially hinder or obstruct the access of light to these windows. When the plaintiff applies to enforce the decree the Court will determine what alterations, if any, should be made in the new building of the defendants. Each party to bear his own costs in this and the lower Appellate Court.

Decree varied.

APPELLATE CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Parsons.

LAKSHMANDA'S RAGHUNA'THDA'S (ORIGINAL PLAINTIFF), APPELLANT, *v.* RA'MBHA'U MANSA'RA'M (ORIGINAL DEFENDANT), RESPONDENT.*

1895. *September 5.*

Bond—Hundi—Dishonour—Stamp—Penalty—Offer to pay stamp duty and penalty in second appeal not allowed—Practice—Procedure.

An instrument, which is in the nature of a bond, is not the less a bond because it does not come into operation unless and until the *hundi* with respect to which it is passed has been dishonoured.

An instrument which is not duly stamped will not be admitted, on second appeal, on payment of stamp and penalty when there is no evidence that the stamp and penalty were tendered and refused on the hearing of the first appeal.

Rámkrishna v. *Vithu*(1) referred to.

SECOND appeal from the decision of W. H. Crowe, District Judge of Poona, confirming the decree of Ráo Sáheb R. G. Bakhle, Joint Subordinate Judge.

The plaintiff sued for Rs. 1,300 due on account of two *hundis* with interest at the rate of Re. 1-8-3 per cent. per month, alleg-

* Second Appeal, No. 227 of 1894.

(1) P. J., 1873, p. 108; 10 Bom. H. C. Rep., 441.