APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1899. *June* 12.

KALLIANDAS (ORIGINAL PLAINTIFF), APPELLANT, *v.* TULSIDAS (ORIGINAL DEFENDANT), RESPONDENT.*

Injunction—Light and air—Easement—Damages—Practice where amount of injury does not justify injunction.

The plaintiff sued for an injunction restraining the defendant from erecting a building which interfered with the light and air coming to the plaintiff's house. The lower appeal Court found that, though the light and air of the plaintiff's house was sensibly diminished by the defendant's building, there was not such substantial damage done as would justify an injunction, and it dismissed the suit with costs, being of opinion that the plaintiff's remedy, if any, was a suit for damages.

Held, that the lower Court was right in not granting an injunction, but instead of dismissing the suit, and referring the plaintiff to another suit for damages, it ought itself to have directed an inquiry as to the damages sustained by the plaintiff by reason of the diminution of the supply of light and air to his house.

SECOND appeal from the decision of E. H. Moscardi, District Judge of Surat.

Suit for an injunction. Plaintiff sued for an injunction directing the defendant to pull down a building which he was erecting on a piece of open land adjacent to plaintiff's house, and restraining him from proceeding with the building, alleging that the building materially diminished the supply of light and air which the plaintiff had uninterruptedly enjoyed for more than twenty years through the windows of his house, which overlooked the open land.

The Subordinate Judge granted the injunction.

On appeal the District Judge rejected the plaintiff's claim, holding that no sufficient case for an injunction had been made out. His reasons were as follows :—

"The point for decision is whether the diminution of light and air caused by the defendant's building is sufficiently serious to justify an injunction for the removal of the building.

"I find this in the negative. The law on the subject is to be found in *Ghanasham* v. *Moroba*(1), in which it is laid down that in order to justify an injunction

*Special Appeal, No. 684 of 1898.

(1) (1894) 18 Bom., 474.

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for the removal of a building on the ground of its interfering with the access of light and air to another building, it is not enough to show that the light and air of the latter building have been sensibly diminished, but it must be shown that the damage is large, material, and substantial, and that the latter building has been rendered unfit for the purpose for which it might reasonably be expected to be used. I have personally inspected the buildings in suit, and have come to the conclusion that applying this principle there is no ground for an injunction. The building complained of is a sort of wooden staging or set of two balconies one above the other, entirely open on the west side, on which it is quite close to plaintiff's house, in fact virtually contiguous to it, and on the east or opposite side. The light coming to the windows on the ground and first floors is somewhat diminished by the two balconies overhanging them, but not to such an extent as to be even disagreeable. Two small openings in the wall of the ground floor, chiefly intended for ventilation, are closed up so far as the light from them is concerned. But they still admit the air freely. A window in the upper or second storey is crossed by the upper balcony of the defendant's wooden staging, and there is a sensible diminution of light there; but the room cannot be said to be completely darkened or rendered unfit for the uses to which it is ordinarily put. From the lower balcony the defendant and his family can approach close to the plaintiff's first floor window, and look right through his house, and this is no doubt intensely disagreeable to the plaintiff. This, however, is not the ground on which the injunction is sought. I am, therefore, of opinion that a case for an injunction is not made out; because though the light and air of the plaintiff's building has been sensibly diminished, there is not such a large, material and substantial damage as would justify the granting of an injunction, nor has the plaintiff's building been rendered unfit for any purpose for which it might reasonably be expected to be used. The plaintiff's remedy, if any, is by a suit for damages.

"I reverse the decree of the lower Court, and reject the plaintiff's claim with costs on plaintiff throughout."

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

Nagindas Tulsidas for appellant.

N. V. Gokhale for respondent.

PARSONS, J.:—The District Judge has given good and sufficient reasons for not granting an injunction in the present case, but he was wrong in dismissing the suit with costs and referring the plaintiff to another suit to recover pecuniary damages for what was found by him to be a sensible diminution of the supply of light and air to the plaintiff's house. It is within the jurisdiction of a Court to give relief by way of damages when it refuses

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an injunction, and it is the practice of the Courts in England to direct an enquiry as to damages though not prayed by the bill—*Lady Stanley of Alderly of Earl* v. *Shrewsbury*[1]. In the present case the plaint asked for an injunction or for such other relief as the Court might think fit to grant. The case thus resembles the case of *Catton* v. *Wyld*[2], in which a decree to ascertain what damages the plaintiff had sustained was ordered.

We ask the Judge of the lower appellate Court to take evidence and record a finding on this issue, *viz.*:—

What money damages is the plaintiff entitled to recover from the defendant for the injury complained of and found proved? and certify the same to this Court within two months.

(1) (1875) 19 Eq., 616. (2) (1863) 32 Beav., 266.

CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1899.
June 22.

QUEEN-EMPRESS *v.* DABHAI KABHAI.*

Salt Act (Bom. Act II of 1890), *Sec.* 47 (*a*)[1]—*Possession of salt water with the intention of manufacturing salt.*

The mere possession of salt water with the intention of manufacturing salt therefrom is not an offence under the Bombay Salt Act (Bom. Act II of 1890).

REFERENCE by J. K. N. Kabraji, District Magistrate of Kaira, under section 438 of the Code of Criminal Procedure (Act V of 1898).

The accused was convicted by the Third Class Magistrate of Borsad under section 47 (*a*) of Bombay Act II of 1890 and sentenced to a fine of Rs. 5, for having in his possession salt water for the purpose of manufacturing salt.

* Criminal Reference, No. 66 of 1899.

(1) Section 47 (*a*) of Bombay Act II of 1890 provides as follows:—"Whoever, in contravention of this Act, or of any rule or order made under this Act, or of any license or permit obtained under this Act, manufactures, removes, or transports salt, shall, for every such offence, be punished with fine which may extend to Rs. 500 or imprisonment for a term which may extend to 6 months or both."