

made liable on a contract, except according to his own, whether it be Mahomedan or Hindu laws. However that may be, in another view of the section in question, the present case would fall within the 2nd clause. Messrs. Grob and Co. seek to set off a debt alleged to be due to them from the estate of Lalchand. Mr. Grob is an actor; and Jagadamba, for the purposes of this issue, must be treated as a defendant, and exactly in the same position as if there were two cross actions, in one of which she was defendant. I am of opinion that the contract of guarantee may be proved, though not in writing as required by the 4th section of the Statute of Frauds. I am satisfied it has been proved, and, subject to the enquiry as to the amount due to the defendant, the rupees 23,000 may be set off.

Judgment for plaintiff.

Attorney for the Plaintiff: *Mr. Hart.*

Attorneys for the Defendant: *Messrs. Judge and Gangooly.*

Note.—The plaintiff appealed. The memorandum of appeal was filed before the decision in *Nekram Jemadar v. Iswariprasad Pachuri* (1), but the appeal was not heard until after that decision. It was argued before Couch, C. J., and Markby, J.

Mr. Woodroffe, for the appellant, contended that the 4th section of the Statute of Frauds was part of the procedure of the Court and applied to the present case. The question was not noticed in the judgment of the Court which reversed the decision of Norman, J., on the ground that no sort of contract of guarantee had been proved by the evidence.

B. L. R. Vol. V, p. 677.

(Foot Note Case.)

Referred to in the case of Mahomed Abdur Rahim v. Birjn Saha, 5 B. L. R., p. 676, here omitted because reported in XIV W. R., p. 103.

The 2nd September 1868.

Before *Mr. Justice Phear* and *Mr. Justice Hobhouse.*

RAMLAL,

versus

MAHES BABOO.

Special Appeal, No. 916 of 1863, from a decree of the Principal Sudder Ameen of Patna, dated the 11th January 1863, affirming a decree of the Sudder Moonsiff of that district, dated the 28th May 1867.

THIS suit was instituted on 29th January 1867. The plaintiff prayed that the defendant might be compelled to remove certain

windows which he had put into the second story of his house, overlooking the apartments occupied by the females of the plaintiff's household.

The defendant stated that the windows complained of were made in the year 1865. The first story of his house was built in 1857, and was surmounted by a terrace which had been used by the members of his family, overlooking the house of the plaintiff; that the plaintiff had made no objection to the windows, and was in fact not inconvenienced by them. The Court of first instance dismissed the plaint, and the Principal Sudder Ameen upheld the decision. In the course of his judgment he referred to Broom's Legal Maxims, page 367, where it is said "an action does not lie if a man build a house whereby my prospect is interrupted or open a window whereby my privacy is disturbed; in which latter case the only remedy is to build on the adjoining land opposite to the offensive window." Reference was also made to pages 368, 369 of the same work.

Plaintiff appealed to the High Court.

Phear, J.—We think there is no legal right shown in this case, of the infringement of which plaintiff is entitled to complain.

B. L. R. Vol. V, p. 682.

(Original Civil.)

The 21st March 1870.

Before *Sir Barnes Peacock, Kt., Chief Justice*, and *Mr. Justice Norman.*

HIRALAL MULLICK (*Plaintiff*),

versus

MATILAL MULLICK and others (*Defendants*).

Relief—Prayer for General Relief.

Under a prayer for general relief, a plaintiff is not entitled to any relief which is inconsistent with his plaint; therefore, where a plaintiff brought a suit to set aside his father's will, on the ground that he had no power to dispose of his property, but that the plaintiff was entitled as eldest son and heir-at-law according to Hindu law, the suit should have been dismissed with costs, and no account should have been decreed to the plaintiff in respect of his interest in a portion of the property, the bequest of which was, in the opinion of the Court below, void for remoteness.

THIS suit was brought by the eldest son of Dwarkanath Mullick, deceased. The

(1) 14 W. R., p. 305.