ORIGINAL CIVIL.

Before Mr. Justice Fletcher.

ANATH NATH DEB

v.

GALSTAUN.*

1908

March 4.

Ancient lights, obstruction of—Infringement—Nuisance—Acquiescence—Decree for damages—Mandatory injunction.

An obstruction to light and air must amount to a nuisance, to be an actionable infringement.

Where the whole of the direct light, which formerly came to the plaintiff's building, was taken away by the defendant's new building, it is no defence that the amount of the reflected light, which now comes to the plaintiff's premises, is sufficient for the ordinary user thereof.

Where there has been such a substantial diminution of light as to amount to a nuisance, evidence that the plaintiff's office has more light left than many other offices in Calcutta, or that the light coming to the plaintiff's premises is sufficient for business purposes, or that the plaintiff could by making internal alterations improve the light coming thereto, is not relevant.

Colls v. *Home and Colonial Stores Limited* (1) followed.

Inasmuch as the plaintiff was shown the plans of the proposed new building in May 1907 and no proceedings were instituted, until the 27th September 1907, when the defendant's building had reached a height of 30 ft., and as on that date permission was given to the defendant to go on building at his own risk, and the defendant had nearly completed his building at a very large cost by the date of hearing of this suit in January 1908, when the building had reached a height of 70 ft., and as the plaintiff's building was a small old fashioned house, which in the ordinary course would in a few years be pulled down and rebuilt.

Held, that the proper remedy would be a decree for damages and not a mandatory injunction to demolish the defendant's new building.

ORIGINAL SUIT.

This suit was instituted by the plaintiff to restrain the defendant, J. C. Galstaun, from interfering with his ancient lights, for a mandatory injunction to demolish such portion of a new building, which was in process of construction, as interfered

* Original Civil Suit No. 780 of 1907.

(1) (1904) A.C. 179.

1908

ANATH NATH DEB v. GALSTAUN.

with such ancient lights, and in the alternative for the sum of Rs. 50,000 by way of damages.

The plaintiff was the owner of premises No. 1 New China Bazar Street in the town of Calcutta, the main building whereof was two-storied. It was the light and air coming through the openings in the north main wall of this building that the plaintiff alleged had been interfered with. It was not disputed that these openings were ancient openings. On the north of the plaintiff's premises were the premises No. 2 New China Bazar Street, which the defendant had acquired in December 1906. The number and position of the openings in the north main wall of the plaintiff's premises, the structure of the old building at No. 2 New China Bazar Street and the relative positions of the two buildings at this date are fully set out in the judgment.

Early in 1907 the defendant caused the old building at No. 2 New China Bazar Street to be pulled down and instructed Messrs. Martin & Co. to prepare plans for the erection of a new building on the premises. The new building was to be a four-storied one of the height of 77 feet and at a distance varying from 7 feet 9 inches to 8 feet 7 inches from the boundary wall between the two premises. Messrs. Martin & Co. commenced building and by May 1907 they had completed the excavations and laid the masonry foundation.

In May, at the plaintiff's request, the plans were shown to the plaintiff's manager and engineer and to Mr. Cobbold of Messrs. Allen Brothers, who were the plaintiff's tenants, at an interview held at the offices of Messrs. Martin & Co. and although objections were taken and proceedings threatened, nothing was done until the 27th September 1907, when the plaintiff filed this suit and obtained a rule for an *ad interim* injunction restraining the defendant from proceeding further with the building. By this date the new building had been erected to the height of 30 feet.

On the 4th October 1907, the rule for the *ad interim* injunction was dissolved and the defendant was permitted to go on building *at his own risk*. The suit came on for hearing in January, 1908, by which time the building had reached the height of 70 feet and was practically complete.

1908

ANATH NATH DEB v. GALSTAUN.

It was established in evidence that the whole of the direct light, which formerly came to the plaintiff's building, had been taken away by the defendant's new building. It was stated, however, on behalf of the defence that, having regard to the nature of the new building, the amount of the reflected light had been so increased, that not only had the light coming to the plaintiff's premises not been diminished, but it had in fact been increased.

Witnesses were also called, who stated that there were many worse lighted offices in business quarters in Calcutta and that the light coming to the plaintiff's premises was sufficient for business purposes. On the other hand evidence was given by a member of the firm and assistants of Messrs. Allen & Co. to the effect that the light had been so diminished as to necessitate the use of artificial light much earlier in the daytime and that in consequence of this diminution and the closeness of the atmosphere in the rooms, the health and eyesight of some of them had been affected.

No case for any special quality of light, however, was made out on behalf of the plaintiff.

Mr. J. E. Bagram (*Mr. Zorab*, *Mr. B. C. Mitter* and *Mr. Camell* with him), for the defendant. The two issues in this action are: (i) does the interference with the light and air coming to the plaintiff's premises caused by the defendant's new building amount to a nuisance; (ii) if so, what is the proper remedy? On the first issue, I admit there has been some interference, but it has not been sufficient to constitute a nuisance, so as to ground an action for infringement of ancient lights. Although the direct light has been diminished, the reflected light has been greatly increased. What must be considered is the *quantum* of light left and not the quality or the source of the light. [FLETCHER J. Have you found any case, where all the direct light has been taken away, in which it has been held that there has not been an infringement of ancient lights?] No nor has it been held, that there was an infringement, when sufficient light has been left. The amount of light left is sufficient for business purposes, and is in fact greater than is to be found

1908

ANATH NATH DEB v. GALSTAUN.

in many offices in the business part of Calcutta. The interference in consequence cannot be said to amount to a nuisance: See *Colls* v. *Home and Colonial Stores, Limited* (1), *Higgins* v. *Betts* (2), and *John George Bagram* v. *Khettranath Karformar*(3). [FLETCHER J. All that *Coll's case*(1) decided was that the plaintiff is not entitled to *all* the light that has come through his windows for 20 years: but he still has a proprietary right to his ancient lights, and can restrain any infringement amounting to a nuisance]. The plaintiff's premises have not been adversely affected in their commercial value: the tenants have agreed to take a new lease at the same rent. No case for special light has been made out. On the second issue, as to the proper remedy, this is clearly not a case for a mandatory injunction. The plaintiff is not occupying the premises and his grievance, if any, can be adequately redressed by compensation. See *Curriers' Company* v. *Corbett*(4), and *Isenberg* v. *East India House Estate Company, Limited*(5). [FLETCHER J. In *Shelfer* v. *City of London Electric Lighting Company*(6), it was held, that, where there is a continuing nuisance, the proper remedy is an injunction, that is apart from the question of acquiescence.] The Court will not grant a mandatory injunction except in cases where very serious damage would be suffered by the party complaining, if such injunction were withheld. See *Lady Stanley of Alderley* v. *Earl of Shrewsbury* (7). [FLETCHER J. In *Martin* v. *Price* (8) a mandatory injunction was granted, although the commercial value of the premises had not been affected.] The Specific Relief Act lays down the rules binding on the Courts in India, and they differ from the rules, upon which the decisions are based in English Law. See *Boyson* v. *Deane* (9) and *Sultan Nawar Jung* v. *Rustomji Nanabhoy*(10). The tendency in English decisions is to be less and less free with mandatory injunctions. In granting an injunction the Court will look to the balance of convenience. A mandatory injunction was refused in *Holland* v.

(1) [1904] A. C. 179.
(2) [1905] 2 Ch. 210.
(3) (1869) 3 B. L. R. (O.C.) 18.
(4) (1865) 2 Drew. & Sm. 355.
(5) (1863) 3 De G., J & S. 263.
(6) [1895] 1 Ch. 287.
(7) (1875) L. R. 19 Eq. 616.
(8) [1894] 1 Ch. 276.
(9) (1899) I. L. R. 22 Mad. 251.
(10) (1896) I. L. R. 20 Bom. 704.

1908

ANATH NATH DEB v. GALSTAUN.

Worley (1), *Robson* v. *Whittingham* (2) and *Ghanasham Nilkant Nadkabni* v. *Moroba Ramchandra Pai* (3). On the question of the nature of light to which the plaintiff is entitled, see *Scott v. Pape* (4).

[*Mr. Knight* referred to *Straight* v. *Burn* (5).]

In *King* v. *Jolly* (6), there is authority that, although there may be material diminution of light, if sufficient be left for ordinary purposes, no action will lie; on the facts of that case damages were decreed, and a mandatory injunction was refused. [FLETCHER J. referred to *Dent* v. *Auction Mart Co.*(7). You were content to continue building at your own risk. Can you now seriously resist a mandatory injunction in respect of the portion built after September 27th, 1907 ?.]

Yes. Having built so substantial a portion by the 27th September it would be inequitable to expect us to desist from completing. See *Aynsley* v. *Glover* (8). See also *City of London Brewery Co.* v. *Tennant* (9).

The plaintiff is estopped by his acquiescence from now claiming a mandatory injunction. As early as January 1907 he knew substantially what sort of building was going to be erected: in May 1907 the plans were actually shown to his agents and he took no steps till September 27th, 1907. Such delay amounts to want of *bonâ fides*. See *Senior* v. *Pawson* (10), where also the defendant continued building at his own risk. See also *Ghanasham Nilkant Nadkabni* v. *Moroba Ramchandra Pai* (3).

Mr. Knight (*Mr. H. D. Bose* and *Mr. C. C. Ghose* with him), for the plaintiff, was not called upon on the first issue. On the second issue: Sections 54 and 55 of the Specific Relief Act express in general terms the rules acted upon by Courts of Equity in England. See *The Shamnugger Jute Factory Co.* v. *Ram Narain Chatterjee* (11), and *The Land Mortgage Bank of India* v. *Ahmedbhoy and Kesowram Ramanand*(12). Acquiescence to have any legal

(1) (1884) L. R. 26 Ch. D. 578.
(2) (1866) L. R. 1 Ch. Ap. 412.
(3) (1894) I. L. R. 18 Bom. 474.
(4) (1886) L. R. 31 Ch. D. 554.
(5) (1869) L. R. 5 Ch. Ap. 163.
(6) [1905] 1 Ch. 480.
(7) (1866) L. R. 2 Eq. 238.
(8) (1874) L. R. 18 Eq. 544, 553.
(9) (1873) L. R. 9 Ch. Ap. 212.
(10) (1866) L. R. 3 Eq. 330.
(11) (1886) I. L. R. 14 Calc. 189, 193.
(12) (1883) I. L. R. 8 Bom. 35, 67.

1908

ANATH NATH DEB v. GALSTAUN.

consequences must amount to equitable estoppel. The principle is quite clear: the party complaining (*i.e.* the defendant) must have proceeded on the erroneous belief of his own legal rights and must have changed his position on the faith of such belief: and the plaintiff must be proved guilty of fraud. See *Dinn* v. *Spurrier*(1), *Ramsden* v. *Dyson* (2), *Willmott* v. *Barber* (3), *Proctor* v. *Dennis* (4) and *The Rochdale Canal Company* v. *King* (5). In the present suit it is obvious the defendant has been under no mistake as to his legal rights. He knew all along that he was committing an infringement and trusted that once his building was erected, he would be only ordered to give compensation. Apart from acquiescence, the mere fact of delay is no bar to the claim. See *Kissen Gopal Sadaney* v. *Kally Prosonno Set*(6). The owner of an ancient light is entitled to a mandatory injunction, where the obstruction renders his house substantially less fit for occupation. See *Kelk* v. *Pearson* (7), and *Cowper* v. *Laidler* (8).

Mr. B. C. Mitter, in reply. The cases cited on behalf of the plaintiff on the question of acquiescence have no application to the present action. Here we do not plead acquiescence as a bar to the suit, but as a bar to one specific remedy, viz., a mandatory injunction. See *Sayers* v. *Cooper* (9), *Allen* v. *Seckham* (10), *Lady Stanley of Alderley* v. *Earl of Shrewsbury* (11), *Benode Coomaree Dossee* v. *Soudaminey Dossee* (12).

Cur. adv. vult.

FLETCHER, J. This is a suit brought by the plaintiff to restrain the defendant interfering with his ancient lights.

The plaintiff is the owner of premises known as No. 1 New China Bazar Street in the Town of Calcutta, the main building whereof consists of a two-storied house. The openings on the north main wall of the plaintiff's building form the subject of this

(1) (1802) 7 Ves. 231.
(2) (1865) L. R. I. H. L. 129.
(3) (1880) L. R. 15 Ch. D. 96.
(4) (1887) L. R. 36 Ch. D. 740.
(5) (1851) 2 Sim. N. S. 78.
(6) (1905) I. L. R. 3 Calc. 633.
(7) (1875) L. R. 6 Ch. App. 809.
(8) [1903] 2 Ch. 337.
(9) (1884) L. R. 28 Ch. D. 103.
(10) (1875) L. R. 11 Ch. D. 790.
(11) (1875) L. R. 19 Eq. 616.
(12) (1889) I. L. R. 16 Calc. 252.

1908 JP.
ANATH NATH DEB v. GALSTAUN.
FLETCHER J.

suit. The north main wall of the plaintiff's building does not run in a straight line, but at each end of the building a portion thereof projects towards the north. On the ground floor of the plaintiff's building these openings consist of seven windows facing due north and a door facing west and a window with another opening below it facing east. On the first floor there are eight large windows and two small windows opening to the north, one small window facing east and four other openings in the room known as the pantry, three of which open to the north and the other to the north-west.

The plaintiff alleges and the defendant admitted at the trial before me that all these openings are ancient openings.

On the north of the plaintiff's premises are the premises No. 2 New China Bazar Street, which now belong to the defendant. The former building on No. 2 New China Bazar Street consisted of a three-storied building about 52 feet high with open verandahs on the south and west of the building; the verandah on the south of such old main building was seven feet six inches wide and ran up to a point of about four to five feet above the level of the 3rd floor of the building with a sloping roof commencing about three or four feet from the top of the main building. On the west side of the defendant's old main building there was a range of godowns extending for a depth of 45 feet from New China Bazar Street towards the defendant's old main building. This range of godowns was about 14 feet 6 inches high and the southern wall thereof formed in part the boundary wall between the plaintiff's and defendant's premises. Opposite the plaintiff's main building there ran a boundary wall 6 feet 9 inches high between plaintiffs and defendant's premises as a continuation of the southern wall of the range of godowns. The plaintiff's main building was at a distance from the boundary wall varying from 4 feet 6 inches to 7 feet 3 inches and the defendant's old main building was at a distance of 19 feet from such boundary wall. The defendant acquired the premises No. 2 China Bazar Street in December 1906 with a view to erecting hereon a large new building.

Early in 1907 the defendant caused the old building to be pulled down and instructed Messrs. Martin & Co. to prepare

1908

ANATH NATH DEB v. GAISTAUN.

FLETCHER J.

plans for the erection of a new building on the premises. The plans were duly prepared and the new building was at the date of the hearing in the course of erection, having then reached a height of about 70 feet or thereabouts.

The new building being erected is a four-storied building intended to be of the height of 77 feet, but a small portion thereof adjoining New China Bazar Street is not intended at present to be raised to the full height of 77 feet, as the sanction of the Corporation has been withheld as to such portion being raised to this height. The new building being erected on the defendant's premises is at a distance varying from 7 feet 9 inches to 8 feet 7 inches from the boundary wall between the plaintiffs and the defendants.

The plaintiff alleges that the defendant's new building has affected his ancient lights, so as to constitute a nuisance. It being admitted that the plaintiff's openings are ancient openings, the only two questions argued on the hearing of this suit were :—

(1) Does the new building so affect the light and air coming to the plaintiff's premises as to create a nuisance within the meaning of *Colls* v. *Home and Colonial Stores, Ld.*(1) ?

(2) If it does, is the plaintiff entitled to a mandatory injunction ordering the defendant to pull down his building?

Dealing then with the first of these questions it is admitted by the experts called by the defendant that the whole of the direct light, which formerly came to the plaintiff's building, has been taken away by the defendant's new building. It is said, however, that having regard to the nature of the new building being erected by the defendant, the amount of the reflected light has been so increased that not only has the light coming to the plaintiff's building not been diminished, but in fact it has been increased. It is also stated by one of such experts, Mr. H. T. Bromley, who was formerly the City Architect, that, if the reflected light was diminished by the building No. 1 New China Bazar Street being raised or otherwise, the light coming to the plaintiff's building would be seriously affected. Now, what is the nature of an easement of light and air ?

(1) [1904] A. C. 179.

1908

ANATH NATH DEB v. GAISTAUN.

FLETCHER J.

"It is an easement belonging to the class known as negative easements. It is nothing more nor less than to prevent the owner or occupier of an adjoining tenement from building or placing on his own land anything, which has the effect of illegally obstructing or obscuring the light of the dominant tenement" per Lord Macnaghten in *Colls* v. *Home and Colonial Stores, Ld.*(1). That is, the right of the owner of the dominant tenement is a right to the reception of light and air in a lateral direction. It is not, however, every obstruction to the light and air coming to the plaintiff's premises, which will be an infringement of the plaintiff's right, the obstruction must amount to a nuisance.

"I am of opinion" says Lord Davey in *Colls* v. *Home and Colonial Stores, Ld.*(1) "that the owner or occupier of the dominant tenement is entitled to the uninterrupted access through his ancient windows of a quantity of light, the measure of which is what is required for the ordinary purposes of inhabitancy or business of the tenement according to the ordinary notions of mankind."

If, then, I should accept the defendant's evidence that, although the plaintiff's premises have been deprived of all direct light, yet the light coming to them has not been diminished by reason of the increase of the reflected light, would the defendant be entitled to succeed in this suit? In my opinion he would not.

Doubtless light coming from other quarters has to be taken into account, but as Lord Lindley remarks in his speech in the House of Lords in *Colls* v. *Home and Colonial Stores Ld.*(1), "light, to which a right has not been acquired by grant or prescription, and of which the plaintiff may be deprived at any time, might not be taken into account."

In order that the plaintiff's premises should continue to enjoy this amount of reflected light it is necessary that the position of affairs should remain as at present. If the plaintiff was to raise the height of his own building, which he has a perfect right to do, he would shut off the reflected light, which at present comes to his premises. And to hold that the plaintiff is under an obligation not to raise the height of his own building would mean that he enjoyed his easement not by reason of any act not to be done

(1) [1904] A. C. 179.

1908

ANATH NATH DEB v. GAISTAUN.

FLETCHER J.

by the owner of the servient tenement, but by reason of his forbearing to do some perfectly lawful act.

I should therefore hold that, even if the defendant had established that the amount of reflected light, which comes to the plaintiff's premises, is sufficient for the ordinary user thereof, yet as the defendant's building takes away the whole of the direct light coming to the windows in the north wall and the plaintiff can only enjoy such reflected light by his or his neighbours forbearing to interfere with the light coming to the defendant's premises, so that it may be reflected into the plaintiff's windows, the plaintiff would be entitled to succeed in the present suit. But on the evidence, which has been given before me, I am, however, of opinion that, even taking into account this reflected light, there has been such a substantial diminution of the light coming to the plaintiff's premises as to amount to a nuisance.

Now the plaintiff has called in support of his case Mr. Harbleicher, partner in Messrs. Allen Brothers, who are the lessees and tenants of the plaintiff's premises, and several gentlemen, who are in the employ of Messrs. Allen Brothers and Mr. Fitze, who is a sub-tenant of Messrs. Allen Brothers, to speak as to the state of affairs during the time the defendant's old building was standing and as to the state of affairs now that the defendant's new building is being erected.

Now, if I accept their evidence as I do, there cannot be any doubt that there has been a substantial interference with the comfortable enjoyment of the plaintiff's premises, so as to create a nuisance.

They say that the light has been so diminished that they have to use artificial light much earlier in the daytime, some of them say that their health and eyesight has been affected by having to peer over their work and by the closeness of the atmosphere in the rooms: Mr. Fitze also says he cannot read a newspaper in his room at 3 o'clock in the afternoon. As against this the defendant has called several gentlemen employed in commercial houses in Calcutta. Now these gentlemen called by the defendant were not asked to go and see the plaintiff's premises before the hearing of the suit, but went at the request of the defendant to the plaintiffs' premises during the hearing of the suit, so that they migh

be called to contradict the evidence given by the plaintiff's witnesses, after the same had been given. The evidence given by these witnesses for the defendant comes to this (1) that there are many worse lighted offices in the business quarter in Calcutta than the plaintiff's premises and (2) that the light coming to the plaintiff's premises is sufficient for business purposes, *i.e.*, that it is possible to carry on business in the plaintiff's premises.

I am unable to see how this evidence given on behalf of the defendant is relevant with regard to this question in issue and the remarks of Lord Macnaghten in his speech in *Colls* v. *Home and Colonial Stores Ld.* (1) appear to me conclusive on this point. Dealing with *Warren* v. *Brown* (2), his Lordship says "In the Court of first instance the learned Judge, who tried the case, found a special verdict, which is not very easy to understand. The room, in which the light has been materially diminished, 'in its present state is' he says 'better lighted than the ground floor front rooms in many of the principal streets.' I do not see what bearing that fact had on the question at issue."

Then it is said by the defendant that one of the rooms on the ground floor is used as a store room and at any rate with regard to this room the plaintiff is not entitled to any relief. In my opinion the plaintiff does not lose his right to light and air by reason of the fact that this room is at present used as a lumber room, and on this part of the argument it is sufficient for me to quote from Lord Lindley's speech in *Colls* v. *Home and Colonial Stores Ld.* (1). "If he (*i.e.*, the plaintiff) chooses in future to use a well-lighted room or building for a lumber room, for which little light is required, he does not lose his right to use the same room or building for some other purpose, for which more light is required."

Then it is said with regard to certain of the rooms in the plaintiff's premises he could by making internal alterations improve the light coming thereto. This argument appears to me to be irrelevant. "The mode in which he (the plaintiff) finds it convenient to arrange the internal structure of his tenement

[1] [1904] A. C. 179. [2] [1900] 2 Q. B. 722.

1908

ANATH NATH DEB v. GALSTAUN.

FLETCHER J.

does not affect the question" (per Lord Davey in *Colls* v. *Home and Colonial Stores Ld.*(1).

To sum up, the evidence given on behalf of the defendant, as to whether or not the plaintiff's building constitutes a nuisance, comes to this that the plaintiff has as much light left as many other offices in Calcutta. But this is not the question to be decided. "The question to be decided is not, how much light is left, but whether the plaintiff has been deprived of so much as to constitute an actionable nuisance. If he has, it is no defence to say that he has as much light left as most other people" (per Lord Lindley in *Colls* v. *Home and Colonial Stores Ld.* (1). I therefore hold that the erection by the defendants of his new building constitutes an actionable nuisance by diminishing the light and air coming to the plaintiff's premises. There remains the second question, as to whether the plaintiff is entitled to a mandatory injunction or to damages, to be dealt with.

Now it appears from the evidence that the plaintiff's engineer and manager and Mr. Cobbold, of Messrs. Allen Brothers, were at an interview at the offices of Messrs. Martin & Co. towards the end of May 1907, shown the plans of the new building proposed to be erected by the defendant and that, although they objected and threatened proceedings, nothing was done, until the 27th September, when the plaintiff commenced this suit. In the meantime the defendant had contracted with Messrs. Martin & Co. for the erection of his building and much material had been ordered out from Europe. On the 27th September 1907 the defendant's building had reached a height of about 30 feet.

On the 27th September an application was made before the Vacation Judge for an interlocutory injunction. The application was not dealt with, but the defendant was permitted to go on building at his own risk. In the meantime the defendant has practically completed his building at a very large cost. The plaintiff's building is a small old fashioned house, which in the ordinary course will in the course of a few years be pulled down and rebuilt.

In these circumstances I have to decide whether the plaintiff is entitled to a mandatory injunction. Now I think there was

[1] [1904] A. C. 179.

1908

ANATH NATH DEB v. GALSTAUN.

FLETCHER J

considerable delay between the end of May and the end of September in the plaintiff coming to this Court. On the other hand, I am satisfied that, from what was said by Mr. Thornton at the interview at the end of May, that the plaintiff might get some compensation for the new building, that he (Mr. Thornton) knew that the new building would invade the plaintiff's rights.

I think on the whole that, if the building had been stopped on the 27th September 1907, I should have granted a mandatory injunction ordering the defendant to pull down so much of his building as affected the plaintiff's ancient lights.

But in the meantime owing to the permission given to the defendant to build at his own risk, a large and expensive building has been almost completed by the defendant, and I am satisfied that the defendant could not comply with a mandatory injunction except by pulling down his building or by pulling down such part thereof as would render the remainder largely useless.

Taking into consideration the delay on the part of the plaintiff and the other circumstances, I have come to the conclusion, although not without some hesitation, that I ought not to grant a mandatory injunction but should make a decree for damages. Accordingly I make a declaration that the defendant's building has created a nuisance by obstructing the light and air coming to the ancient openings in the north wall of the defendant's premises and direct the Official Referee to enquire and report, what sum ought to be paid by way of damages by the defendant to the plaintiff for the injury caused to his premises by such nuisance.

The defendant must pay to the plaintiff his costs of this suit.

Judgment for plaintiff.

Attorney for plaintiff: *C. C. Bose.*

Attorneys for defendant: *Morgan & Co.*

J. C.