

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Elliott and others v. Bhoobun Mohun Bon-
nerjee, from the High Court of Judicature
at Fort William in Bengal; delivered 12th
February 1873.*

Present :

LORD JUSTICE JAMES.

SIR BARNES PEACOCK.

LORD JUSTICE MELLISH.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THIS was a suit for an injunction praying that the Defendants might be restrained from proceeding with a certain building, and that a portion of it might be taken down, which had the effect of obstructing light which the Plaintiffs alleged they were entitled to have through their windows. It would appear that the windows in respect to which the right to the light is claimed were so far completed on the 14th April 1850 that the origin of the right would then accrue; that is the finding of Mr. Justice Norman, the judge of first instance, a finding in which their Lordships concur.

The suit was commenced on the 18th of May 1870, rather more than a month beyond the expiration of 20 years from the former date of April 14th 1850.

It is admitted that the Prescription Act, the 2nd and 3rd William IV. c. 71. does not apply, and that we must have resort to the English law which prevailed before its passing. So far as this would seem to be clear that the Plaintiffs, in order to establish their title, would have to show an uninterrupted user of at least 20 years, with the

acquiescence of the Defendant, the owner of the servient tenement. But some questions of nicety have been raised as to what would or would not amount to acquiescence, and it was discussed whether actual knowledge was necessary to be shown on the part of the Defendants. That proof of such actual knowledge was necessary appears to have been the view of the Court above, which reversed the decision of Mr. Justice Norman, the judge of First Instance, and found, as a fact, that actual knowledge was not shown to have existed on the part of the Defendants. If the decision of the case rested upon this point their Lordships would have desired to hear further argument, because they are by no means satisfied that knowledge on the part of the agent, who acted for the rajah, the owner of the property in 1850 (from whom the Defendants purchased), who collected his rents, and, further, was entrusted with the authority of fixing their amount, would not be constructive knowledge on the part of the rajah, sufficient to satisfy the exigence of proof on the part of the Plaintiffs.

Another question arose in the case as to whether the fact of the premises being let to tenants at, as it would appear, a monthly rent, on the commencement of the accruing of this right, namely, in 1850, would have had any bearing upon the rights of the parties. But their Lordships do not think it necessary to enter into a discussion of these questions, because they have come to the conclusion, independently of them, that the Plaintiffs have not established an uninterrupted user of these rights for the space of 20 years, with the acquiescence of the Defendants. It must be taken that the enjoyment commenced on the 14th April 1850. It would appear that in March 1870 the Plaintiffs received a notice from the Defendants, or, at all events, they were informed by the Defendant that it was their intention to erect a building of 24 feet or more in height on the north of the premises of

the building in question, which would have the effect undoubtedly of obstructing their lights. It appears that that building was actually commenced on the 23rd March 1870, and its construction was continued. It is true that it was not raised to such a height as to actually amount to an obstruction until some days after the 20 years had elapsed; but it was commenced, and commenced with the manifest intention of being erected as an obstruction before the expiration of the 20 years.

Under these circumstances it appears to their Lordships that it is quite impossible to presume enjoyment for 20 years with the acquiescence of the owner of the servient tenement, when before the expiration of those 20 years, the owner not merely gave notice of his intention to interfere with that enjoyment and to raise an obstruction, but in pursuance of that notice actually commenced the erection of that obstruction which was completed a few days after the expiration of the time in question.

Under these circumstances their Lordships have come to the conclusion that there was not an enjoyment for 20 years on the part of the Plaintiffs with the acquiescence of the Defendant such as to entitle them to maintain this suit.

Their Lordships will therefore humbly advise Her Majesty that the Judgment of the Appellate Court, the High Court of Calcutta, be affirmed, and this Appeal dismissed, with costs.

