

I find that there has not been by reason of any obstruction caused by defendants' building any privation of light so as to render the occupation of plaintiff's house uncomfortable. . . .

Coles v. Home and Colonial Stores, [1904] A. C. 179, decides that "to constitute an actionable obstruction of ancient lights it is not enough that the light is less than before. There must be a substantial privation of light, enough to render the occupation of the house uncomfortable according to the ordinary notions of mankind, and (in the case of business premises) to prevent the plaintiff from carrying on his business as beneficially as before." That case goes the whole length of warranting my conclusion of law, if right in my finding upon the question of fact. . . .

[Reference to Jolly v. Kine, [1905] 1 Ch. 480, [1907] A. C. 1.]

The action must be dismissed.

Apart from any question of liability for damages, I am of opinion that, by reason of what took place between the parties, plaintiff is not entitled to an injunction. At first plaintiff had not in mind any possible obstruction of light. He bought on 14th July, 1906. At that time there was on the ground building material, and building operations were going on, so that plaintiff knew in a general way what defendants intended. Plaintiff's solicitor on 27th July wrote to defendants about the fence between the properties, and he desired to have plaintiff's rights along his western boundary safeguarded. He also complained that there were iron girders on the street in front of his property which he wanted defendants to remove. This was all amicably attended to.

On 22nd November plaintiff's solicitor wrote to defendants about obstruction of light, stating that he was instructed to bring an action. . . . Defendants placed this letter in the hands of their solicitors, and the solicitors replied to plaintiff's solicitor that they would accept service of process and of notice of any intended or threatened motion for injunction. Mr. Baird (plaintiff's solicitor) and plaintiff visited the property and saw the wall of defendants' building on 22nd November. Mr. Baird replied on 27th November: "Can you assure my client that the wall on the property of the company on Albert street will not be erected higher?" On 28th November defendants' solicitors replied