

BOYD, C.:—Plaintiff has a substantial grievance, and his action should not have been dismissed. The judgment appears to err in applying the rules settled by the Courts in the case of interference with ancient lights by extension to the present case, where plaintiff's rights depend upon conveyance to him from the common owner of this lot and the adjoining lot now owned by defendants. This case is one of modern windows which are to receive such access of light as they had at the time plaintiff's lot was severed from that now owned by the adjoining proprietor. Long, the common owner of both, severed the lots by first granting, under a short form of conveyance, to plaintiff's predecessor his lot. That grant by express terms covered the lights as appurtenant or quasi-appurtenant, and, over and above that, it was subject to the well-established rule that one cannot derogate from his own grant. As applied to the case in hand, that means that Long, having conveyed this lot with house and windows in question thereon, could not, by himself or any one claiming under him, thereafter do anything on the next adjoining lot he retained, which would materially diminish the light coming to the windows. But a change has been made by defendants, who have erected a wall on their lot about twice as high as that which existed at the time of the severance. This structure has the effect of obstructing the passage of light whereby plaintiff's rooms have been darkened and artificial light has to be used early in the evening. The structure complained of occasions perceptible and material detriment to plaintiff's premises and lessens the beneficial enjoyment of them to an easily measurable extent. By this act defendants have derogated from the grant made by Long, and plaintiff has the right to complain of it.

Plaintiff's inertness has been such that defendants have changed their position; so that the proper method of relief is not by way of mandatory injunction, but by way of award of damages.

No evidence was given on this head, and, though the learned Judge has assessed the sum of \$300 in case damages are to be given, I do not think plaintiff should be concluded by that, if he chooses to risk a reference. If this sum is not accepted, there will be a reference to the Master, who may then dispose of the costs of reference (having regard to the sum of \$300 rejected) when he ascertains the amount.