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**(1940) 04 CAL CK 0040**  
**In the Calcutta High Court**

S.A. Basil

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

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**Date of Decision :** 11-04-1940

**Acts Referred:**

Limitation Act, 1963 — Section 29(2)

**Citation :** AIR 1941 Cal 207

**Hon'ble Judges :** Ameer Ali, J

**Bench :** Division Bench

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## Judgement

Ameer Ali, J.—This is a suit by receivers in whom is vested the premises formerly 23, Free School Street, now No. 6, Free School Street, and they complain of a nuisance created by the defendants in the user of what has been referred to generally as a refuse depot. The defendants in a manner which has not been investigated are the owners of the Sir Stuart Hogg Market, a very well known institution in this city, and as such they have to provide for the removal of the refuse from that market. They have done so principally by the refuse depot in question although there is another depot in the northern side. This depot is on the western outskirts of the market.

2. The Free School Street depot consists of two portions which I shall refer to separately, as a lorry or trailer shed, and the refuse yard. In the lorry shed is an inclined ramp, the purpose of which is to provide means for the municipal sweepers to empty their handcarts or wheelbarrows into the trailer. The plan annexed to the plaint is admitted as substantially correct. The place is not large as will appear from the scale. The depot, generally, is referred to in the pleadings and elsewhere as a "pucca refuse dump." As this matter may go before a tribunal not familiar with the vernacular, I should explain that "pucca" has a different significance as applied to different objects. A. "pucca" saheb is a perfect gentleman. A "pucca" refuse dump means a permanent refuse dump, or in this connexion a paved refuse yard. The house in question has remained vacant for some eight years, and the injuria complained of is the smell from the refuse, and

the inconvenience and discomfort consequent on the vermin which are attracted to the lorry and to the yard. How far it is necessary to distinguish I will discuss hereafter.

3. Mr. Mitter has attempted to attract me by the law, but in my opinion, in this case, I need lay down no principles. As I understand the position, speaking very generally, where a public body carries on activities in the course of which a nuisance or alleged nuisance is created, on the statute by which that body is created, three questions may arise : (1) Whether the statute or section (in this case, Section 371) makes any difference at all, i. e., affords any protection. Is the public body in the same position as any private person? (2) At the other extreme whether the section or statute provides an absolute protection whatever the public body may have done. (3) An intermediate position where the Corporation is protected notwithstanding that a nuisance may have been committed, provided they have done whatever is practicable to minimize the inconvenience : in other words, whether what they have done is more of a nuisance than it need be. The difference between positions (1) and (3) is expressed in a case which attracted my attention by reason of its analogy on the facts with that before me, *Rapier v. London Tramways* (1893) 2 Ch 588 by Lindley L. J., as follows: Does the Act of Parliament give power to a public body to do

whatever in the exercise of their discretion they may think reasonable and proper in their own interests, provided they take all reasonable care not to commit a nuisance...or is it that they may do what they may think right in the exercise of their own discretion provided they do not commit a nuisance.

4. In my opinion, disregarding all questions of onus and permissive or other than permissive powers, the section in this case puts the corporate defendant into position 3 and indeed this, as I understood it was not disputed by Mr. Bose. Absolute protection is not claimed. That is all I propose to say on the question of law. That being so, the following are the questions which fall to be considered : (1) What has been complained of? A question arises whether on the pleadings as they stand the plaintiffs are entitled to complain not only of lorry or trailer and its contents, but also of the refuse yard generally. The defendants contend that the plaintiffs have confined themselves to the refuse trailer and shed. (2) Have the defendants in what they have done taken all reasonable care not to commit a nuisance? Have they done their work in such a manner as to create the least practicable nuisance? In the course of the discussion I took the liberty of summarizing the points to be considered upon the evidence in the following manner : (a) Choice of method - to dump or not to dump; in other words whether the system generally was a proper one; (b) where to dump, i. e., the propriety of the site; and (c) how to dump, i. e., the method adopted in the user of this refuse dump.

5. As I may have to point out later, the plaintiffs in the first instance appeared to confine their attention wholly to the second question, namely site, and they

seem to have considered it sufficient to point out what is obvious that the inconvenience to them would be lessened by the refuse depot being further away from the house notwithstanding that it might be a greater inconvenience to the public. In considering the last question, the user of the dump, the following points have been throughout in my mind, which I think it convenient to enumerate : (1) trailer, (2) trailer-house, (3) separation of refuse into animal and vegetable, (4) yard, (5) bins, (6) handcarts, (7) handling, (8) removal in horsecart, (9) general supervision. The significance of these points will become apparent, I hope, in discussing the evidence. So much for a general view of the injuria. With regard to damages, I have postponed consideration of that matter, but that, if nuisance is established some damages have ensued is not disputed.

6. It is convenient, first, to discuss the question what has been complained of? It is quite true that both in the plaint and in the evidence of Mr. Basil and Mr. Barber, the matter to which attention is mainly focussed is the trailer and trailer-house. The plaint on the other hand does refer-generally to the area both described in the body and delineated in the plan. The written statement does not appear to me to be based upon any distinction, and it must be remembered that the individual importance of trailer-house and refuse yard is largely, if not wholly, the result of the theory of separation of refuse which does not appear in the written statement, and upon which, I think, counsel were not, until a late stage, instructed. The moment that case was made, and the photographs which form such a feature of this case, put in, the centre of interest shifts to the refuse yard and the bins just as those bins are plainly the centre of interest to the animal kingdom. In my opinion it would not be right to shut out evidence of the condition of the yard or to decide this case without a consideration of the condition and user of the refuse depot as a whole.

7. Next: has a nuisance been established? I hold in the affirmative, and my reasons will appear from my views on the main questions to be discussed, namely, was it more of a nuisance than need have been? Before I discuss this question, I must admit to having taken a greater part in the discussion than is usual for me, and I also wish it recorded that Mr. Bose bore this additional trial with his usual patience and tact. It did make the case more difficult for him. My reasons were fully appreciated by him, namely that I considered that the plaintiffs had missed certain more important points in the case, points which in the interests of all concerned should not be neglected. The plaintiff's attention seemed to be rivetted upon damages, and as I have already said, confined so far as method or propriety is concerned, to the question of site. It was indeed with some difficulty, that counsel could be persuaded to devote his attention to the question of bins, covers and handling. Again, it must be remembered that the importance of this was largely the result of the case made at the trial to the effect that all animal refuse was confined to the bins standing in the yard. The case on behalf of the Corporation was, if I may say so, admirably conducted at the trial. I have, however, this criticism to make, that it was a case eminently calling for advice on evidence, and if this case has been lost other than upon its

real merits, it is due to such advice not having been taken. The Corporation is our very own, and I am proud to think that it has not been influenced by any narrow prejudices. It has for instance adopted all that is most impressive from other spheres. I am referring to the gorgeous individual in blue and gold who added colour to the proceedings, and before whom even the Chief Secretary's chaprasi pales into insignificance. I consider, however, that three gold mohurs spent not upon his uniform and his three golden stripes, but upon junior counsel, would have been almost as well spent. The result of not taking such advice was that the matter was at the trial in what may be called a plastic state. However, the moment Mr. Bose saw the photographs, to which I shall shortly refer, he at any rate fully realized the avoidable nuisance which the defendant has in this case to face is constituted by the vermin and parasites to which the refuse dump is an attraction, in particular, the vultures.

8. This leads me to discuss the evidence which may be divided into three classes, that of the plaintiffs and Mr. Galstaun; that on the part of the Corporation; and that of what I shall call the independent witnesses. With regard to the evidence of Mr. Basil, Mr. Barber and Mr. Galstaun, it is open to criticism as evidence of enthusiasm and grievance. It lacks perhaps moderation. For instance, when Mr. Basil never sees a municipal dustbin in any position other than horizontal, this must, I think, be the result of what in other spheres is referred to as a peculiar angle of vision. With regard to the evidence on behalf of the Corporation, this again, may be subdivided into that of the sergeants, that of the menial staff, and that of the officers. Sergt. Marshall, in no easy position, I thought, gave evidence well and accurately. Sergt. Septimus Griffiths, who is of generous proportions, is given to imagination which goes sometimes with a highly developed sense of smell. It was Sergt. Septimus Griffiths who could distinguish the dust bins from the meat bins by a scent, notwithstanding the defendant's case that the yard is practically odourless. It was also his view that the presence of the vultures on the lorry might be accounted for by the fact that some vegetable refuse had been carried in hand-carts used previously for animal refuse. I had always been under the impression that nature had fitted vultures for their vocation by providing " them with a subnormal sense of smell and an abnormal sense of sight, but, as I have not had access to any authority on the subject, I will not use the little knowledge I possess, which may be dangerous. With regard to the menial staff, I am in no way disposed to accept the suggestion that they are stupid, and I shall perhaps refer to this matter again. The fact that they have never seen vultures on the ground is not due to stupidity but to sense of loyalty to their superiors and to their market. The old sirdar told the Court that he had been 25 years a sirdar of sweepers with as much pride as if he had told us he had been 25 years Chief Justice of the Supreme Court. With regard to the officers, I am unable to judge of the two supervisors or conservancy officers, which matters little as they gave us no assistance. With regard to the engineer, I thought he gave his evidence both fairly and loyally in a very difficult situation, and my only comment is that he took upon himself more responsibility for the

condition of things than appears to be warranted. So far as the vital questions are concerned, however, few, if any, of the witnesses ever appeared to have attended the site at or about the time when the photographs were taken, i. e., during the time or times when the animal refuse from the yard is cleared away, which is the. important moment.

9. I now come to the "independent witnesses," and it is upon their evidence that this case turns. Mr. Edgar I regard as independent, although it is quite true that his school suffers from the presence of vultures. He spoke mainly of the lorry, but also mentions handcarts full of rubbish left about in. the refuse yard. More important even than. the principal of St. Thomas" School are the some three score or more "independent witnesses" who appear in the photographs both upon the plaintiffs" premises and upon the floor of the yard in various positions. Now, again, counsel for the defendant was faced by unusual difficulty. He was unable to cross-examine these witnesses to prove that they were suborned. He was unable to-put to half a dozen or more that they were just on their way from Kalighat to Sham-bazar and dropped in to see a friend in the free school. Either, therefore, the photographs are in some way false representations or the evidence of these witnesses,. which I shall shortly analyze, has to be> accepted. The question, therefore, of what I shall call the fairness of these photographs-became of prime importance, and it was for that reason that I allowed a most unusual course, namely the photographer to be recalled after the arguments had concluded, for further cross-examination. The plaintiffs, as so often happens in this Court, had made it possible for the defendants to criticize these photographs and challenge their fairness on the ground that they had never been produced until the trial. So far as the photographer is concerned, the best results of my observation are as follows: that he did realize more than he admitted that his photographs were to represent dirt and vultures, but that save for this, there was nothing in his demeanour or otherwise to suggest that he had in any way participated in any fraud or attempt to take an unfair picture. One very vital point in this connexion is the position and identity of the bins which did not become fully apparent until certain questions put by me to the District Engineer. His answers gave rise to a suggestion never hitherto made, that possibly the two bins in the photographs" were not the animal refuse bins, and the suggestion was finally made, though faintly, that these might have been substituted. Now, apart from all else, what leaves me to reject any such theory is that had this been deliberately done-and there is no alternative - the legal adviser of the plaintiffs would have been aware of this and made use of it, instead of which, as I have already said, it was only almost under torture by the Court that I could persuade the plaintiffs to take an interest in the bins at all. In my opinion, therefore, these photographs must be taken as fair, notwithstanding that they may have been taken on dates although not particularly chosen, when there was a very full attendance of vultures, and at times-and this, I think, is the important thing-at a time of the day when the attendance is always at its best, namely the time of clearance.

10. Treating these witnesses, therefore, as independent, I now come to analyze their evidence. Notwithstanding the well-known enthusiasm for education among all classes in India, I am not prepared to accept the suggestion that these vultures come to the free school for educational purposes. They come for food. And I accept this evidence that they get it. They establish custom. I do not again accept the view that the presence of a man or men would prevent these purposeful animals from effecting their purpose. Indeed, in one photograph (No. 13) we see one whom I hold to be the invisible sweeper, wheeling a wheelbarrow into the trailer-shed. In the next photograph (no. 8) we see two vultures on that barrow, and in the next, more vultures. Either the man has been driven off by the vultures or he has left that barrow there because the trailer was full. I do not accept the suggestion made in the cross-examination of the photographer, that the municipal sweepers who were on the site, went across the road to join the photographer. That is less likely than the other explanation. Municipal sweepers have no objection to be photographed. "With regard to the trailer-house, Mr. Bose has asked me to rely upon the demeanour of these witnesses, especially those sitting on the wire netting. He suggests that it registers disappointment, and that I should infer, and that they were unable to find any animal refuse in the trailer. Sergt. Griffiths suggested that they were smelling. I am unable to draw any precise inference from their demeanour, remembering always their constitutional melancholy, due perhaps to the fact that, rightly or wrongly, they are not regarded with favour by human beings. On the other hand, I draw an inference that there was at any rate in the barrow in question animal matter. I also draw an inference that there was animal refuse on the platform. I finally accept their evidence that during the time of clearing, which according to the cartman takes some half an hour, these vultures perform a very large part of his duty. How much animal matter they can consume in that time is difficult to say. But a collection of vultures such as appears in these photographs would I think make very good progress on the contents of two bins in half an hour. If left wholly to them there might be little or nothing to remove in the cart, always remembering that if anything did remain, there is still sitting accommodation in the carts for a respectable number.

11. My inferences from this evidence, and my findings, are as follows : (1) I think that a certain amount of animal matter finds its way into the lorry and this is because the theory of separation of animal and vegetable is not rigidly carried out in practice. To my mind, the matter is comparatively unimportant, but my view is supported by the fact that there is no logical reason for the separation. It has not been adopted because it is not recognized that there should be a different method of treatment for animal refuse. There is no question of different bins for different classes of refuse, as for instance in a modern city, or because the bins set upon the platform are more appropriate containers, or because the Corporation lorry is better for vegetables, and conservancy horse-drawn carts are better for meat. The distinction is purely sociological or historical, namely, as I understand it, because originally at any rate, different classes of sweepers

handled different classes of refuse.

12. My second finding is that the system adopted does afford undue opportunities for the attendance of parasites, big and small, with consequent disposal of remains, and smell, especially at the stage of clearance from bin to cart. With regard to the removal to the bins, it is hardly a part of this case, although that matter may have to be investigated in considering an alternative, or what one might call, "a thorough," system of removal. That is more a matter for the public than for the plaintiffs. I find that the bins themselves were not proper receptacles. I will say something about lids. I had grave doubts whether the two bins in the picture ever had lids. No witnesses suggested that these were not the bins for animal refuse, until in answer to a specific question from me the engineer agreed with me that the bins in question had been born without lids. He then suggested that these were not animal refuse bins. I am not quite clear what he meant, and it is to be remembered that this gentleman only came into the district a year ago. My inference is that no serious attention was paid to the form of the bins, or the kind of bins used for animal refuse, and for the reason already indicated that the division had not been made upon hygienic grounds. Nor do I think was sufficient attention paid to keeping the animal matter covered.

13. With regard to the question whether the intervention of vermin such as described can constitute nuisance, I hold in the affirmative and this not only from the point of view of health, but also from the point of view of psychology. This reminds me that Mr. Bose suggested in cross-examination that the only class of tenant which the plaintiffs could obtain for this residence was what he calls woman of a particular class. Be that so, it makes to my mind no difference. I cannot believe that those who sacrifice at the shrine of Venus desire to be attended by the ill-omened fowls of Mars. There is the evidence of the principal of the Free School that the vultures come into collision with the small boys. The small . boys cannot get out of the way of the vultures or vice versa. We are perhaps unduly prejudiced against vultures. Vultures on the outskirts of an Indian village in the small hours of the morning is one thing, vultures on the outskirts of the new market in the middle of the day is another thing. There is time and place for the obscene. With regard to health, no expert evidence has been given. But I take the view that vermin and parasites of the various species that attend this refuse dump must inevitably be injurious to those living in close proximity.

14. My fourth finding is that notwithstanding difficulties, a considerable improvement could be made. In this connexion I desire to say something about service. I do not consider on the evidence-that the public is badly served. I am well aware that there is one great advantage of public life in India, namely if anything goes wrong the blame can be put upon the constitution, and if that fails, as in this case it must, upon the cooly. It is said that he is unintelligent and apathetic. So far as the evidence in this case is concerned I entirely reject that view. If the individuals who have been called in this case are at all

representatives, as I think they are, I reject any argument on the part of the defendant on the lines that nothing better can be done because of the want of intelligence or poor quality of the coolies. In my opinion they give to the public for what they receive from the public in wages and in other amenities more than full value. I meant to ascertain their wage which I presume is the normal.

15. As regards the type of building provided for them or which they provide for themselves this will appear from the batch of photographs submitted by the Corporation at the end of the case which will explain, if it is not otherwise understood, the "description of Calcutta as a city of palaces." In my opinion, the failure to adopt a more efficient system is not due to any defects in the labour available in its lower ranks. With regard to the higher ranks, I am unable to express much opinion about the supervisors, as I am not clear what they supervise, but as regards the young engineer I see no reason why he should not give as good service as his equivalent in any other part of the world. This rubbish yard is to some extent no man's land or too many men's land. I am not clear whether the market supervisor or the conservancy supervisor or the district engineer or any one or more is really responsible for the system of clearance from the market or the proper maintenance of the pucca depot. To my mind the blame is placeable on the public. We alternate between apathy and short periods of misguided interference. We are inclined to let the lorries thunder by and plunge in sleep again. There is one matter upon which I intended to get the data, namely the capacity of the two bins. I mention that before I forget.

16. The result is that the plaintiffs are entitled to succeed. With regard to damages the matter will remain over, and if not settled I will have to deal with it. With regard to an injunction, subject to hearing counsel, I do not propose to make the common order. I have drafted the lines of the special order and I shall welcome the assistance of counsel in putting it into shape. I wish it to be remembered that this is not a victory obtained over a public enemy but a stricture upon the public of Calcutta for not performing satisfactorily their public duties. If good results, the money will have been well spent, but the damages which are ordered are damages which Mr. Sinha and myself among others will pay.

17. The form of the injunction which I propose to pass is upon the following lines which I should like counsel to consider, restraining the defendants from dumping refuse in the trailer or in or about the trailer shed and refuse yard in the manner complained of and in particular so as to expose animal and other organic refuse so as to (a) attract vermin and parasites, (b) permit of loss and leakage, (c) emit noxious odours and without providing more suitable receptacles and vehicles and an improved system of transport. I shall adjourn the matter in order to enable counsel to consider their position in regard to the question (1) of damages and (2) of injunction. The plaintiffs are entitled to costs. With regard to costs counsel for the defendants has asked me to reserve that matter until the other matters have been disposed of, but in case it be forgotten, I certify that it is a fit case to

warrant the employment of two counsel.

11th April 1940.

18. Two matters remained over and were considered yesterday. The first, and to my mind the more important, was the form of injunction; the second, damages. In point of fact, in this case certain somewhat important questions do arise with respect to the claim for damages, and I shall give my decision notwithstanding that I may not have given that aspect of the matter as full consideration as it requires.

19. Dealing first with the question of injunction, I indicated to counsel my desire to put the injunction in such a form as would first suggest to the defendants how they might, in my view, abate the nuisance and secondly, in such a form as would not embarrass the defendants in any attempt to carry out the necessary changes. In this respect I have, as I expected, received the utmost assistance from both Mr. Bose and Mr. Sinha on behalf of the Corporation, and substantially, with certain amendments which I shall note and explain, I have adopted Mr. Sinha's draft. It is based upon a decided case, (1929) 1 KB 533 : on appeal *Farnworth v. Manchester Corporation* (1930) AC 171 . I shall now dictate the form of injunction and thereafter indicate the amendments I have made in counsel's draft and the reasons for making them:

(I.) Injunction restraining the defendant Corporation from dumping refuse in the trailer, or in and about the trailer shed and refuse yard: (1) in the manner complained of or in any other manner which permits, (a) animal and other organic refuse to be exposed so as to attract vermin and parasites, (b) leakage of offensive matter from the receptacle used for dumping the refuse, (c) noxious odours from the refuse dump to be emitted, except in so far as such results are unavoidable on using the best known methods within reason, (2) without providing for the collection of refuse in such receptacle and removal thereof in such vehicles and by such means of transport as may not cause damage or injury to the plaintiff or his premises, other than such damage or injury as is unavoidable on using the best known methods within reason.

(II.) The operation of the injunction will be suspended for one year to enable the defendant Corporation to adopt such measures as they are advised, to terminate or mitigate the nuisance. Provided that the suspension may be removed unless, (a) the defendant Corporation reports to the Court within six weeks by letter the name or names of the expert or experts whom the Corporation decide to consult; (b) the defendant Corporation reports progress of the measures to be taken, at intervals of three months thereafter; (c) the defendant Corporation will pay to the plaintiff compensation until the removal of the injunction or further order, monthly at the rate fixed for damages.

(III) Liberty reserved to the defendant Corporation to apply to Court to dissolve the said injunction on the defendant Corporation establishing, if it be not admitted by the plaintiff, that they have exhausted all reasonable modes of

terminating or mitigating the nuisance.

20. My comments are as follows : The provisos in Part 2 of the order were inserted by me without the consent of counsel. The object is clear. I have allowed the Corporation one year's time, notwithstanding Mr. Mitter's objections, subject to the check contained in the provisos, realizing as I do that the Corporation also has its difficulties. The language of the qualifying clause to the injunction is mine and an explanation of it will help to make clear my view of the law. Mr. Sinha in his anxiety to be scrupulously fair used the phrase "such injury as is absolutely unavoidable." Persons who have followed this trial will know what that means, but it might be liable to misconstruction hereafter and I have therefore used the language of the suburbs to indicate my reading of the statutory phrase "least practicable nuisance." "Practicable nuisance" is not a wholly happy expression. You are not trying to create a nuisance; you are trying to avoid it. It is a contraction of the injunction to create no nuisance, except such as is unavoidable, using all practicable means. I have avoided the word "practicable." One neighbour says to another; your kitchen chimney causes a nuisance because the smoke blows down into my back garden. Forget for the moment that in private life there is no excuse for a nuisance, and secondly that what two neighbours call a nuisance may not be a nuisance in law. The neighbour whose smoke is complained of, will reply: I will do everything, within reason; I will not buy an electric stove, that is out of the question, that means altering my whole house and I cannot afford it, but I will affix a cowl; I will sweep my chimney, I will use better coal; I will tell my cook not to burn rubbish; in other words, I will do everything "within reason" to see that it is not a nuisance. That, in back garden phraseology, is what I take to be the law, and I therefore use that phrase "means within reason" as a paraphrase.

21. Coming now to damages, the fact is that since September 1933 this house has remained untenanted, and, according to the plaintiff, that is due entirely and wholly to the nuisance. I am not now on the question of fact. According to the plaint para. 6, it is alleged that the nuisance is continuing de die in diem with which proposition I agree. We do not now-a-days, as we used to, state at the bottom of the plaint when the cause of action arose. The procedure has this value in that at any rate it helps the draftsman to make up his mind about the cause of action, starting point of limitation and the way he is to claim damages. In this case except in so far as the matter is covered by a claim to further reliefs, the plaintiff has claimed only special damages as for a specific injury, in other words, the capitalized loss or injury to the building in letting value and in depreciation of sale value, amounting to Rs. 30,000. Upon this turns the argument of Mr. Bose that since this capital loss, this specific injury, took place and must be taken as completed in 1933 or 1934 or at any rate long before any starting point for limitation, the suit being filed in 1938 the plaintiff's whole claim to damages is barred. Mr. Mitter contends that as the injuria continues, he can claim capital loss at any time however many years may have elapsed between the injuria and the suit. With that proposition I am not prepared to

agree. In my view this is a case where the cause of action arose from day to day, where the injuria arose from day to day. Mr. Bose points out that Mr. Mitter has not claimed damages on this basis and reminds me that although I offered Mr. Mitter the opportunity of a formal amendment to ask for such damage and he declined the opportunity, I shall allow him to make that claim under the general claim for further relief and I will not shut it out though I think the matter should have been more fully considered. On this basis, the basis of continuing wrong and what I may call day to day damages, what is the starting point of limitation? Mr. Mitter suggests it is prescribed by Article 36.

22. The point argued by the Corporation is that into the Limitation Act we have to read a special article of limitation created by the Special Act, namely Section 538. Mr. Mitter has contended that this is not a substituted section. I referred Mr. Mitter to Section 29 (2), Limitation Act. He contends that although the suit must be filed within two months u/s 538, yet damages are claimable under Art 36. In my view if, under Article 36 or Section 23, Limitation Act, a claim to damages is barred after the period of limitation fixed in the Limitation Act, it is equally barred in the lapse of the period prescribed in the Special Act. In other words, we are to ascertain the position on the Limitation Act, with the special section read into it. If this be right, the terminus a quo for damages is four months prior to the date of the suit. As already indicated, the argument on this point on the part of the plaintiff has not been of the fullest nature. I did not have discussed before me by the plaintiff's counsel Sections 23 and 24, Limitation Act. I have assumed to be applicable the principles suggested in *Maine on Damages*, p. 530 and have proceeded on a general impression of the matter on the sections. Another question arises as to the terminus ad quern of damages. In England the difficulty of granting damages until the hearing and during the continuance of the wrong, was appreciated, and there is a special rule, Order 36, Rule 58. In India there is no such rule and as far as I can see, the only provision under which this Court ever grants damages or has granted damages for a period after the filing of the suit is in the special case provided for by Order 20, Rule 12, Civil P. C. I have, therefore, considerable doubts whether I have jurisdiction to make any decree as asked by Mr. Mitter, and whether this is a matter which comes within Section 151 of the Code, but as the plaintiff would be barred from claiming damages for the period from August 1938 to January 1940, I propose to do so, and also because, if I do not, it means another suit every four months in the future.

23. I now come to the question of fact, and the parties have preferred to leave it to me rather than go to an inquiry the additional cost of which would certainly exceed any difference which might on the quantum of damages be allowed by me, and that which might be allowed upon a more minute examination. I have taken into account the following matters : Locality. I infer on the evidence that the particular locality was declining in attraction. As regards the state of repair, the house was, I think, generally deteriorating. Repairs to the extent of two or three thousand rupees were done. I do not rule that they were done, as

suggested by the defendant, wholly with an eye to the suit; but I do not think that, nuisance or no nuisance, they were sufficient or appropriate to make this house readily let-table. There is the inference to be drawn from the two alternative schemes. There is the inference to be drawn from the delay in filing the suit. On the other hand, it is to my mind certain that the proximity of the nuisance was one of the main reasons, though not the whole reason, for the house becoming unlettable.

24. I think the fair amount at which to assess the damages being the amount of loss in monthly rental value due to the nuisance, to be in the neighbourhood of Rs. 200. There will, therefore, be a decree for damages at that figure for four months prior to the suit, for the period from the institution of the suit until today, and from today until the removal of the injunction or further order. With regard to this last period, the matter is also covered by the special condition which I have inserted in the part of the order which operates as a stay. The figure will remain at Rs. 200. The plaintiff is entitled to costs, including reserved costs which includes the costs of the de bene esse examination.