

made on a certain date, which will give a fresh period from which the limitation of twelve years will run under (b), s. 230. The appeal is decreed, and the order of the lower Court is reversed with costs.

*Appeal allowed.*

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Brodhurst.*

LACHMAN PRASAD (PLAINTIFF) v. BAL SINGH (DEFENDANT).\*

*Occupancy-tenant—Continuous occupation—Act XVIII of 1873 (N.-W. P. Rent Act), s. 8.*

A tenant who has occupied or cultivated alluvial land, whenever such land was capable of occupation or cultivation, for twelve years, acquires by such occupation or cultivation a right of occupancy in such land.

THE plaintiff in this suit sued in the Court of the Munsif of Allahabad for possession of certain land on the allegation that it was land, originally waste, but lately reclaimed, belonging to the village of which he was the lessee, and the defendant had taken forcible possession thereof and cultivated it in 1287 fasli. The defendant set up as a defence to the suit that he had for upwards of twelve years past cultivated the land, and had cultivated it in the year in question as a tenant with a right of occupancy. It appeared that the land was "kachár" land of the Ganges, and that for eighteen years or so the defendant had cultivated it whenever the action of the Ganges allowed him to do so. For three agricultural years, *viz.*, for 1284, 1285, and 1286, the defendant had not been able to cultivate it, as it was covered with sand; and on its becoming culturable and his cultivating it after that period in 1287 fasli the plaintiff, the lessee of the village to which the land belonged, regarding him as a trespasser, had brought the present suit against him. The Munsif dismissed the suit. On appeal by the plaintiff the Judge of the Court of Small Causes, in the exercise of the powers of a Subordinate Judge, affirmed the decree of the Court of first instance. The Judge observed as follows; "There is evidence on the record which shows that the defendant has for many years held land in the 'kachár' or alluvial mahál of this village; this kind of land is cultivated when-

---

\* Second Appeal, No. 334 of 1881, from a decree of R. D. Alexander, Esq., Judge of the Court of Small Causes at Allahabad, exercising the powers of a Subordinate Judge, dated the 24th December, 1880, affirming a decree of Babu Pramoda Charan Banarji, Munsif of Allahabad, dated the 3rd May, 1880.

1881

BAL CHAND  
v.  
RAGHUNATH  
DAS.

1881  
December 13.

1881

LACHMAN  
PRASAD  
v.  
BAL SINGH.

ever nature allows it to be cultivated ; and it would appear that for eighteen or twenty years the defendant was in the habit of cultivating these particular fields, when the action of the river allowed him to. The former lessee of the village deposes that the defendant used regularly to cultivate these lands and pay him rent for them ; and it appears that it was on the new lessee the plaintiff taking this village that this dispute arose ; for three years the defendant could not cultivate the land, and on his cultivating it in 1287 fasli the plaintiff looked upon his action as something new and as that of a trespasser, but it appears to me that his previous cultivation must be taken into account, and that it was such as to give him a right of occupancy in these lands, and that he was entitled to hold on in 1287 fasli, and that the plaintiff could not treat him as a trespasser."

In second appeal the plaintiff contended that the cultivation of the land by the defendant, not being continuous, did not give him a right of occupancy.

Babū Jogindro Nath Chaudhri, for the appellant.

Lala Lalta Prasad, for the respondent.

The following judgments were delivered by the Court :—

STUART, C. J.—The lower appellate Court states that it does not understand the Munsif's reasons for holding that the defendant-respondent had acquired rights of occupancy in the disputed lands, and I must allow that I am in the same difficulty. But the Subordinate Judge himself states that the kind of land in suit is cultivated whenever nature allows it to be cultivated, that is, whenever the submerging water dries up and leaves it open for the time at least to a cultivating process. The lower appellate Court finds that, for eighteen or twenty years, the defendant-respondent was in the habit of cultivating these particular fields when the action of the river allowed such cultivation ; and it further finds on the evidence that the defendant-respondent's cultivation was in fact such as to give him a right of occupancy in the lands.

The only question requiring consideration is whether the kind of possession and cultivation had by the defendant in the lands was such as come within the meaning of s. 8 of the Rent Act XVIII

of 1873. By that section it is provided that: "Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him." Here the cultivation was not actually and absolutely continuous, but it was as continuous as the nature of the case admitted of, and it was besides cultivation against which necessarily there could not have existed any adverse right of a similar kind. The occupancy or cultivation therefore by the respondent of the lands in question was in my judgment such as to give him a claim to be an occupancy-tenant within the meaning of the Rent Law; for, as I have shown, the Subordinate Judge has found that these lands were cultivated by the defendant for eighteen or twenty years. His findings go to negative the contention of the plaintiff-appellant; and following a ruling by Pearson, J., and myself in First Appeal No. 125 of 1879, dated the 4th August, 1880 (1), I must hold that the defendant could not be ejected from or dispossessed of his holding otherwise than as provided by s. 34 (b) and s. 35 of the Rent Act XVIII of 1873. It is not pretended that there is any ground for holding that these sections of the Rent Act have any application to the present case. This appeal altogether fails, and it is dismissed with costs.

BRODHURST, J.—As the lower Courts have found that the defendant-respondent had acquired a right of occupancy in the lands in suit, and as the latter person had neither relinquished those lands nor been ejected from them, under cl. (b), s. 34 of Act XVIII of 1873, I concur with the Hon'ble the Chief Justice in dismissing the appeal with costs.

*Appeal dismissed.*

## CIVIL JURISDICTION.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Brodhurst.*

IN THE MATTER OF THE PETITION OF JAUNDHA KUAR v. THE COURT OF WARDS.

*Lunatic—Native of India—Act XXXV of 1858, s. 23—High Court's Charter, s. 12—Original jurisdiction of High Court in respect of the persons and estates of lunatics who are natives of India.*

The High Court has not, under s. 12 of its Charter, any original jurisdiction in respect of the persons and estates of lunatics who are natives of India.

(1) Not reported.

1881

---

LACHMAN  
PRASAD  
v.  
BAL SINGH.

---

1881  
December 13.