Before Mr. Justice Norman and Mr. Justice E. Jackson.

1869 April. 26

BECHARAM CHOWDHRY (ONE OF THE DEFENDANTS) *v.* PUHUBNATH JHA (PLAINTIFF.)*

Use of Water Rights—Injury to Neighbouring Land.

No proprietor can lawfully pen back the water of a stream by erecting a bund upon his own land, so as to inundate the land of his neighbour, without his license and consent.

Baboo *Budh Sen Sing* for appellant.

Baboo *Krishna Sakha Mookerjee* for respondent.

The facts are sufficiently stated in the judgment of

NORMAN, J.—In this case the defendant erected a bund across a stream, the effect of which has been to throw back the water of the stream upon the land of the plaintiff, and destroyed his crops. The lower Appellate Court has given the plaintiff a decree for the amount of injury which he sustained. There is no doubt that the decision of the lower Appellate Court is quite correct. The rule, regulating the enjoyment of water flowing in its natural course, is that no proprietor can lawfully pen back the water by erecting a bund upon his own land, so as to inundate the land of his neighbour without the license or consent of that neighbour. The rule is clearly stated in page 334 of the third edition of Broom's Legal Maxims, under the maxim "*sic utere tuo ut alienum non lœdas*," in other words, every man must enjoy his own property in such a manner as not to injure that of any other person.

The Appeal is dismissed with costs.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

1869 April. 28.

RANI SARAT SUNDARI DEBI AND ANOTHER (PLAINTIFFS) *v.* SURJA KANT ACHARJI CHOWDHRY AND OTHERS (DEFENDATS.)†

Plaint—Cause of Action—Multifariousness.

When a plaint discloses different causes of action against different parties it is bad in law, and the suit is not maintainable.

THIS was a suit for confirmation of right, and possession of about 350 khadals of land within the boundaries mentioned in the plaint, being contiguous accretions to the village of Subarnakhali within Pergunna Pakurea Jainshahi,

* Special Appeal, No. 2378 of 1868, from a decree of the Subordinate Judge of Zilla Purneah, dated the 8th of June 1868, modifying a decree of the Moonsiff of Arraria in that district, dated the 6th of February 1868.

† Regular Appeal, No. 250 of 1868, from a decree of the Subordinate Judge of Mymensingh, dated the 20th August 1868.

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upon the allegation that the plaintiffs were the owners of the Pergunna Pakurea Jainshahi and of Mauza Subaranakhali, appertaining to the above integral zemindaries. That after the khasbust demarcation of the above mauza, a portion of the land had been washed away by the violence of the river Jumna, but gradually re-formed since 1264 (1857) in contiguity to the land held by the plaintiff; that such land became arable by degrees from the year 1266 (1859); that when the plaintiffs began to make preparation for assuming possession of plot No. 1, (they being already in possession of plot No. 2) Lakhi Debi Chowdrain, deceased, the mother of defendant, Surja Kant Acharji Chowdhry, did in 1270 (1863) partly by fraud and partly by force, dispossess them from plot No. 2; that as regards plot No. 1 the said Lakhi Debi Chowdrain and the rest of the defendants had opposed the entry of the plaintiffs; since the time the land had re-appeared, and became fit for cultivation, that accordingly the lands of plot No. 1 are unjustly held by all the defendants and those of plot No. 2 by the mother of defendant, Surja Kant, and afterwards by himself; that the lands being contiguous accretions to the village Subarnakhali, the property of the plaintiff, they prayed for obtaining possession thereof

The defendants set up in their defence (*inter alia*) that the suit was not maintainable, inasmuch as the plaintiffs alleged that they had been dispossessed by different parties, at different periods, from different plots of land.

The Principal Sudder Ameen held, that, as the plaint disclosed different causes of action against diffeent parties, the suit could not be maintained under section 8, Act VIII. of 1859. He, accordingly, dismissed the suit.

The plaintiffs appealed to the High Court.

Baboo *Anukul Chandra Mookerjee* and Baboo *Gopal Lal Mitter* for appellants.

The judgment of the Court was delivered by

HOBHOUSE, J.—The plaint in this case was against a number of defendants. Against some of those defendants the plaintiffs alleged that their cause of action accrued in the year 1266 in regard to certain lands, of which those defendants prevented them from taking possession; and as regards one other defendant, the cause of action was said to have accrued in the year 1270 when that defendant alone ousted the plaintiffs, from certain lands, different from those, in the matter of which the cause of action accrued in the year 1266.

Upon this state of facts the lower Court dismissed the plaintiffs' suit with these remarks:—"When the dates of custer are different and the plaintiffs "sue on the allegation that they were dispossessed by different defendants, "and when it is clear that the interests of the answering defendants are "distinct and separate, these statements involve different causes of action "the merits of which will have to be tried on different evidence. I think, "therefore, that a suit of this nature cannot be maintained under the pro- "vision of section 8 of the Civil Procedure Code. The above section allows

"causes of action to be joined in the same suit by and against the same "parties; but when the ousters in this case appeared to have occurred on "different dates, caused by different defendants on different rights, they can- "not be made the subject of one and the same suit." And so the Judge dismissed the plaintiff's case.

In the grounds of Regular Appeal, the first three grounds are to the effect, that the Jude is wrong in his law and that even, on the facts stated by the Judge, the case should have been tried and determined. These grounds are substantially abandoned before us, and the only ground, taken is the 5th ground, and of that again only a portion of the ground, and it is that in which it is stated that the Judge should have proceeded to try the case in the manner laid down in section 9, Act VIII. of 1859, that is to say, the Judge should have ordered separate trials to be held on one of the two different causes of action. The Judge himself relies in his decision upon certain precedents of this Court: *Raja Ram Tewary* v. *Luchmun Persaud* (1) *Baboo Motee Lal* v. *Rani, the wife of Maharaja Bhoop Sing Bahadoor* (2); *Romoona* v. *Manicko Moyee Chowdhrain* (3). No doubt, these cases are not exactly in poin, and in two of those cases the remarks made by the presiding Judges were what are called *obiter* remarks; but still the opinions there expressed go to the extent that it is not proper, when two causes of action against different persons are sought to be joined in the same suit, that the suit should be entertained and heard.

On the other hand the pleader for the appellant relies on certain cases: *Najoomoodeen Ahmed* v. *Beebee Zohoorun* (4); *Golam Mustufakhan* v. *Sheo Soondaree Burmonee* (5) *Hurro Monee Dossee* v. *Oneokool Chunder Mookerjee* (6). But these cases are not exactly in point, neither do they go as far as the appellants' pleader would ask us to go in his case. They seem to us simply to say that when in the Court of first instance the evidence was entirely gone into, upon whatever might have been the causes of action, that even if those causes of action were different, the Judge should have determined the case upon the evidence and given his decision accordingly. But that is not the case here, for here no evidence has been at all gone into, and the Judge dismissed the suit upon the first issue of law settled without going into the evidence.

The pleader for the appellant then contends that, inasmuch as the Judge had, under the provisions of section 9 of the Procedure Code, a discretion to divide the case into two separate cases; that in this case the Judge did not exercise that discretion properly and judicially in dismissing the case altogether, instead of dividing and hearing it as two separate cases, as that section directs. But it seems to us that there is an answer which is complete and fatal to this objection, and it is this, viz., that the pleader for the appellant cannot shew us that the Judge in this instance was ever asked to exercise his discretion, and on

(1) 8 W. R., 15.
(2) 8 W. R., 64.
(3) 9 W. R., 525.
(4) 10 W. R., 45.
(5) 10 W. R., 187.
(6) 8 W. R., 461.

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the contrary, it seems to us, most likely that he was not so, because the first and the chief objection taken in the grounds of appeal to his decision, is not that he exercised his discretion improperly and unjudicially, but that he was wrong in law in dismissing the case, because of the misjoinder of the causes of action.

We think, therefore, that we cannot say that the Judge was wrong in dismissing this case, and we therefore dismiss this appeal with separate costs to the two sets of respondents who have appeared.