

The 30th May 1865.

Present :

The Hon'ble C. B. Trevor and G. Campbell,
Judges.

Alluvial Lands.

Case No. 2355 of 1864.

Special Appeal from a decision passed by Baboo Gopeenath Bose, Principal Sudder Ameen of Nuddea, dated the 28th May 1864, modifying a decision passed by the Moonsiff of that District, dated the 31st July 1863.

Mr. Thomas Kenny (Defendant), *Appellant,*
versus

Beebee Sumeeroonissa (Plaintiff) and others
(Defendants), *Respondents.*

Mr. R. T. Allan and Baboo Mohendro Lall Shome for Appellant.

Mr. C. Gregory and Baboo Mohinee Mohun Roy for Respondents.

Proof of re-formation on an old site will not suffice to establish a claim under Regulation XI. of 1825. When the land has been completely diluviated, all claim to the site is gone, and all re-formations are governed by clauses 1 and 3, section 4, Regulation XI. of 1825. A claim to hold the land under clause 2 can only be maintained by the old proprietors, when the land has not been diluviated, but cut off by a change of the stream.

THIS is one of those most unsatisfactory cases in which a new Officiating Principal Sudder Ameen, by an unintelligible and irregular order, has admitted a review of his predecessor's decision, and reversed it. Nor is the present judgment by any means clear.

It appears, however, that the Principal Sudder Ameen's decision rests entirely on the doctrine that, when land having been diluviated a re-formation takes place on the old site, the former owner is entitled to re-acquire the re-formed lands. He finds on the evidence of witnesses that the disputed plots are re-formations on the site, where plaintiff's lands formerly diluviated. It does not seem to have been at any time supposed that a claim to re-form lands could be supported on such evidence; but only that, when there were actual means of identification on the land itself, it could be re-claimed. A Full Bench has, however, lately held that proof of re-formation on an old site will not suffice to establish a claim under Regulation XI. of 1825. When the land has once been completely diluviated, and washed away by a great river (not merely temporarily inundated or partially submerged), all claim to the site is gone, and all re-formations are

governed by the ordinary law of accretion, *i. e.*, clauses 1 and 3 of section 4 of Regulation XI. of 1825. A claim to hold the land under clause 2 can only be maintained by the old proprietors when the land used by man has not been diluviated, but is cut off by a change of the stream—fields, trees, houses, or other surface objects remaining as before. In this case it is stated by all the Courts that the former lands have diluviated, and that those now disputed are new formations.

The principle adopted by the Principal Sudder Ameen is wrong. Clause 2 does not apply. There is no question of island under clause 3, and the case must be remanded to be tried simply under clause 1, section 4 of Regulation XI. of 1825, that is, to find to whose land have the new formations accreted.

The proprietors of the old land immediately adjoining, on what may be called the landward side, that is lying parallel to the river channel, will take the new lands. It is not clear from the maps and proceedings to whom these lands belong, and the case must, therefore, go back. Remand accordingly.

The 31st May 1865.

Present :

The Hon'ble H. V. Bayley and J. B. Phear,
Judges.

Limitation—Cause of action—Mesne-Profits—Costs.

Case No. 50 of 1865.

Regular Appeal from a decision passed by Moulvie Syud Emdad Ali Khan, 1st Grade Principal Sudder Ameen of Tirhoot, dated the 26th November 1864.

Ekbal Ali Khan (Plaintiff), *Appellant,*
versus

Kalee Pershad and others (Defendants),
Respondents.

Baboo Unnoda Pershad Banerjee for Appellant.

Messrs. C. Gregory, A. F. Lingham, and J. Baptist for Respondents.

Suit laid at Rupees 17,259-4 as. 2 p.

The date of dispossession is the date when the cause of action arises in suits for mesne-profits.

Reasons should be given when the ordinary rule for costs is varied.

PLAINTIFF in this case sued for mesne-profits from the 6-anna kist of 1256 to 1265 F.

The defendant No. 1, amongst other pleas, pleaded limitation under clause 16 of section 1 of Act XIV. of 1859.