tervention does not take place before 15, then, on attaining that age, according to the case above referred to, the minor becomes of full age, capable of legally exercising all rights of ownership in such a way as to bind himself and his property, and time commences to run against him in regard to any causes to action which he may possess. But during the succeeding three years, could not a next of kin apply to the Civil Court under section 3 of the Act, and obtain charge of the statutable minor's property? And, if so, would not the statutable minority date back to the minor's birth, and cover the period during which he was, supposing the case of Deobo Moyee Dossee *versus* Juggessur Hati to be correct, legally dealing with his property *sui juris*? If this period does so become covered by the new minority, how are the minor's acts during that interval to be thereby affected; and will the circumstance that time (if such has been the case) has once commenced to run against the minor in any way alter the time of limitation to be again allowed him after he attains the age of 18?

The difficulties above suggested, as consequent on the decision quoted, seemed to me to throw doubt on its correctness, and to lead to the inference that the Legislature must have intended a somewhat more extended meaning to be given to the words "purposes of this Act," than is attributed to them in Deobo Moyee Dossee *versus* Juggessur Hati. If these words could be considered as equivalent to "relative to all that forms the subject of this Act," then the limit of minority, as regards the exercise of proprietary rights, would be fixed at 18 years of age for all cases whatever, irrespective of whether the Civil Courts has intervened by any direct act or not, and all cause of anomaly would disappear. However, as Mr. Justice Bayley holds the same views as the two Judges who decided Deobo Moyee *versus* Juggessur Hati, I do not think that my own doubts justify me in calling for the determination of the point by a Full Bench. I am, therefore, content to follow the ruling already laid down, and consequently this appeal will be dismissed with costs.

Mr. Justice Bayley.—I regret that I cannot concur in the view expressed in this case by Mr. Justice Phear. There is no law which prescribes that the minority of Hindoos (not being proprietors paying revenue to Government) shall extend beyond the completion of the fifteenth year. Section 26 of Act XI. of 1858 is restricted to cases where there is action of the Government through the Collector. Such is not the fact here. There may exist the anomaly suggested by Mr. Justice Phear; but the law itself can, I think, justify only that conclusion which was come to in the case cited in the judgment of Mr. Justice Phear, which, therefore, I would follow. I would, accordingly, dismiss the appeal with costs.

The 26th May 1865.

Present:

The Hon'ble C. B. Trevor, G. Loch, H. V. Bayley, and W. Morgan, *Judges.*

Alluvial Lands.

Case No. 1495 of 1863.

Special Appeal from a decision passed by Mr. A. R. Thompson, Officiating Judge of Nuddea, dated the 4th March 1863, reversing a decision passed by the Moonsiff of that District, dated the 30th April 1862.

Katteemonee Dossee (Plaintiff), *Appellant,*

versus

Ranee Monmohinee Dabee and others (Defendants), *Respondents.*

Baboos Banee Madhub Banerjee and *Nil Madhub Sein* for Appellant.

Baboo Chunder Madhub Ghose for Respondents.

According to clause 1, section 4, Regulation XI. of 1825, all gradual accessions from the recess of a river or the sea are an increment to the estate to which they are annexed without regard to the site of the increment. Mere proof of identity of site (without proof of ownership) is not sufficient to defeat the right by accretion which the law gives to an adjacent owner.

By the gradual encroachment of the river Pudha in former years, the village Koopadoha belonging to the plaintiff's zemindary, and a part of the defendant's village of Saldoha, were carried away. In subsequent years the river gradually receded, and the chur, which is the subject of dispute in the present suit, has been formed. The chur occupies, we understand the Judge to find, the site of the lands formerly washed away. It has been formed by gradual accession to the defendant's village from the recess of the river; and it appears, therefore, to be an increment within the express provision of clause 1, section 4 of Regulation XI. of 1825, and to belong wholly to the defendant. The defendant's right is undisputed to the portion of the newly formed land which occupies

the place where the old lands of his village of Saldoha stood; it is admittedly an increment to his old estate. But the new land, beyond those limits, is claimed by the plaintiff as his property, because it stands where his village of Koopadoha formerly stood. It is not denied that this land is an alluvial formation like the portion already mentioned; but, although like that, it has been formed by gradual accession, it is, according to the plaintiff's argument, not land "*gained* by gradual accession" within the meaning of the clause referred to, but a re-formation on the old recognized site of his village, and therefore his property. The Judge has found that Koopadoha was entirely washed away upwards of twenty-five years ago, and that not a vestige of the village remains. Any recognition of the land is now impossible, and it is only *upon the identity of site* that the plaintiff's claim is based. The Division Court has referred the case to a Full Bench in consequence of a decision reported in I. Marshall 136 (Romanath Thakoor and others *versus* Chunder Narain Chowdhry and others), which has been understood to sanction the construction of the law for which the plaintiff contends. It is said to have been there held that clause 1 of section 4 applies only to cases of land *gained*, that is to say, formed upon a site which cannot be recognized as that of the estate of any former proprietor; and that where the accretion can be clearly recognized as having been re-formed on that which formerly belonged to a known proprietor, it remains the property of the original owner.

Regulation XI. of 1825 is a declaratory law, whereby the previously well-established rules and customs for the determination of claims to land gained by alluvion, or by dereliction of a river or the sea, were formally enacted as written law. It contains a recital that, "in consequence of the frequent changes which take place in the "channel of the principal rivers that intersect the Provinces immediately subject to "the Presidency of Fort William, and the "shifting of the sands which lie in the beds "of those rivers, *churs* or small islands "are often thrown off by alluvion in the "midst of the stream or near one of the "banks, and large portions of land are "carried away by an encroachment of the "river on one side, whilst accessions of "land are at the same time or in subsequent years gained by dereliction of the "water on the opposite side." The Regulation then declares (section 2) that certain disputes relative to alluvial lands between proprietors of contiguous estates divided by a river shall be decided by immemorial and definite local usage. Where no such local usage exists (section 3), the rules declared by the subsequent sections are applicable. The first of these (clause 1, section 4) is the rule in question relating to land gained by gradual accession.

Accession is an increase or addition to something previously belonging to us. The proprietor of the land becomes also, by virtue solely of his old proprietorship, the owner of the alluvial soil gradually added by the river to his land. The imperceptible increase of his property in no way affects his ownership of every portion of it. That which has been recently added is his, because he is the proprietor of the older portion. In every title founded on accretion, it is essential that the ownership of the adjacent lands should be established by the claimant.

This first clause of the section provides that, "when land may be gained by gradual "accession, whether from the recess of a "river or of the sea, it shall be considered "an increment to the tenure of the person "to whose land or estate it is thus annexed."

We read this clause to declare that what is added by gradual accession must *in all cases* be considered an increment to the old estate without regard to the site of the increment. Whether the new land is a re-formation on an old site, or whether it is formed where no land ever previously existed, its ownership is determined, when the ownership of the adjacent land to which it has by imperceptible decrees accreted is ascertained. If, therefore, in the present case the ownership of the adjacent land has been duly ascertained to be in the defendant, and the newly formed land is found to have been gradually gained from the river by accession to the defendant's adjacent land, we think that the plaintiff cannot lay claim to any portion of the latter by showing that it occupies the site of his village of Koopadoha, and that it is needless to remand the case for a more distinct finding as to the identity of site.

The language of the Court in the judgment which has been quoted appears to limit the operation of this clause, so as to exclude from its provisions land formed again by accretion on an old site which can be clearly recognized. If we are to understand the Court to have held that

"land formed on the site of an old estate belongs to the person who was the owner of the old estate, and not to the owner of the adjacent dry land, to which it has by slow degrees accreted, we must dissent from this opinion." The law recognizes no right of property in a mere site, nor any such mode of acquisition as that which would confer on the proprietor of an old estate (every particle of which may have long ago disappeared or passed away) the ownership of land since formed on that site, however clearly the identity of *the site* may be established. It is only where the original owner retains his property in land on *his old site* that he can lay claim to the surface where it re-appears above the water; and his title to this is not necessarily by accretion (because he will be equally the owner, whether the land is exposed by a sudden recess of the river, or by a gradual deposit of soil on its surface), but by virtue of his old ownership remaining undisturbed. The judgment in the case quoted, when it speaks of "the "recognition of a site," may perhaps be understood to refer to the case of a still continuing ownership in land which has disappeared by submergence beneath the surface of the water. This is probable from the following passage in the judgment: "It "never could have been intended that, when "the surface of an estate is washed away, "and the lower portion of it is covered with "water and formed into a portion of the bed "of a river, the ownership of that portion "of the estate which has become inaccessible "in consequence of its being covered with "water should be lost; and that, when the "surface is re-formed, it should become the "property of an entirely different owner, "because he may happen to be the owner "of the estate adjoining." The suit itself was one instituted to recover land claimed by the plaintiff as gained by accretion to his estate. The plaintiff seems also to have claimed the land as a re-formation on the site of lands formerly belonging to him, but which had since been washed away. The judgment only, and not the argument of the pleaders, has been reported. We are, however, able to state (Mr. Justice Bayley having been a Member of the Court) that the argument for the defendant (against the plaintiff's right to the land as re-formed on the site of his old land) was carried to the length of contending that *in no possible case* (not even where the existence of a mine or some clear means of recognition enabled the identity to be established beyond dispute) could the old rights of property in land, the surface of which was wholly washed away, subsist so as to be the foundation of a title to newly formed land. The judgment should perhaps be read with reference to the argument, which is clearly untenable. The ownership of land is not ordinarily lost because the land itself may be submerged or inundated. The case of Musst. Imam Bandi *versus* Hurgovind Ghose (4 Moore's Indian Appeals, p. 403) is a striking illustration of this. The land there in dispute is thus described in the judgment: "The whole of the district adjoining the land in dispute, as well as that land itself, is flat, and is very liable to be covered or washed away by the waters of the *Ganges*, which river frequently changes its channel. The land in dispute was inundated about the year 1787: it remained covered with water till about 1801; it then became partially dry, till in the year 1814 it was again inundated. After this period it once again re-appeared above the surface of the water, and by the year 1820 had become very valuable land." These frequent changes and the lapse of time were deemed not to affect the question of title, for the judgment continues: "The question then is, to whom did this land belong before the inundation? Whoever was the owner then remained the owner while it was covered with water and after it became dry."

So in the case supposed, in the passage of the judgment under consideration which we have quoted, the surface stratum may be swept away, and lost without disturbing the old ownership in the land or mines beneath (subject perhaps to some limitation or qualification when what is left forms the bed of a navigable river). Where the remaining land can be sufficiently identified, no change takes place in its proprietorship, and whatever becomes annexed to it belongs to the old owner if he is known.

But this principle cannot, we conceive, govern the case which has been referred to us. The old right of property cannot remain in existence after the lapse of any length of time, however considerable, nor unless something beyond mere identity of site is brought forward in proof of it. To defeat or prevent the right by accretion which the law gives to the adjacent owner, the claimant is required to prove some continuing right of property to himself; it is not enough for him to rely merely on identity of site. If he can show no assertion of ownership, such as

the condition of the property admits of, for a great number of years, it may fairly be concluded that he has relinquished all right and claim to the remnant of what once belonged to him. In this case upwards of a quarter of a century has passed since the plaintiff's village was washed away, and there is no suggestion of any evidence in support of the continued existence of any portion of his old estate, beyond the (alleged) identity of site, or of any right of the plaintiff therein.

With this expression of our opinion of the law as applicable to cases, like that before us, we remit the case to the Divisional Bench.

The 26th May 1865.

Present:

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

Sale of (Government property)—Non-deposit of earnest-money—Power of Attorney—Agent (powers of).

Case No. 309 of 1864.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Dacca, dated the 26th May 1864.

The Collector of Dacca (Plaintiff), *Appellant,*

versus

Nund Lall Ray and others (Defendants), *Respondents.*

Baboo Kishen Kishore Ghose for Appellant.

Baboos Kalee Mohun Doss, Nuleet Chunder Sein, and *Sreenath Banerjee* for Respondents.

Suit laid at Rupees 13,550.

Suit for damages sustained on a re-sale of a Government estate. The original sale was made under certain conditions laid down by the Board of Revenue which merely provided for the payment of the purchase-money, and (on failure thereof) for re-sale at the risk of the defaulting purchaser; but not for the rejection of a bid if a deposit of earnest-money were not made, and for the continuance of the sale irrespective of it. HELD that the non-deposit of the earnest-money did not affect the validity of the sale.

A power of attorney authorizing an agent to bid for a particular estate on a particular date does not limit him as to time of purchase. The power not being limited to a particular date is good whether the sale be held on one date or another.

THE Collector of Dacca sues the defendant for damages sustained on a re-sale of a talook which defendant had purchased, but failed to pay for.

The plaintiff alleges that a notification was issued for the sale of the zemindary rights of Government in an 8-annas share of Jowl Batwal Tarakandee, which was a khas mehal, bearing a sudder jumma of rupees 708-0-8; that the notification contained a condition to the effect that, in the event of default in the deposit of the purchase-money, a re-sale would be made at the risk of the auction-purchaser; that on the 8th September 1863, the four first defendants purchased the property in question through their mooktear, the defendant Shib Narain Ghose, for a consideration of 20,100 rupees; that as they failed to pay in the purchase-money agreeably to the conditions of sale, a re-sale was made on the 23rd November of the same year for 6,550 rupees; that by defendants' failure to pay for the mehal that they had purchased, the re-sale became necessary, and Government has thereby sustained a loss of 13,550 rupees, the difference between the price at the two sales, and under the condition of the sale notification, which was published in the *Gazette* of the 11th August 1863, defendants were justly liable for that amount. Hence the present action.

The defendants, Joogul Kishore Roy, Bungshee Budun Roy, and Ramanath Roy, pleaded that they neither bid for nor purchased the Government estate Jowl Batwal Tarakandee; that when the sale of the khas mehal had been fixed by the Board of Revenue for the 13th Srabun 1270, they, in conjunction with Huro Lal Roy and Than Singh, defendants, executed a power of attorney in favour of the defendant Shib Narain Ghose, empowering him to bid in that sale; that as the sale did not take place *on the day fixed,* the power of attorney became null and void; that after a second notification had been issued, fixing another date of sale, no new power was given to the agent; that by the mooktearnamah given, no general power had been given to the agent to purchase for them without reference to time; hence they cannot be liable for an unauthorized act of the defendant, Shib Narain Ghose, though he may be responsible to Government; that, moreover, the power was a joint one on the part of five persons; hence the agent could not bid for the others, omitting the name of one; and, if he did so, he is liable, and not the parties whose instructions he has disobeyed; that as no earnest-money had been paid by them, the purchas-