It has also been asked by the learned Counsel for the respondent, whether a son, adopted by one wife, would be looked upon as the son of a co-wife, and succeed to her property. Though this question does not arise, we may point out that the Hindoo Law of Inheritance provides even for this case, and mentions the son of a contemporary wife among the heirs of a woman entitled to succeed to her *streedhun*.

In the case before us, as the Court has found that the adoption is valid, and that the property in dispute belonged to Nubo Monjuree as *streedhun*, we now hold that plaintiff, as her adopted son, is entitled to succeed to that property in the absence of daughters, whether there be or be not a will in his favour. It is, therefore, unnecessary for us to go into the genuineness of the will, and we affirm the former decision of this Court, and charge the respondent with all costs.

The 26th May 1865.

Present:

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

Limit of minority of Hindoos (not being proprietors of Revenue-paying estates)—(Section 26 of Act XL. of 1858).

Case No. 2868 of 1864.

Special Appeal from a decision passed by Baboo Kalee Kinkur Ray Bahadoor, Principal Sudder Ameen of Chittagong, dated the 27th June 1864, reversing a decision of Baboo Poorno Chunder Kostageer, Moonsiff of Jorowabgunge, dated the 6th November 1862.

Monsoor Ali (Plaintiff), *Appellant,*

versus

Ramdyal and others (Defendants), *Respondents.*

Mr. R. E. Twidale for Appellant.

Baboo Kishen Succa Mookerjee for Respondents.

Discussion as to the limit of minority of Hindoos not being proprietors paying revenue to Government, and as to the proper construction of section 26 of Act XL. of 1858.

Mr. Justice Phear.—This was a suit brought by a son to recover his aliquot portion of his late father's estate from his brothers, who, it was alleged, had kept him out of it ever since the father's death.

It is objected that the suit is barred by limitation; and the Lower Appellate Court has upheld this objection.

Whether or not the suit is barred admittedly depends upon the determination of the period of life at which the plaintiff may be legally considered to have attained his legal majority. The Lower Appellate Court has decided that the plaintiff's minority ceased at the age of 15 years; and, in so doing, the plaintiff says it has committed an error of law, against which he, the plaintiff, now specially appeals to the Court.

The plaintiff contends that, by reason of the provisions of Act XL. of 1858, he did not attain majority until the age of 18; and, if this be correct, his suit is brought in time.

Section 26 of that Act says: "For the purposes of this Act every person shall be held to be a minor who has not attained the age of 18 years;" and in the case of Deobo Moyee Dossee *versus* Juggessur Hati, 1 Weekly Reporter, p. 75, a Division Bench of this Court seems to have held that the words "for the purposes of this Act" confine the operation of this section to cases where the minor's estate is actually taken charge of by, or held under, Government, and that, in all matters unconnected with the possession of estates held under Government, the minority of a male Hindoo terminates with the completion of the fifteenth year. The report does not state what was the subject-matter of that suit, nor does the judgment give any of the reasoning which led the Court to its decision. In the case before us the property in question undoubtedly neither is, nor has been, under the charge of Government, and therefore the judgment just quoted appears to be strictly applicable. If we follow it, we shall be obliged to dismiss this appeal.

But the construction which I understand the Court to have put upon section 26 of Act XL. of 1858 in Deobo Moyee Dossee *versus* Juggessur Hati does not entirely command my acquiescence; and I was at first disposed to think that the consequences which flow from it are so important relative to the proprietary *status* of young Hindoo proprietors and their dealings with their land as to render the question deserving of the consideration of a Full Bench.

It seems clear from the words of section 20 of Act XL. of 1858, taken together with section 26, that the jurisdiction of the Civil Court over the person and property of the minor continues until the age of 18, whether its intervention be invoked or not. If in-

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