

We think the principle of this ruling is applicable to the facts of this case, and that plaintiff is on that principle precluded by section 7 of Act VIII. of 1859 from suing; and we, therefore, affirm the decision of the Court below, and dismiss this appeal with costs.

The 16th May 1865.

Present:

The Hon'ble W. Morgan and Sumbhoonath Pundit, *Judges.*

Land taken for Railway—Right of way.

Case No. 418 of 1865.

Special Appeal from a decision passed by Mr. F. L. Beaufort, Judge of the 24-Pergunnahs, dated the 2nd December 1864, affirming a decision passed by the Moonsiff of that District, dated the 26th July 1864.

Collector of the 24-Pergunnahs and another
(Defendants), *Appellants,*

versus

Nobin Chunder Ghose (Plaintiff),
Respondent.

Baboo Kissen Kishore Ghose for Appellants.

Baboo Kali Prosunno Dutt and Romesh Chunder Mitter for Respondent.

A right of way cannot, by the provisions of Act VI. of 1857, continue to exist over land acquired by a Railway Company under that Act with the aid of Government. If, however, the Railway Company, by their representations and conduct, lay themselves under legal obligation to provide a way, such obligation may be enforced.

THE line of the South-Eastern Railway, passing through the plaintiff's mouza, has severed about 1,200 beegahs of land from the remaining portion of the mouza, which lies on the south side of the line. The ryots of the land so severed live on the southern side of the Railroad, and, before the making of the line, they had access by a road from their dwelling-houses to the land cultivated by them. This suit is brought against the Railway Company (the Government being also made defendant) to procure the removal of obstructions caused by them, and to establish the right of the plaintiff and his

ryots to a road across the railway. Both the lower Courts have decreed in substance the plaintiff's suit, principally because the Courts find that the plaintiff's ryots have no mode of access to their lands except by crossing the line; and that their right to pass over the land now occupied by the railway remains as it was before the railway was made, notwithstanding that the land itself has been acquired by the Railway Company.

We think the decision cannot be supported on these grounds. The Railway Company, with the aid of Government, acquired the land under the provisions of Act VI. of 1857; and by the 8th section of that Act, the land taken became vested in the Government, and afterwards in the Railway Company, absolutely, and free from every right or interest therein, of whatever description, possessed by the former proprietors, or by other persons. All rights before existing, whether of passage or of any other kind, absolutely ceased upon the acquisition of the land for the railway; and no right of way afterwards arose, or was continued, merely because there remained no mode of access to the land on the north, otherwise than by crossing the line. The express provisions of the law are not consistent with the existence of such a right.

In the judgment of the Lower Appellate Court there is reference to a promise stated to have been made by the Railway Company to provide a level crossing at the place in question; and the Railway Map, which is in evidence, shows the trace of a road there. If the Railway Company have, by their representations and conduct, laid themselves under legal obligation to provide a road or crossing, the plaintiff is entitled to enforce that obligation; and, although the present suit is based on a misconception of his strict rights (which in our view arise, not as he supposes from the continued existence of the old rights, but from the acts of the Railway Company in conferring a new right of way), we think the suit may nevertheless proceed for the purpose of obtaining the relief to which he is really entitled. We must remand the case in order that it may be ascertained whether the Railway Company have, by their conduct or representations, contracted to provide and maintain any and what description of way for the plaintiff and his ryots over the line. If the Court is satisfied by the evidence that the defendants have so engaged, a decree may be awarded in plaintiff's favour.