

the Lower Appellate Court the defendant had done some act whereby, as it were, he denied or questioned the right of the plaintiff, but that he did not actually interrupt it or obstruct it.

It seems to me quite clear that such an act on the part of the defendant would not entitle the plaintiff to a decree for the removal of the bund in question, much less to damages. I think that, to entitle the plaintiff to a decree in this case, there must have been some actual infringement of his right by the defendant. I, therefore, think that we ought to reverse the judgment of both the Lower Courts, and to order the plaintiff's suit to be dismissed with costs.

Markby, J.—I am of the same opinion.

The 4th January 1869.

Present:

The Hon'ble G. Loch and Dwarkanath Mitter, *Judges.*

Account—Objection.

Case No. 2490 of 1868.

Special Appeal from a decision passed by the Subordinate Judge of Nuddea, dated the 27th August 1868, reversing a decision of the Moonsiff of Chooadangah, dated the 12th June 1868.

Kantee Chunder Dutt (Defendant),
Appellant,

versus

Gopee Madhub Neogee (Plaintiff),
Respondent.

Baboo Kalee Mohun Dass and Grish Chunder Mookerjee for Appellant.

Baboo Romesh Chunder Mitter, Sham Lall Mitter, and Anund Chunder Ghossal for Respondent.

Where an Ameen was directed by an order of Court to adjust an account between parties according to the accounts given in by the defendant, and no objection was raised by the plaintiff in whose presence the account was taken:

Held that the Lower Appellate Court was wrong in disallowing the sums debited, because the defendant failed to prove each item mentioned in his account.

Loch, J.—We find that, under an order of the first Court, an Ameen was directed to adjust the account between the parties, according to the account given in by the defendant. To this order no objection was raised by the plaintiff. The Ameen's account shows that the plaintiff had advanced Rupees 872-13-3, and that the profits of the

trade amounted to Rupees 1,431-15-1; that on the debit side there were Rupees 1,003-4 on account of miscellaneous expenses, and Rupees 1,275-13-1 on account of outstandings due from other parties. Against this account the plaintiff made no objection, and the first Court dismissed the claim on the ground that there was nothing due to the plaintiff. In appeal the Subordinate Judge has disallowed the sums debited, because the defendant has failed to prove each item mentioned in his account. But we think he was wrong in so doing, because the plaintiff took no exception to those accounts or to any items of those accounts, which he might have done either when the accounts were ordered to be taken by the Ameen, or when the report was filed by the Ameen; and it appears that the account was taken in his presence. We think the order of the Lower Appellate Court should be reversed, and the order of the first Court restored, and this appeal decreed with costs, and the plaintiff's suit dismissed with costs.

The 4th January 1869.

Present:

The Hon'ble L. S. Jackson and W. Markby,
Judges.

Notice — Enhancement — Withdrawal of suit — Section 97, Act VIII., 1859 — Section 13, Act X. of 1859.

Case No. 1011 of 1868 under Act X. of 1859.

Special Appeal from a decision passed by the Judge of East Burdwan, dated the 18th December 1867, modifying a decision of the Deputy Collector of that District, dated the 18th September 1867.

Romanath Dutt and others (Defendants),
Appellants,

versus

Joy Kishen Mookerjee (Plaintiff),
Respondent.

Baboo Boykuntnath Paul and Moutvic Murhumut Hossein for Appellants.

Baboo Pearee Mohun Mookerjee for Respondent.

Following a previous decision of a Division Bench, it was held that a judgment passed against a ryot in a contested suit operates as a notice to him under Section 13, Act X., 1859, taking effect from the commencement of the year following that in which the decree was passed.

The prohibitory clause of Section 97, Act VIII. of 1859, does not apply to cases under Act X.

Jackson, J.—I THINK that the decision of the Lower Appellate Court must be affirmed.