The Weekly Reporter:

APPELLATE HIGH COURT.

The 4th January 1869.

Present:

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

Land taken for public purposes—Compensation—Cause of action—Limitation—Section 4, Act XIV., 1859.

Case No. 2746 of 1868.

Special Appeal from a decision passed by the Officiating Judge of Nuddea, dated the 4th August 1868, affirming a decision of the Subordinate Judge of that District, dated the 9th May 1867.

Mr. James Hills (Plaintiff), *Appellant,*

versus

The Magistrate of Nuddea on behalf of Government (Defendant), *Respondent.*

Mr. J. S. Rochfort for Appellant.

Baboos Juggodanund Mookerjee and *Onookool Chunder Mookerjee* for Respondent.

In a suit to recover compensation for certain lands taken by the Magistrate for roads, where plaintiff had applied for compensation in the usual course, but, after various delays on the part of Government, had been refused compensation, and referred to the Civil Court after the period of limitation had expired:

HELD that plaintiff was not entitled to any consideration for his delay in instituting a suit, which was the remedy prescribed by law; and that the mere fact of Government receiving revenue for the estate in which the lands are situated did not prevent the law of limitation operating in its favor, as it would in the case of any private individual in adverse possession.

HELD that plaintiff's cause of action arose from the time when he was dispossessed, and not from the date when his application for compensation was rejected.

HELD that a letter from the Commissioner of Revenue, expressing his willingness to recommend to Government to pay for the land, was not an acknowledgment in writing within Section 4, Act XIV. of 1859.

Loch, J.—THIS suit is brought to recover compensation for certain lands taken by the Magistrate in or about the year 1856 for the purpose of making roads—which roads, according to the evidence, were completed in 1859; but both the Lower Courts have thrown out the suit on the ground of limitation; and the plaintiff comes up in special appeal, urging that no limitation can apply to this case.

First.—Because Government is receiving revenue for the lands, and is also in possession; that the lands must have been taken under Act VI. of 1857: that, under the provisions of Sections 28 and 29 of that Act, the Government must be considered as the depositary of the money till such time as it is made over to the owner of the land, or till the owner establishes his right to it; and therefore limitation cannot apply.

Secondly.—That the Lower Courts were in error in supposing that the case had arisen previous to 1859. The plaintiff's cause of action did not arise till his application for compensation was ultimately rejected by the Government on the 28th December 1865.

Thirdly.—That, even if limitation were otherwise to bar the suit, yet, as the Commissioner of Revenue, in his letter of the 6th July 1865, addressed to the Magistrate of the District, expressed his willingness to recommend the Government to pay for the land, that letter must be considered as a promise to pay under the provisions of Section 4 of Act XIV. of 1859.

With regard to the first point, we observe that this is the first time that Act VI. of 1857 has been mentioned in the course of the proceedings. It is not shown to us that the provisions of that Act were applied when the land in dispute was taken, and indeed the pleader for the special appellant admits that he does not know under what law they were taken. We see no reason why the law of limitation should not operate in this case in favor of the Government who is in adverse possession, as in the case of any private individual. The mere fact of the Government receiving revenue from the estate in which these lands are situated will not prevent the law of limitation running against the plaintiff, if he have failed to institute his suit within the proper time.

With regard to the second point, we concur with the Lower Courts in thinking that the plaintiff's cause of action arose from the time when he was dispossessed from his lands, and not from the date when the Government rejected the application for compensation.

On the third ground, we think that under no circumstances can the Commissioner's letter of the 6th July 1865 be considered as an acknowledgment in writing mentioned in Section 4, Act XIV. of 1859.

It is then said that this is a very hard case, that the plaintiff had done his best to obtain compensation in the usual course, and then, after various delays, the Government has thrown out his application, and referred him to the Civil Court after the period of limitation had expired. The mere fact of his having applied to the Government for compensation did not in any way prevent his making use of the remedy provided by law, which was to institute a suit against the wrong-doer; and as he has failed to institute that suit within proper time, he is not entitled to any consideration on account of the long time spent by him in useless applications. We think that, in this view of the case, the special appeal ought to be dismissed with costs.

The 4th January 1869.

Present:

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

Right of irrigation—Cause of action.

Case No. 838 of 1868.

Special Appeal from a decision passed by the Subordinate Judge of Maunbhoom, dated the 14th January 1868, modifying a decision of the Moonsiff of that District, dated the 26th December 1867.

Shama Churn Chatterjee (one of the Defendants), *Appellant,*

versus

Boidonath Banerjee (Plaintiff), *Respondent.*

Baboo Sham Lall Mitter for Appellant.
No one for Respondent.

In a suit to compel defendant to remove an embankment recently constructed on his own land, on the allegation that it infringed plaintiff's right of irrigation by a certain channel, where it was found that the embankment in question was no manner of obstruction to the water-course by that channel:

HELD that, to entitle plaintiff to a decree, there must have been some actual infringement of his right by the defendant, and not merely some act whereby, as it were, that right was denied or questioned.

Jackson, J.—THE plaintiff brought the suit out of which this appeal arises, in order to compel the defendant to remove an embankment which appears to have been constructed on the defendant's own lands, and which was 75 cubits long, 14½ broad, and ½ a cubit in height. The plaintiff alleged that the erection of this embankment, which was a new one, infringed his right of irrigation, and he claimed damages as well as the demolition of the embankment.

As far as I can understand the judgment of the Principal Sudder Ameen, it appears that the right of irrigation claimed by the plaintiff, and not disputed by the defendant, was a right of irrigation by a certain roadway or channel. It has been expressly found by the Lower Appellate Court that the newmade *bund* was off the water road or channel, and was "no manner of obstruction to the water-course by that road." But that Court was of opinion that the defendant's act in recently and newly raising the embankment, so as to block the current of the water partially, was a sufficient resistance to the free use of the plaintiff's right to give him a cause of action, and entitle him to a decree. The only construction which we can put upon these words, coupled with the first-mentioned express finding of fact, is, as it seems to me, that the opinion of