

Mitter, J.—I think this action was one for debt. Upon the facts stated on the record, it appears that the plaintiff advanced a certain sum of money to the defendant for a particular purpose, and that there was an understanding between them that the money should be repaid by the latter. The value of the suit being below Rupees 500, no special appeal lies to this Court under the provisions of Section 27, Act XXIII. of 1861.

The 27th January 1871.

Present:

The Hon'ble H. V. Bayley and Dwarkanath Mitter, *Judges.*

Accretions—Section 4, Regulation XI. of 1825.

Case No. 1738 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Rajshahye, dated the 24th June 1870, affirming a decision of the Moonsiff of Pubna, dated the 31st December 1869.

Gobind Monee Debia (Plaintiff), *Appellant,*

versus

Dino Bundhoo Shaha and others (Defendants),
Respondents.

Baboo Mohinee Mohun Roy for Appellant.

Baboos Sreenath Doss and Bhugobully Churn Ghose for Respondents.

Where lands become annexed to a jote by gradual accretion within the meaning of Section 4, Regulation XI. of 1825, the jotedar is entitled to hold them on the same principle, and under the same legal conditions, as he holds the parent estate.

Mitter, J.—THE first question which the Lower Courts had to determine in this case was, whether the lands in dispute had been annexed to the plaintiff's jote by gradual accretion, within the meaning of Clause 1, Section 4, Regulation XI. of 1825. Both the Lower Courts, however, have dismissed the suit on the ground that, the Government being the owner or proprietor of the chur,

the plaintiff has no right to sue for the reversal of the settlement made by Government with the defendant, or for possession of the lands in question.

We are of opinion that this judgment is erroneous. The Government, no doubt, is admitted on all sides to be the proprietor of the lands; but if the lands were annexed to the plaintiff's jote by gradual accretion, the plaintiff would be entitled to hold them precisely on the same principle and under the same legal conditions as he would be entitled to hold the parent estate to which they have accreted. This point has been frequently ruled by the Court, and all that we have now to say is that the words of Clause 1, Section 4, Regulation XI. of 1825, are clear, and cannot be overlooked.

We, therefore, remand the case to the first Court with directions to make the Government a party to the suit, and then to decide it on the issues arising from the pleadings.

The costs of this appeal will abide the ultimate result.

The 27th January 1871.

Present:

The Hon'ble H. V. Bayley and Dwarkanath Mitter, *Judges.*

Refusal to examine witnesses — Special appeal.

Case No. 1753 of 1870 under Act X. of 1859.

Special Appeal from a decision passed by the Judge of Bhaugulpore, dated the 11th June 1870, affirming a decision of the Deputy Collector of Monghyr, dated the 7th January 1870.

Osman Singh and others (Plaintiffs),

Appellants,

versus

Chummun Mahtoon and others (Defendants),
Respondents.

Mr. K. E. Twidale for Appellants.

Baboo Motee Lall Mookerjee for Respondents.

Where any real grievance or other just cause of complaint arises to a plaintiff from the first Court's refusal to examine his witnesses, his first duty is to bring the matter prominently to the notice of the Lower Appellate Court in his grounds of appeal. Failing to do so, he cannot be allowed to urge it as a plea in special appeal.

Bayley, J.—THERE is no ground for this special appeal.

The main objection is that, on various occasions, it was brought to the notice of the first Court that the witnesses for the special appellant were present in Court, and yet they were not examined.

Now, looking to the record, it, no doubt, appears that there were most unreasonable adjournments and delays in the examination of the witnesses, and this Court would have taken further notice of the matter had the jurisdiction of the Deputy Collector over such cases remained; but if there were any real grievance or any just cause of complaint, or any obvious injustice caused to the special appellant by the refusal of the Court to examine his witnesses, his first duty would have been to bring the matter prominently to the notice of the Lower Appellate Court in his grounds of appeal; but he totally neglected to do so, and only after the case was decided against him by the Lower Appellate Court on other grounds did he take the objection by way of review, and now urges it before this Court as a point of special appeal. We quite agree with the learned Counsel, Mr. Twidale, that it is the duty of this Court to redress the grievances arising to parties from the neglect of the Courts below in matters of this kind; but at the same time it cannot be denied that, in this particular case, if any real grievance had been caused to the special appellant by the omission of the first Court to examine his witnesses, he would and should have first urged it as a preliminary and prominent point of appeal before the Judge, and not that point only for a special plea in this Court in the last stage of the special appeal.

In this view, we think this special appeal must be dismissed with costs.

The 30th January 1871.

Present:

The Hon'ble H. V. Bayley and Dwarkanath Mitter, *Judges*.

Witnesses—Notice.

Case No. 420 of 1870.

Miscellaneous Appeal from an order passed by the Subordinate Judge of Bhaugulpore, dated the 9th July 1870.

Mussamut Mussitee Khanum (Claimant),
Appellant,

versus

Mussamut Hookoom Bibee and another
(Opposite Party), *Respondents.*

Moonshee Mahomed Yusuf for Appellant.

Baboos Debendro Narain Bose and Kalee Kishen Sein for Respondents.

After a list of witnesses has been filed and the *tullubana* paid, the Court's officers, not the applicant, are responsible for the service and return of notice.

Bayley, J.—IN this case, we think that justice requires that the order of the Subordinate Judge must be reversed.

On the 15th June 1870, an order was passed that the case be taken up on the 9th July, and that the applicant do, in the meantime, file his *issumnuvisee* or list of witnesses.

On the 29th June, the applicant not only put in the list of witnesses, but did also on that day pay in the *tullubana*, and thus completed all that he was required to do under the law. This gave a period of 10 days before the day fixed for hearing. For the proceedings that were taken within this