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were in possession of the lands in question from 1282 without adverting to the limitation pointed out above in the application of the doctrine of constructive possession, namely, that it does not, as a rule, apply to the case of a wrongdoer.

For the foregoing reasons we think the judgment and decree of the lower Appellate Court, so far as they relate to the plots described as *patit* land of different denominations in the *chitta* of 1282, must be set aside and the case remanded to that Court in order that it may determine, (1) how far the presumption referred to in the rule laid down in the case of *Mahomed Ali Khan* v. *Khaja Abdul Gunny* (1) quoted above applies to this case, and (2) how far that presumption has been rebutted by evidence of actual possession adduced by the defendants, and then dispose of the appeal. Costs will abide the result.

H. W. *Case remanded.*

Before Mr. Justice Macpherson and Mr. Justice Hill.

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BINDU BASINI CHOWDHRANI AND ANOTHER (DEFENDANTS) *v.* JAHNABI CHOWDHRANI (PLAINTIFF.)*

Injunction—Specific Relief Act (I of 1877), section 54—Threatened damage—Damage occurring after suit—Cause of action—Digging so as to endanger neighbour's land.

Where an act threatening danger to a person's land is such that injury will inevitably follow, a Court may grant a perpetual injunction restraining the continuance of that act, even though no damage has actually occurred before institution of suit. And where actual injury has occurred subsequently to the filing of the plaint, the plaint may be amended so as to show the nature and extent of such injury.

Pattisson v. *Gilford* (2) applied.

THE plaintiff and the defendants owned adjoining lands. Close to the boundary line the defendants dug a trench 110 feet long and 9 feet deep, the sides towards the bottom sloping in the direction of the plaintiff's land. The plaintiff sued for a perpetual injunction restraining them from continuing to dig, for the cost

* Appeal from Order No. 390 of 1895 from the order of Babu Baroda Prosono Shome, Additional Subordinate Judge of Mymensingh, dated the 25th October 1895, reversing the order of Babu Kali Krishna Chowdhry, Munsif of Atia, dated the 18th September 1894.

(1) I. L. R., 9 Calc., 744. (2) L. R., 18 Eq., 259.

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of filling up the excavation, and for other relief. The defendants pleaded that they had a right to dig as they pleased on their own land, and that as the plaint did not allege any injury, it disclosed no cause of action. The Munsif held that no cause of action accrued until damage had actually occurred, and he therefore dismissed the suit.

After the suit had been instituted, the plaintiff's land subsided in consequence of the defendants' excavations, and this fact was brought to the notice of the Court.

The plaintiff appealed to the Subordinate Judge, who reversed the Munsif's decision and remanded the case under section 562 of the Code of Civil Procedure, directing the Munsif to allow the plaint to be amended, and to try the questions that had already been or might be raised in the case.

Against this order the defendants appealed.

Babu *Nilmadhub Bose* (with him Babu *Jogesh Chunder Roy*, Babu *Mukunda Nath Roy*, and Babu *Satyananda Bose*) for the appellants.—There is no cause of action unless there is actual injury or unless the act of the defendants is such that the injury appears, on the face of the plaint, to be inevitable. Gale on Easements, p. 329; Kerr on Injunctions, pp. 220 to 222. Besides it would be impossible, where there is no averment of injury, for the Court to say in what terms an injunction should go; and to restrain the defendants from using their property in such a way as not to injure the plaintiff is not only too vague but is also a mere statement of the general law. Everyone may dig in his own land as he pleases if he takes steps to protect his neighbour from injury; and the defendants were about to do so. Lastly, there cannot, under section 54 of the Specific Relief Act, be a perpetual injunction if the damage occasioned, or likely to be occasioned by the defendants' wrongful act, can be compensated with damages, as it can in the present case, for the plaintiff has valued the suit at a definite sum.

Babu *Srinath Das*, Babu *Dwarkanath Chuckerbutty* and Babu *Kritanta Kumar Bose* for the respondent.—An averment of actual damage is not necessary; therefore the plaint does disclose a cause of action. Illustration (*r*) to section 54 of the Specific Relief Act is clear upon the point. In the case of

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The Darley Main Colliery Co. v. *Mitchell* (1) the question arose as to when the cause of action accrued in a suit for damages for subsequent subsidence of the soil; and it was held that each subsidence would furnish a separate cause of action. An injury has actually resulted by the subsidence of the plaintiff's land; and therefore the plaint ought to be amended on the principle adopted in cases where a prayer for recovery is allowed to be added when dispossession has taken place subsequent to institution of suit,—*Abdul Kadar* v. *Mahomed* (2), or where the defect is merely one of form,—*Amir Hossein* v. *Imambandi Begum* (3).

Babu *Nilmadhub Bose* in reply.

The judgment of the Court (MACPHERSON and HILL, JJ.) was as follows:—

The plaintiff and the defendants are the owners of adjoining tenures. The plaint sets out that the defendants wantonly and with the intention of causing injury to the plaintiff dug a trench on the verge of the boundary of her tenure, 110 feet long and 8 or 9 feet deep, the depth being perpendicular downwards and sloping inwards towards the bottom in the direction of the plaintiff's land, and that this must necessarily result in the subsidence of the plaintiff's land. It is further alleged that the defendants were still going on with the work. The relief asked for is a perpetual injunction prohibiting them digging earth within a certain distance of the plaintiff's tenement; the filling up of the excavation, or in default a certain sum of money as the costs of filling it up. There was a further prayer for general relief.

The defendants raised various objections to the plaintiff's suit. They asserted their right to dig as they pleased upon their own land, and stated that the plaintiff was not entitled to an injunction. There was no direct denial of the particular acts alleged in the plaint, but it may be gathered from the 9th paragraph of the written statement that they were excavating a tank which had no slopes, although they intended to make them hereafter.

The case proceeded to trial, and, when it was ripe for decision, the defendants contended that the plaint disclosed no cause of action, inasmuch as no injury was alleged to have resulted

(1) L. R., 11 App. Cas., 127.

(2) I. L. R., 15 Mad., 15. (3) 11 C. L. R., 443.

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from the acts of the defendants. The Munsif accepted as correct that view of the law, and, holding that until actual damage had ensued no cause of action could arise, dismissed the suit without deciding any of the other questions which arose in the case. It appears that the plaintiff in the course of the trial represented to the Court that, subsequent to the institution of the suit, injury had actually resulted from the acts of the defendants by the subsidence of some of the plaintiff's land, and evidence to that effect was given. The case went on appeal before the Subordinate Judge, who reversed the Munsif's decision and remanded the case under section 562 of the Code of Civil Procedure, directing the Munsif to allow an amendment of the plaint and decide the question already raised in the case and any other questions that might arise after the amendment. This appeal is against the order of remand, and it is contended that the Munsif was right in dismissing the suit on the ground that the plaint disclosed no cause of action.

If the Munsif was right in holding that actual injury would alone give a cause of action, then he was right in dismissing the suit, because anything that happened subsequent to the institution of the suit could not supply a cause of action which did not exist before. In our opinion he was wrong in his view of the law. A suit for injunction may be a suit for preventive relief, and, under section 54 of the Specific Relief Act, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication. The same section provides that when a defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in certain specified cases. Illustration (*r*) attached to the same section indicates a case in which an injunction may be sued for to restrain a defendant from doing an act which threatens injury to the plaintiff's property, although no such injury had actually ensued. In the case of *Pattisson* v. *Gilford* (1) the Master of the Rolls, speaking of the principles upon which a Court of Equity interferes when an injunction is asked for, says: "I take it that, in order to obtain an injunction, a plaintiff who complains, not that an act

(1) L. R., 18 Eq., 259.

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is an actual violation of his right, but that a threatened or intended act, if carried into effect, will be a violation of the right, must show that such will be an inevitable result. It will not do to say a violation of the right may be the result; the plaintiff must show that a violation will be the inevitable result." And then he proceeds to cite a case decided by Lord Cottenham, and another case in which the Lord Chancellor says: "I consider this Court has jurisdiction by injunction to protect property from an act threatened which, if completed, would give a right of action. I by no means say that in every such case an injunction may be demanded as of right, but if the party applying is free from blame and promptly applies for relief, and shows that by the threatened wrong his property would be so injured that an action for damages would be no adequate redress, an injunction will be granted." The facts of that case had, it is true, no analogy to the present case, but still the Master of the Rolls was dealing with the principle upon which relief is given against a threatened wrong, and the case is, we think, an authority that such a suit will lie when the threatened act is of such a character that it must *inevitably* result in injury—inevitably in the sense in which the Master of the Rolls says he uses the word, that is to say not in the sense of there being no possibility the other way, because Courts of Justice must always act upon the theory of very great probability being sufficient, but in the sense that there must be such a great probability, that, in the view of ordinary men, using ordinary sense, the injury would follow. The Munsif was, therefore, we consider, wrong in holding that, as a matter of law, actual injury before suit must in every case be alleged and proved in order to maintain the suit, and that it is sufficient if it is alleged that the result of the act complained of must inevitably, in the sense we have stated, flow from it. Whether the case is one in which an injunction or any other relief should be granted, or what precise form the injunction should take, are questions which the Courts dealing with the facts must decide with reference to the provisions of sections 53 and 54 of the Specific Relief Act. It may be that the plaintiff is not entitled to the relief which she claims or to relief in the particular form which she claimed it, but that would not make the suit unmaintainable. Now, no better proof of the inevitable consequence of an alleged act can be given than

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it the contemplated injury had actually occurred, and, we think, s quite competent for the plaintiff in this case to give dence of that injury, although it had not occurred prior to the titution of the suit, and, for that purpose, and in order to give e notice to the defendants of the fact, which it is intended to prove, plaint might properly be amended. It is not quite clear on what unds the Subordinate Judge reversed the decree of the Munsif l remanded the suit. He does not say that the view which Munsif took of the law was wrong, but merely that the intiff should be allowed to amend the plaint; in what way he s not say, and his order that the Munsif should allow the int to be amended in some undefined way is not a correct er. If he took the same view of the law which the Munsif , and intended that the plaint should be amended in order to the plaintiff a cause of action which did not before exist, his w is wrong. Nevertheless, we think that the order of remand ight, and that the plaintiff should be allowed to amend the int by inserting in it the nature and extent of the injury fered. That is not an amendment inconsistent with the provisions the Code. The act complained of occurred before the institu- n of the suit, and the injury, which was foreseen and which it s the object of the suit to avert, occurred after the institution of it.

The appeal fails and is dismissed with costs.

H. W. *Appeal dismissed.*

APPEAL FROM ORIGINAL CIVIL.

fore Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Prinsep, and Mr. Justice Pigot.

1890 *Sept.* 15.

[ANMULL (PLAINTIFF) *v.* RAM CHUNDER GHOSE (DEFENDANT).*

or—Representations as to age known to be false—Liability in equity—Action on the contract—Action framed in tort—Costs—Statements as to existence of relationship—Evidence Act (1 of 1872), section 32, sub-section (5).

Where an infant obtained a loan upon the representation (which he knew s false) that he was of age: *Held*, that no suit to recover the money l be maintained against him, there being no obligation binding upon the

* Original Civil Appeal No. 23 of 1890, against the decree of Mr. Justice is, dated the 9th of May 1890.