

*Special Appeal No. 425 of 1864.*1864.  
Aug. 24.NASARVA'NJI PESTAMJI..... *Appellant.*NASARVA'NJI DA'RA'SHA' ..... *Respondent.**Alluvion—Accretion—Occupancy.*

Land gained from a river by gradual accretion belongs to the owner of the adjacent soil, by the title of occupancy.

THIS was a special appeal from the decision of R. H. Pinhey, Acting Judge of the Súrat District, in Appeal Suit No. 143 of 1863, reversing the decree of the Munsif of Súrat, in Original Suit No. 934 of 1861.

The suit was instituted by Nasarvánji Pestamji, to recover possession of two bighás of land, on the banks of the river Tápi: alleging that the same formed part of his field No. 63, in the village of Túнки, in the Súrat District; that his said field was bounded on the west by the Tápi; that a portion of it had been washed away: that subsequently two bighás of land had been re-formed on the west of his field; and that the first defendant, Nasarvánji Dáráshá, had, for himself and as guardian of his brother Hormásji's adopted son, Káikhashrú, taken wrongful possession of these two bighás of land, and leased them to the second defendant, Koyá Kánji.

Nasarvánji Dáráshá's defence was, that he had not taken wrongful possession of the land in dispute; but was in possession of the field No. 64, of which it formed a part; and that if that field were measured, it would be found to be less than it was said to measure. Koyá Kánji answered that he was merely a tenant under the first defendant.

The Munsif of Súrat found in favour of the plaintiff; holding it proved, by the position of the land, that it was his property, and formed part of his field No. 63.

On appeal, the District Judge laid down the issue for decision to be: "Is the land, for which plaintiff sues, proved to be his property, or not;" and found that the plaintiff had failed to prove his title; observing as follows:—

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"It appears to me, that the title of the plaintiff to the field No. 63 is only that of a mortgagee ; and that the extent of that field was only what it now is, that is, four bighás and eight vassás. Extracts from the village register are produced by plaintiff in support of his claim. No. 51 is for the year Samvat 1909, or A. D. 1852-53 ; and No. 52 is for the year Samvat 1888, or A. D. 1831-32. In No. 51, the western boundary of the field No. 63, is not given. In No. 52, the river Tápí is given as the western boundary of the field. In reality, however, these extracts do not in any way strengthen plaintiff's asserted title. Both in 1831 and 1852 the Tápí was very probably the western boundary of the field No. 63 ; for it is admitted, both by plaintiff and the defendants, that the land to the west of the field, now held by plaintiff, numbered 63, was overflowed by the Tápí for some years, and remained submerged till the Samvat year 1912 or 1913, that is, A. D. 1855. \* \* \* The decree of the Munsif is reversed."

The case was heard before ARNOULD, Acting C.J., and WARDEN, J.

*Shántarám Náráyañ*, for the appellant :—The District Judge erred, in that he did not lay down the points for decision to be : (1) Is plaintiff the owner of the field No. 63 ; and (2) was the land in dispute formed by alluvion, and adjacent to the field No. 63. On an affirmative finding upon these two issues, the land should, according to the law, as laid down in *Doe dem. Raja Saheb Kristo v. The East India Co.*, have been awarded to the plaintiff. The Judge had, in addition to an inquiry into the title to the field No. 63, which was admitted by the opposite party in his deposition No. 49, looked for a title to the two bighás in dispute, which (as also admitted in No. 49) were formed by alluvion.

No one appeared for the respondent.

ARNOULD, C. J. :—The field No. 63 has been sufficiently shown to be the property of the plaintiff, as against the defendant and respondent. The land in dispute is, moreover, admitted to have been gained from the river by gradual accretion ; and is contiguous to the plaintiff's field No. 63.

The plaintiff is, therefore, entitled to it, on the principle of alluvion : as recognised in *Doe dem. Raja Sahab Kristo v. The East India Co. (a)*, and *Mussumat Imam Bandi v. Hurgovind Ghose. (b)*

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The Court reverses the decree of the Acting Judge ; and affirms that of the Munsif, with costs on the special appellant.

*Appeal allowed.*

(a) 6 Moo. Ind. App. 267.

(b) 4 Moo. Ind. App. 403.

NOTE.—*Alluvion* is the imperceptible augmentation (*incrementum latens*) to land, from the washing-up of earth by a river, “ which is added so gradually that it is impossible to distinguish how much is added at any one moment of time.”—Institutes, lib. II., tit. i., § 20 ; Dig., lib. XLI., tit. i., l. 7, § 1 ; Code Civil, art. 556. The land so formed (*alluvius ager*) is acquired *jure gentium* by the riparian owner (in the French code, *propriétaire riverain*), on the principle of *accession*—which is a kind of consequent *occupancy* : being, in the language of Grotius, “ the addition of *partioles* which cannot be claimed by any one, because it is unknown whence they come ; for otherwise the ownership would naturally remain unchanged :” *De Jure B. et P.*, lib. II., cap. viii., § 11. “ But if the violence of a river should bear away a portion (*partem aliquam*) of your land, and unite it to that of your neighbour, it undoubtedly still continues yours. If, however, it remains a long time united to your neighbour’s land,” &c. : Institutes, lib. II., tit. i., § 21. Here the part is considerable and *ascertainable* (*reconnaissable*) ; “ and the owner of the part carried away may reclaim his property ;” but by the French Code (art. 559), he is bound to make his demand within a year after it has been taken possession of by the owner of the field to which it has been united. *Inundation*, again, is quite different from *alluvion* : “ for it does not alter the nature of the land ; and, on the water receding, it is clear that the land remains the property of its former owner.” Inst., lib. II., tit. i., § 24 ; Dig., lib. XLI., tit. i., l. 7, § 6. And see Lord *Kingsdown’s* judgment in 4 Moo. Ind. App. at p. 406. The Persian term *shikast-piwast* (literally, *broken and joined*), is applied in Bengal to alluvial land ; and the Indian law and usage on the subject correspond, according to Sir W. Macnaghten, with those of England and with the Civil Law : 1 Mor. Dig. 561, note.—ED.