

general relief, grant that to which the plaintiffs and the purchaser are alike entitled, namely, to have the sale set aside. It is true that a prayer for general relief is not in accordance with the provisions of the Code, which in Sec. 26 declares that the plaintiff must ask for the specific relief he claims. If the defendant had raised that point at the outset, the Judge would doubtless have ordered the requisite amendment to be made, but as the bank did not object in the Division Court, it cannot now be allowed to do so.

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As to the question that arises on the merits of this case, I agree with what has been said by the Lord Chief Justice.

Decree confirmed.

Appeals dismissed with costs.

Attorneys for the plaintiffs: *Macfarlane and Green.*

Attorneys for the defendants in both cases: *Rimington, Hore, and Langley.*

Appeal Suit No. 141.

Sept. 3.

KHARSHEDJI NASARVA'ANJI CA'MA' et al.....Appellants.
THE SECRETARY OF STATE IN COUNCIL OF
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Land required for public purposes — Appointment of Arbitrators—Laches—Waiver of Right to have entire Manufactory taken—Neglect to put forward Defence in written statement—Surprise—Act VI. of 1857, Sec. 32.

By a Government notification of the 3rd of June 1863, published in the *Gazette*; it was declared, under the provisions of Act VI. of 1857, that a certain strip of land passing by the mill of the defendants was required for a public purpose, the B. B. and C. I. Railway, a plan of which land was to be seen in the Collector's office.

On the 4th of November following, the Secretary of the defendants' company received a notice, signed by the Collector, requiring the owner of the mill to call at the Collector's office to signify his acceptance or otherwise of the compensation for the land required.

The Secretary went to the Collector's office, and there saw a plan, from which it appeared that an adjoining well from which the engine of the mill was supplied with water was intended to be taken, but no compensation for the well or land required was then agreed upon,

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On the 28th of November a notice was served upon the defendants, signed by the Collector, stating that he had appointed an arbitrator on behalf of Government, and requiring the defendants to appoint a second arbitrator to determine the amount of compensation for the land (describing it) required by the B. B. & C. I. Railway Co.

The defendants' Secretary wrote in reply that the defendants had appointed an arbitrator on their behalf to determine the amount of compensation for their land required for the B. B. & C. I. Railway Co.

Semble that a contract was entered into by the last mentioned notice and letter of reply to it, of which specific performance could be enforced.

Held that the defendants had, by appointing their arbitrator to determine the compensation for the land required, waived any irregularity in the previous proceedings, and precluded themselves from claiming to have the whole manufactory taken under Sec. 32 of Act VI. of 1857, though no proceedings were taken in the arbitration for nearly twelve months subsequently, and the defendants had shortly before such proceedings made such a claim.

A well in a mill compound from which the mill's engine is, by means of a pipe, supplied with water, is part of a manufactory within the meaning of Act VI. of 1857, Sec. 32.

THIS was an appeal from the decision of Sargent, J., delivered in a Division Court on the 26th of March 1868.

The facts of the case were as follow :—

The plaintiffs, who were Directors and Trustees of the Arkwright Cotton Mill Company, as such were possessed of a certain manufactory called the Arkwright Cotton Mill. This mill was situated near the Chaupáti Road in the island of Bombay. It was built in a compound or enclosed piece of ground, to a lease of which the plaintiffs were entitled for the unexpired portion of a term of ninety-nine years.

Water for the use of the boiler and engine by which the mill was worked was supplied from a well in the compound, about thirty feet distant from the engine-room. The natural flow of water in the well was supplemented by water conveyed into it by means of pipes connected with the Vehar waterworks.

The evidence adduced at the trial showed that, although the position of this well, with reference to the engine-room, was particularly well adapted for the working of the engine, other wells could be sunk in the compound which would yield an equally large supply of water, and that thus the

engines could be worked almost, if not equally, as advantageously as from the well in question.

The cost of sinking a new well was estimated by the witnesses at from two to three thousand rupees; and the time necessary to complete it from two to three months. A witness for the defence, Mr. Ormiston, suggested that a well, arched over, and sunk in the building itself, would, from the fact of a well so constructed maintaining a lower temperature and being closer to the engines than the existing well, answer the purposes of the manufactory even better than the existing well.

On the 3rd of June 1863 a notification was published in the *Government Gazette* as follows:—

“It is hereby declared, under the provisions of Act VI. of 1857, that the land on the island of Bombay, described below, is required for a public purpose, that is to say, for the Bombay, Baroda, and Central India Railway, and is to be taken at the public expense:—

“A strip of land sixty feet more or less in width, extending from the point where the Bombay, Baroda, and Central India Railway line touches the new road to Cammathepoora, thence crossing Grant Road, Breach Candy Road, Gam Davi Road, passing by the cotton mill, thence crossing the Malabar Hill Road, crossing Nacooda's Oart, and opening on the sea-beach of Back Bay. This land is in the occupation of various individuals.

“Plans of the land, and all particulars regarding it, may be obtained on application to the Collector of Bombay.”

A trial line had been made in the direction indicated in this notification in 1862. The line, as finally proposed to be taken, was found in May or June 1863. Marks and pegs were then placed to show its direction, and it was then, where practicable, lock-spitted.

When the line was finally determined on, it was surveyed by a Surveyor in the Collector's Department, and the plan made from such Survey was that alluded to in the *Gazette* notification as to be seen on application to the Collector.

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On the 4th of November 1863 a notification, signed by the Collector, was received by Motirám Bhagábhái, the Secretary of the Arkwright Cotton Mills Company:—"To Owner of the Cotton Mill. You are hereby required to call at my office, on Thursday the 19th instant, to signify your acceptance or otherwise of the compensation for your land required by the Bombay, Baroda, and Central India Railway."

Motirám, in accordance with this notice, went to the Collector's office, and was there shown a plan, which, by means of a schedule attached to it, indicated the portions of land proposed to be taken for the railway. Upon this plan the well adjoining the manufactory was shown as portion of the land required for the railway. No agreement as to the compensation for the land and well was then arrived at, nor was it proved that any specific sum was tendered as such. On the 28th of November 1863 the following notice (dated November 23) was sent to Motirám, signed by the Collector:—"Take notice that I have appointed Major A. H. Curtis as arbitrator on behalf of Government, and that, unless you concur in his appointment as single arbitrator, you are hereby required, to appoint in writing your arbitrator within fifteen days from this date, to determine the amount of compensation for land situated near and between the Camateepoorá Road and Back Bay, required for the Bombay, Baroda, and Central India Railway." On the 7th of December 1863 Motirám wrote in reply:—"Sir,—With respect to your notice dated 23rd ultimo, I am desired by the Directors of the Arkwright Cotton Mill Company to inform you that they have appointed Sorabjee Pestonjee, Esquire, arbitrator on their behalf, to determine the amount of compensation for their land required by the Bombay, Baroda, and Central India Railway Company."

Subsequently C. M. Keir was appointed third arbitrator, and S. J. Harrison and Nasarvánji M. Petit were substituted for the arbitrators at first appointed.

After the appointment of the arbitrators the mill continued to be worked as before, and in March or April 1864

two new cooling reservoirs were constructed by the Directors of the Company—not, as the witnesses stated, in lieu of the well for the supply of water to the engine, but because the water in the well used to become too heated for condensing purposes, and these cooling reservoirs were required in addition for the advantageous working of the engine. On the 11th of November 1864, Mr. C. Tyabji, solicitor, on behalf of the plaintiffs, wrote to the Collector as follows:—

“ Dear Sir,—I was unable to communicate to you the final resolution of the Directors until they had time to consult with competent persons with reference to the practicability of carrying on the mill after the railway has taken a portion of the ground in the possession of the company. They have now come to the conclusion, after obtaining the best advice on the subject, that it will be impossible to work the mill with any advantage when the trains are running so close to the premises, and they must, therefore, part with their entire interest in the ground and premises, the value of which they estimate at four lákhs of rupees. The company have a very valuable lease of the ground, but they have no power to convey an estate in fee simple.—(Signed) C. TYABJI.”

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After some further correspondence and meetings between the parties, the Acting Collector, on the 17th November, wrote the following letter to C. Tyabji:—“ Dear Sir,—With reference to the conference you have had with Mr. G. Scott, late Collector, and Mr. Peile, Solicitor, regarding the Arkwright Mill property, I have the pleasure to send you the sketch plan, as promised, and hope you will be able soon to let me know that an amicable settlement is practicable.—(Signed) R. H. SHOWELL.”

No settlement was arrived at.

On the 25th of November 1864 the Acting Collector wrote to the solicitor of the plaintiffs, informing him that the ground required for the railway would be taken possession of, under Act VI. of 1857, Sec. 8, on the 28th then instant. This was accordingly done, and, the well having been filled up, the mill ceased working on the 2nd of December 1864.

On the 19th of December 1864 the arbitrators held their

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first meeting. It was then objected, on the part of the plaintiffs, that the arbitrators should arbitrate on the value of the entire manufactory, and not on the slip only required for the railway. Several meetings were held, and evidence was taken, but no award was finally made, but the arbitrators came to the conclusion that their functions were limited to arbitrating on the slip of land required for the railway only. The plaintiffs, pending the arbitration, filed their plaint in the present suit, by which, as amended, they prayed—(1) That it might be declared that the first defendant (the Secretary of State) was bound to purchase the plaintiffs' interest in the whole of the said land, buildings, mill and machinery, being a manufactory within the meaning of Act VI. of 1857, Sec. 32; (2) that the arbitrators appointed under the said Act might be directed to determine the compensation money in respect of the plaintiffs' interest in the whole of the said land, buildings, mill, and machinery; (3) that the defendants and the arbitrators might be restrained by injunction from proceeding to determine the compensation money in respect of that part only of the land of which possession had been taken by the first defendant on behalf of the Railway Company; (4) for further and other relief.

The first defendant put in a written statement in which, after admitting that portion of the land of the plaintiffs had been taken possession of, he denied that the land so taken formed part of any house or other building or manufactory within the meaning of Sec. 32 of Act VI. of 1857.

Para. III. The defendant says that no objection was made on behalf of the plaintiffs to the taking possession by the Collector of Bombay of the said portion of land prior to the same being so taken possession of, on the ground that the same formed a part of any house, building, or manufactory.

Para. IV. That the question of compensation for the land so taken possession of was referred to the arbitrators, whose first meeting was held on the 19th of December 1864, when it was objected that a portion of the manufactory having been taken by Government, the whole ought to be taken;

and on the part of the defendant it was contended that the arbitrators ought to decide that preliminary objection before proceeding with the arbitration.

The written statement then set out in great detail the proceedings that took place under the arbitration, and concluded thus:—(VIII.) Under the circumstances aforesaid, the defendant, the Secretary of State, contends that by reason of the laches and conduct of the plaintiffs in the premises they are disentitled to any of the relief claimed in the plaint.

A list of documents upon which the defendant intended to rely, and which included the respective appointments of the various arbitrators, was annexed to the written statement.

The issues framed were—(1) Whether the land taken possession of by the Collector on the 28th of November 1864 formed part of a manufactory within the meaning of Sec. 32* of Act VI. of 1857; (2) If so, whether the plaintiffs are not deprived by their own laches and conduct of the relief sought, or any part thereof; (3) Whether the plaintiffs are entitled to the relief prayed or any part thereof.

The second and third issues were, by the learned Judge found in favour of the defendant.

The Appeal was argued before Couch, C.J., and Westropp, J., on the 13th of August and subsequent days.

White (with him Mayhew) for the appellants.

The Advocate General (The Honourable L. H. Bayley) and Dunbar for the respondent.

The following authorities were cited in the course of the arguments:—*St. Thomas's Hospital v. Charing Cross Rail. Co.* (a); *Sparrow v. Oxford and Wolverhampton Rail. Co.* (b); *Dakin v. London & N. W. Rail. Co.* (c); *Grosvenor v.*

* Act VI. of 1857, Sec. 32—"The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, or other building or manufactory, if the owner desire that the whole of such house, building, or manufactory shall be taken."

(a) 30 L. J. Ch. 395. (b) 21 L. J. Ch. 731. (c) 3 De G. & S. 420; and see 26 L. J. Ch. 734 *in notis*.

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Cur. adv. vult.

COTCH, C. J.:—The facts of this case, as proved by the evidence, I consider to be as follow:—By a notification signed by the Chief Secretary to the Government, dated the 3rd of June 1863, it was declared, under the provisions of Act VI. of 1857, that a strip of land sixty feet, more or less, in width, extending from the point where the Bombay, Baroda, and Central India Railway line touched the new road to Cammathepoora, thence crossing Grant Road, Breach Candy Road, Gám Devi Road, passing by the cotton mill, thence crossing the Malabar Hill Road, crossing Nacoodá's Oart, and opening on the sea beach of Back-Bay, and in the occupation of various individuals, was required for a public purpose, that is to say, for the Bombay, Baroda, and Central India Railway, and was to be taken at the public expense. The cotton mill there mentioned is the plaintiffs' mill. In June 1863, according to the evidence of Pándurang Sukiáji, a surveyor to the Railway Company, the intended line of railway was set out and marked by cutting a narrow trench and placing pegs. A trial line was made in 1862, and marked by paint and pegs; and these were left when the line was set out. The two lines are correctly shown in the map No. 7, which was put in evidence. The line thus marked out was, according to the evidence of Govind Gangádhár, the head surveyor to the Collector of Bombay, surveyed by the Collector's Department, and a plan (No. 9) of it made with a schedule, which was to be seen at the Collector's office by any person who wished to do so. On the 4th of November 1863, the following notification, signed by the Collector, was received by Motirám Bhagábhái, the Secretary of the Arkwright Cotton Mill Company, the owners of the mill:—"To Owner of the Cotton Mill. You are hereby required to call at my office on Thursday the 19th instant, to signify your acceptance or

otherwise of the compensation for your land required for the Bombay, Baroda, and Central India Railway." This was not such a notice as is required by Sec. 4 of Act VI. of 1857, and the Collector appears to have paid but little regard to the provisions of the Act; but it told the owners of the mill that their land was required for the railway, and that they might receive compensation for it. Upon the receipt of this notice, Motirám Bhagábhái went to the Collector's office, where he says he saw a large plan in which he does not think the well was included that he saw the surveyor, a Hindú (apparently Govind Gangádhár), who had a large plan, and he does not recollect whether the well was included. Notwithstanding what this witness says, I have no doubt that the well was included in the plan of the land at the Collector's office, and in the intended line of the railway which had been set out and marked. The plaintiffs might at this time have ascertained, and most probably did, by their agent Motirám, ascertain, what portion of their land was going to be taken. On the 28th of November 1863, a notice dated the 23rd, and signed by the Collector, was served upon them. It was as follows:—"Take notice that I have appointed Major A. H. Curtis as arbitrator on behalf of Government, and that, unless you concur in his appointment as single arbitrator, you are hereby required to appoint in writing your arbitrator, within fifteen days from this date, to determine the amount of compensation for land situated near and between the Camateepoorá Road and Back Bay, required for the Bombay, Baroda, and Central India Railway." On the 7th of December 1863 the following letter was addressed by Motirám Bhagábhái, as Secretary of the Arkwright Cotton Mill Company, to the Collector:—"Sir—With respect to your notice dated 23rd ultimo, I am desired by the Directors of the Arkwright Cotton Mill to inform you that they have appointed Sorabjee Pestonjee, Esquire, arbitrator on their behalf to determine the amount of compensation for their land required by the Bombay, Baroda, and Central India Railway Company." Now, what was the effect of the notice of the 23rd of November and this letter? When the amount of the compensation had been settled by the arbitra-

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tion, they would constitute a contract, which could be enforced by this court, at the instance of either the Government or the plaintiffs, the land required being capable of being ascertained by a reference to the Collector's plan : *Mason v. The Stokes Bay Pier and Railway Company (a)*. And it is very material to observe that the plaintiffs were entitled, not only to compensation for the land taken, but also, by Sec. 24, to compensation for any damage that might be sustained by them in respect of the adjoining land. But it is not necessary to go so far as to consider that there was a contract. When the Collector notified the appointment of an arbitrator, the plaintiffs were at liberty to desire that the whole of the manufactory should be taken, and the Collector might then have, either withdrawn his notice of the 4th of November, and appointment of an arbitrator : *The Queen v. The London and South-Western Railway Company (b)* ; or assented to take the whole and appointed the arbitrator accordingly. If the notice by the Collector of the 4th of November 1863 had been in accordance with Sec. 4 of Act VI. of 1857, the plaintiffs would have been obliged to give him notice that they required the whole of the mill to be taken, within a reasonable time and before he proceeded to put in motion the compulsory provisions of the Act : *Gardner v. The Charing Cross Railway Company (c)*. Possibly, as the notice was irregular, the Collector might, if they had remained quiescent, have been unable to take the land ; but, by appointing the arbitrator to determine the amount of compensation for it, I think they waived any irregularity in the previous proceedings, and made their election, which, unless they could show it was caused by any false representation by the agents of the Government, they were not at liberty to withdraw from. I look upon the case as one, not simply of laches in making a claim under Sec. 32 to have the whole of the manufactory taken, but of the plaintiffs having done an act inconsistent with such a claim. Although no proceedings were taken in the arbitration before the 11th of November 1864, the basis of it was unaltered, and could

(a) 32 L. J. Ch. 110. (b) 12 Q. B. 775. (c) 31 L. J. Ch. 181.

not be altered without the consent of the Collector. I think Mr. Showell's letters of the 17th of November and the 5th of December do not show that such consent was given, but only that the parties were endeavouring to come to an amicable arrangement.

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The written statement did not set up as a ground of defence the laches upon which the decision of the court below was founded; but the written statement is, by the express language of the Code of Civil Procedure, to be confined as much as possible to a simple narrative of facts which the party believes to be material to the case, and which he believes he will be able to prove; and we cannot apply to it the rules applicable to Equity pleadings. The question was raised by the second issue; and if, upon the facts proved, it appeared that the plaintiffs were not entitled to relief, the Judge was right in refusing it; but I think the first defendant ought not to have the costs, either of the original suit or of this appeal; and that the arbitrators should pay their own costs of appearing on this appeal. The order of the court below must be amended, by ordering the first defendant to pay his own costs.

WESTROPP, J.:—On the first question whether the portion of the premises taken falls within Sec. 32 of Act VI. of 1857, there cannot, I think, be any doubt that they do form a part of the factory. The evidence, in my opinion, completely brings the case within the authorities quoted on behalf of the appellants on that point.

On the second question, whether, under the circumstances of this case, the laches of the appellants has been such as to deprive them of the benefit of Sec. 32 of the Act, I have had considerable doubts.

If there have been laches on their part, there unquestionably have also been irregularity and laches on that of the Collector's Department in 1863 and 1864.

Sec. 4 of the Act requires the Collector to affix a notice upon a conspicuous part of the land, and to make proclamation that the land is about to be taken by Government for a public purpose. He does not appear to have done either

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the one or the other. The section further requires the Collector to give notice to the same effect to the occupier, and to all persons known or believed to be interested, who reside or have agents within the district; and that such notice shall contain a citation calling on all persons interested in the land to appear, personally or by agent, at a time and place therein mentioned, and to state the nature of their interests in the land, and the amount and particulars of their claim to compensation for the same. The Collector has neglected to serve any such notice. The notice of the 4th of November 1863, signed by Mr. Scott, the Collector, does not comply with any one of the requirements of the 4th section. It calls upon the mill-owners to state whether they will accept the compensation for their land, but there is nothing whatever to show that any sum for compensation was then, or has ever since been, fixed or named by or on behalf of the Collector. A more irregular or meagre document I never recollect to have seen produced from a public office. One of the principal objects of the notice required by the 4th section to be served upon the landowner is to elicit from him a clear statement of the nature of the claim which he intends to set up, so that the points at issue between him and the Government may be placed beyond doubt. Nothing of the kind was ascertained by the Collector. However, Motirám Bhagábhái, the Secretary of the appellants' company, notwithstanding the irregularity of the notice, went to the Collector's office, and there saw a plan of the intended course of the line. That plan I believe to have been the exhibit No. 9, prepared in the Collector's office from the Railway Company's plan (Exhibit No. 7). Both of those plans show that the line was intended to run directly through the place where the appellants' well was situated. An alternative line was laid down on the plan No. 7, but it ran on the other side of the factory, and did not touch any of the premises belonging to it. Motirám says that, so far as he recollects, the plan which he saw did not include the well; but he says this in a somewhat equivocal manner, and as Govind Gangádhár, of the Collector's office, says that there were not any other plans except No. 7 and No. 9 in that office, Motirám

is either mistaken or insincere in his testimony on that point. Evidence has also been given on behalf of the Secretary of State, that the line had been marked out by surveyors, or as they style it, lock-spitted, in June 1863—a long time before the claim of the appellants that the whole factory should be taken was put forward by them. Motirám also said that the course of the line had been changed, and that the marks did not include the well. That evidence has not, I believe, been contradicted by any other witness, but, having regard to the want of accuracy in what he has said about the plan, it is difficult to give much weight to what he says with regard to the moving of the pegs.

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The Collector, Mr. Scott, on the 23rd of November 1863, wrote a letter to the appellants appointing Major Curtis arbitrator on behalf of Government to determine the amount of compensation for the appellants' land required by the Railway Company, and on the 7th of December 1863 Motirám replied by letter, on behalf of the appellants, appointing Sorábji Pestanji Framji arbitrator for the appellants, to determine the amount of compensation for their land required by the Railway Company. That letter does certainly, in its terms, justify the view taken of it by my Lord Chief Justice and my brother Sargent. I am not prepared to dissent from them, but I am not free from doubts on the subject. Motirám is not, apparently, an advanced English scholar. His style of writing indicates this, and his letter, in speaking of compensation merely echoes a passage in the letter of the Collector to which he was replying. I doubt whether he, by his reply, intended to limit the claim of the company in any respect, as he does by the reference in it to compensation for the land required. Moreover, the letter of Mr. Showell (replying to the letter of the 11th of November 1864, in which the appellants claimed to have the whole factory taken under Sec. 32 of the Act) does not affect to treat them as precluded by the correspondence with respect to the appointment of arbitrators from raising that claim, nor did Mr. Showell then say that the claim was too late. The appellants' request, made

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about that time, to be furnished with a plan showing what part of their premises was to be taken, and Mr. Showell's compliance with it, also tend to show that the appellants were not previously well informed as to the course which the line was to take. Of the same complexion is the fact that in March and April 1864 the appellants constructed two reservoirs in connection, and to be used together, with the well for the purpose of working the steam engine. That fact is scarcely to be reconciled with a complete knowledge on their part that the well was to be destroyed by the line of railway, or that they had, by the letter of Motirám agreeing to the appointment of arbitrators, completely bound themselves to give up the well to the Railway Company, and to be satisfied with compensation for it. Again, there is no evidence whatever to show that the appellants, by any plan or otherwise, were informed that the line, as constructed through their premises, would be a cutting eleven feet below the level of their compound. No such information appeared either upon Exhibit No. 7 or Exhibit No. 9, the two plans which lay in the Collector's office. I find it difficult to hold that the absence of such information is excusable. A cutting of that depth through the appellants' land and the adjoining land could scarcely fail to affect to a considerable extent the supply of water to any future well which might be constructed on the premises of the factory. Such a deep cutting would act as a drain to the adjacent land to the extent of eleven feet in depth. Under Sec. 16 of the Act, the Collector had full power to compel the arbitrators to proceed with the arbitration; but so far from his doing so, although arbitrators were, as has been stated, appointed on both sides early in December 1863, yet not a single step was taken in the arbitration until the 19th of December 1864, and no sufficient explanation of this delay of more than a year has been given on the part of the respondent. The Government arbitrator first appointed, Major Curtis, died in April or May 1864, and another arbitrator in lieu of him was appointed on the 1st of July 1864, and on the 17th of November 1864 Mr. Harrison was substituted for him. Sorábji Pestanji Frámji resigned, and Nasarvánji Mánikji Petit was appointed in lieu

of him by the appellants on the 16th of January 1865, and Mr. Keir was appointed umpire on the 7th of July 1864. But these changes do not sufficiently account for the delay. If the Collector had exercised his authority, and compelled the arbitrators to proceed, an award might have been made long before the first of these changes occurred. The delay in compelling the arbitrators to proceed, almost indicates doubt on the part of Government as to the course which the line should take. Further, not one iota of evidence has been offered on behalf of the respondent to show that the line was in November 1864 so far advanced towards the premises of the appellants as to render it impossible, or even difficult, for the engineers to make such a deviation as would enable them to carry the line clear of the well. I mention November 1864 because it was then that the appellants first made their claim to have the whole factory taken; and it would even then, so far as the evidence goes, have been in the power of Government to have avoided these premises altogether. At least, there is not any evidence to the contrary. These circumstances lead me strongly to doubt whether we ought to hold that on the 11th of November 1864 the claim of the appellants to have the whole factory taken was too late. However, it is impossible to deny that their delay was very great. In June 1863 they knew that it was in contemplation that the line should pass through some part of their premises. The visit of Motirám to the Collector's office I have already commented upon. The appellants seem, at all events, to have been very apathetic in their proceedings, and to have made very slender, if any, inquiry beyond that made by Motirám, who I think, did know that the taking of the well was in contemplation. It is, I think, the policy of the Act that early information should be given by any house or factory owner intending to proceed under Sec. 32, and to compel Government to take the house or factory off his hands. The appellants have not done so.

Their reply, through Motirám, on the 7th of December 1863, assenting to the appointment of arbitrators, is open to the view taken of it now by my Lord Chief Justice, and by

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Sir Charles Sargent in the Division Court. That is the natural construction of that letter ; and, on the whole, although with much doubt, I must say that I am not prepared to dissent from the decision which the Chief Justice proposes to make.

This decree will not prevent the appellants from recovering full compensation for any damage sustained by the factory consequent upon the taking of the well and adjacent land. That right to compensation is secured to them by the 24th section of the Act. For the full meaning and scope of the word "land" used in that section, the interpretation clause (Sec. 39) should be consulted.

As to the fact of the particular act of laches, now relied on, not being put forward in the written statement, and, therefore, coming on the plaintiffs by surprise, I should have been willing, if the plaintiffs had alleged that they were taken by surprise by the finding of the court, and could bring forward any fresh evidence on that part of the case, to allow them an opportunity of now bringing forward such additional evidence. Mr. White, however, was not instructed by his clients that they were in a position to adduce such evidence ; and no advantage would, therefore, accrue from making an order sanctioning the production by the plaintiffs of additional evidence. I quite agree in the order which the Chief Justice proposes to make with regard to costs.

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