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June 16.

Special Appeal No. 81 of 1869.

Kashidas Govindbhai. ... ... *Appellant.*

The B. B. & C. I. Railway Company. ... *Respondents.*

Limitation—Crops—Moveable property—Act XIV, of 1357, Sec. I., cl. 2.

A suit for damages for injury to crops is a suit for damages for injury to personal property within the meaning of cl. 2 of sec. I of the Limitation Act.

This was a Special Appeal from the decision of R. W. Hunter, Acting Judge of the District of the Konkan at Thana, in Appeal Suit No. 38 of 1868.

Kashidas Govindbhai sued the defendants to recover damages sustained by him in consequence of the defendants having omitted to construct culverts for the removal of surplus water from the plaintiff's field, whereby his crops were injured.

The defendants contended *inter alia* that the suit was barred by cl. 2 of sec. I of Act XIV, of 1859, the claim being one for injury to personal property.

The Munsif of Bassein, overruling the objection, awarded the claim.

In appeal the Judge reversed the Munsif's decree. The following is an extract from his finding on the question of limitation :—

"The decision in Special Appeal No. 193 of 1866, *Sri Viswambhara v. Sri Saradhi* (*a*) seems to be very nearly a case in point. That was a suit to recover damages for loss of produce caused by the interference of the defendant with the plaintiff's right to the flow of water from a canal. The lower Courts treated the claim as one for damages for injury to personal property, and applied sec. 1, cl. *k* of the Limitation Act (XIV. of 1859) to it. The Madras High Court held that there was no injury to personal property, that

(*a*) 3 Mad. H. C. Rep. 111.

the injury was to an easement or an incorporeal right attaching to real property. The inference I draw from that case is, that if the plaintiff therein had failed to prove the incorporeal right asserted by him, his claim must have been thrown out as being one of the nature ascribed to it by the lower Courts.

"To rebut this inference my attention has been directed to the case of *Raj Chunder Ghose* v. *Joy Kishen Mookerjee* (*b*), where the plaintiff sued for compensation for injury to land resulting in loss of crops which that land might have produced but for the illegal act of the defendant in cutting a watercourse, whereby the water flowed upon the plaintiff's land and prevented it from being sown. But that is obviously not a case in point, as the damage was caused to the land and not to the crop. * * *

"I therefore hold that the injury, if any, done in this instance was not an injury to any incorporeal right possessed by the plaintiff in respect of a watercourse, nor an injury to his land (for the plaint does not set forth that the land itself was in any way injured); but I hold it to be simply an injury to rice crops or personal property, and, therefore, the claim is barred by Sec. I, Cl. 2 of Act XIV. of 1859."

The Special Appeal was argued this day before COUCH, C. J., and LLOYD, J,

Dhirajlal Mathuradas (with him *Shivshankar Balkrishna* for the appellant. The decision of the Madras High Court in *Sri Viswambhara* v. *Sri Saradhi* (*c*) does not apply to this case, but the decision that is applicable here is the one given by the Calcutta High Court in *Rai Chunder Ghose* v. *Joy Kishen Mookerjee* (*d*). An injury to crops is not an injury to personal property, and therefore the limitation of six years applies to the case on the analogy of the ruling in *Muhammad Sileman* v. *Satu Valad Harji* (*e*). where it was held that crops which have not been severed

(b) 4 Calc. W. Rep. Civ. R. 76.

(c) 3 Mad. H. C. Rep. 111 (d) 4 Calc. W. Rep. Civ. R. 76.

(e) 5 Bom. H. C. Rep. A. C. J. 90.

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from the ground are not moveable property within the meaning of the term as used in Sec. 19 of the Mofussil Small Cause Court Act (XI. of 1865).

Green (with him *winter*) for the respondents. The plaintiff had no easement over the land taken for the Railway, and the suit was clearly barred.

COUCH, C. J. :—The Judge has come to a right decision. Cl. 2 of Sec. I of the Limitation Act prescribes the period of one year to "suits for damages for injury to personal property," and crops have always been considered personal property. There may be cases where for the purposes of certain Acts they are not so considered ; but in the Limitation Act the words 'personal property' were used in their ordinary sense, which includes crops. We must therefore confirm the decision of the Judge.

LLOYD, J., concurred,

Decree confirmed.

Special Appeals Nos. 74 and 84 of 1869.

June 16.

Tapidas Govindbhai. ... ... *Appellant.*
The B. B. & C. I. Railway Company... ... *Respondents.*

The B. B. & C. I. Railway Company... ... *Appellants.*
Tapidas Govindbhai... ... ... *Respondent.*

Land taken up for Railway Company—Damages caused to adjoining lands—Separate suit when maintainable—Compensation—Act VI. of 1857.

When land is taken up for a Railway Company under Act VI of 1857 the owner should claim for all damages likely to be caused to his adjoining lands by the works of the Company; and no suit will lie for damages so caused if they could reasonably have been foreseen at the time of the fixing of compensation.

Whether such damages could reasonably have been foreseen or not is a question of fact to be determined by the lower courts.

These were cross Special Appeals from the decision of R. W. Hunter, Acting Judge of the Konkan District at Thana, in Appeal Suit No. 173 of 1868, reversing the decree of the Munsif of Bassein.