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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 maintaiaable—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.

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Tapidas Govindbhai v. B. B. & C. I. Railway Co. and B. B. & C. I. Railway Co. v. Tapidas Govindbhai.

Tapidas Govindbhai sued the Bombay, Baroda & Central India Railway Company to recover damages caused, from the year 1863 to the year 1866, to the fields and crops of the plaintiff by reason of the defendants having failed to provide a proper passage for the waters of a certain creek.

The defendants' railway adjoined the land of the plaintiff on the eastern side, and, when the rains came down, led to a vast accumulation of the creed waters which were thus thrown back upon the lands of the plaintiff and caused the injury complained of.

The defendants pleaded, *inter alia*, the law of limitation as to the damages that accrued for the first three years; that culverts and openings had been provided where necessary; that the line had been constructed under the sanction of Government; that the suit was not maintainable against the Company, as it had not been provided in the Act Incorporating the Company that they should be responsible for such damages.

The Munsif of Bassein rejected the claim, but in appeal the Acting District Judge reversed his decree, and awarded to the plaintiff Rs. 297-8 for injury to the crops of 1866, together with Rs. 0-4-6 for expenses incurred by the plaintiff, on the grounds stated at length in appeal No. 38 of 1868 (a). The District Judge rejected the claim of the plaintiff for the injury caused to his crops for the preceding years. The following is an extract from the finding of the Judge in Appeal Suit No. 38 of 1868:—

"Although I have held that the plaintiff cannot claim a servitude from the Railway Company's land, nor demand that an outlet for this water should be made through their line, still I think he can claim for damages for the injury which have been shown to have been caused to his crops through the negligence of the Railway Company in omitting to provide sufficient waterway at this spot in the construction of their line. It has been urged that according to Sec. 24 of

(a) S. A. No. 81 of 1869; See *ante* p. 114.

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Act VI. of 1857 the compensation originally awarded to the plaintiff for the land that was once his and is now the Company's must 'include any damage which may be sustained by any of the persons interested therein in respect of any adjoining land held therewith,' and that this fact must constitute a bar to the claim; but in the case of *Lawrence* v. *The Great Northern Railway Company* (b), whereby the construction of the railway, without sufficient openings, the flood waters could not spread themselves as formerly, but were penned up and flowed over a bank upon the plaintiff's lands, it was held that, though there was no express clause in their Act obliging the Railway Company to make openings for flood waters in that district, yet that an action would lie against the Company for the injury to the plaintiffs' lands, and that, though the amount of compensation awarded covered all damage known or contingent by reason of the construction of the Railway on the lands purchased, and all other damage arising from the construction of the Railway at other places, which was *apparent and capable of being ascertained and estimated when the compensation was awarded*, yet that *it did not include any contingent and possible damage which might arise afterwards* by the works of the Company at other places *which could not have been foreseen* by the arbitrator. Now, in the case before us, although the flood waters of the two years in question were unusually large, the evidence shows that these floods have occurred more or less in each year, and caused damage to the crops sown in this land in each year, until the Railway Company recently made an outlet through that part of their line, ostensibly to cary off the water that stagnated within their own limits, but just as probably to obviate the damage caused by the flood to the crops of the adjoining land for want of an outlet; at any rate an outlet exists now which did not exist when the damage in question occurred, and as the damage could have been obviated, as is proved by the plaintiff's witnesses, by the construction of an outlet in the first instance, I think I must hold that this was a contingent

(b) 20 L. J. Q. B. 239.

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unforseen damage for which no provision was securred by the Government from the Railway Company, and which therefore was not covered by the amount of compensation awarded to the plaintiff, and that the Company have, by a negligent exercise of their statutory powers, and by a disregard of the maxim *sic utere tuo &c.* rendered themselves liable for the damage sustained by the plaintiff as a result of their negligence—(Addison on Wrongs, Chapter XVI). The plaintiff, therefore, has a right of action."

The Special Appeal were heard this day defore Couch, C.J., and Lloyd, J.

Green (with him *Winter*) for the appellant, in the second appeal (and with him *Shantaram Narayan*) for the respondents in the first: These damages should have been claimed and determined at the time when the amount of compensation of the plaintiff's land taken for the Company was fixed under Sec. 24 of Act VI. of 1857, since floods are of annual occurrence, and the damages likely to be caused by them could have been foreseen and estimated. That is the principle deducible from the cases decided in England under Sec. 63 of the Lands Clauses Consolidation Act (8 and 9 Vict., c. 18), and that Section does not materially differ from Secs. 24 and 25 of Act VI. of 1857.

Nanalal Haridas, for the appellant in the first appeal, and respondent in the second: Whether the damages were foreseen or not is a question of fact, and the Judge has decided that they were unforeseen.

COUCH, C. J.:—In *Chamberlain* v. *The West-End of London and Crystal Palace Railway Company* (c), Lord Chief Justice Erle observed: "It is well-known law that under these statutes a party must make one claim for damages, once and for all, for all damages that can reasonably be foreseen, and have one inquiry and one compensation." The question therefore which the Judge ought to have determined in this case was, whether at the time the compensation was awarded for the land taken the damages to

(c) 32 L. J. Q. B. 173, 178.

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the adjoining land could reasonably have been foreseen. If they could have been, the only mode in which the plaintiff could have obtained compensation would have been by the award under Sec. 24 of Act VI. of 1857, and the decree therefore ought to have been for the defendant; but if the damages could not reasonably have been foreseen, the decree ought to have been for the plaintiff, since the compensation awarded for the land would in that case be no bar to the present suit. Now it is really a question of fact whether the damages could have been foreseen or not. The language of the Judge below, however, does not amount to a finding on the point; since he says—"I think I must hold that this was a contingent unforeseen damage for which no provision was secured by the Government from the Railway Company" He does not say that the damages could not have been foreseen. The finding is not to my mind sufficient. We should be justified in deciding the case if the evidence was of such a nature as that it could not have supported the finding at all; but I am not prepared to say that such is the case here.

We must, therefore, confirm that portion of the decree appealed against in suit No. 74 of 1869 with costs, and reverse that portion of the decree appealed against in suit No. 84 of 1869, and remand the case for retrial with reference to the above observations.

Decree reversed and case remanded.