

[THREE JUDGMENTS in the RADHA PROSHAD APPEALS,
Nos. 52, 53, and 51 of 1874.]

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharajah Radha Proshad Singh v. Baboo Umbica Persad Singh and another, heirs of Baboo Santbilash Singh, deceased, (No. 52 of 1874,) from the High Court of Judicature at Fort William in Bengal; delivered March 22nd, 1879.

Present:

SIR JAMES W. COLVILLE.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is one of nine suits brought by Maharajah Radha Proshad Singh against different Defendants, for the purpose of recovering certain land of an alluvial nature. Inasmuch as two of these suits have already been before this Board, and this Board in its judgment has gone somewhat fully into the general nature of the case which is common to all the suits, and has adjudicated thereon, it is not necessary to give judgment in the present case at any length. It seems enough to say that the evidence was common to all the suits, and according to that evidence it appears that the River Ganges now runs in what may be called its ancient channel, which at the date of the perpetual settlement formed the southern boundary of Mouzah Nowrunga, belonging to the Plaintiff; that at a subsequent period it deviated from its course, and has run in different channels further and further to the south until it reached a southernmost channel about six miles from its present channel: and that the consequence of these deviations of the Ganges has been that a large quantity of land

has been diluviated, and has from time to time reappeared. The case of the Maharajah has, in substance been this, that he was entitled to the land which he claimed in the different suits by accretion and by adverse possession. The case of the Defendants has been in substance that they were entitled to the lands as re-formations upon sites originally belonging to them, and which they were able to identify. The Subordinate Judge in India determined the suits, or most of them, in favour of the Maharajah, upon the ground that he had made out his title to the land claimed as far south as the channel of the River Ganges in the year 1844. That was very far south, although short of the southernmost limit of the land in dispute. The High Court reversed these decisions of the Subordinate Judge, and dismissed all the Plaintiff's suits, on the ground that the Defendants were entitled to the lands in dispute, because they were re-formations upon original sites belonging to them under the authority of the well-known case of *Lopes v. Mudden Mohun Thakoor*. Two of these cases came before their Lordships upon appeal, and their Lordships, although maintaining the law as laid down in the case of *Lopes v. Mudden Mohun Thakoor*, which is undoubtedly correct, held that the right of the original proprietor to reclaim land which has been diluviated, and has reappeared, is subject to the claim of another landed proprietor, who, after the first reappearance of that land, has obtained adverse possession of it, and has retained such possession for more than the period prescribed by limitation, namely, 12 years. Applying that principle, their Lordships came to the conclusion that the Maharajah had in fact held adverse possession for the requisite period of so much of the land in dispute as lay north of the northern bank of the Ganges as it ran in the year 1839.

They found that by a Thakbust map and proceedings at that time, the then channel of the Ganges was laid down, and that all above the northern bank of that channel was in fact measured into the Mouzah Nowruna of the Maharajah by the Government officers, and that from that time he held possession adverse to the Defendants. The river, after 1839, went further south until it reached the channel of 1844, which was the limit assigned by the Subordinate Judge to the land which the Plaintiff was entitled to recover; and it subsequently went still further south to its most southern point. In the year 1857, by a sudden rebound, it again took a channel very much to the north above the greater part of the lands in dispute in the actions, and finally, three or four years afterwards, returned to its original channel. Their Lordships, after considering the whole evidence which, as before observed, was taken in all the cases, came to the conclusion that the Maharajah had had adverse possession of all that was above the northern bank of the river in 1839, from that time to 1857, and had therefore established a title to that portion of the land in dispute, but to no more. It was upon that principle that the two appeals were then decided.

In the present case the suit is brought to recover a piece of land called Husso Sonki, which, it would appear, is situated partly above and partly below this line of 1839. The Appellant, although he brought his suit for the whole, now claims only so much of it as was above the northern bank of the river in 1839, and admits that he cannot extend his claim to any part that is below that line. Mr. Graham, for the Defendant, has endeavoured to distinguish this case on various grounds, principally of fact, from the other cases which were dealt with by their Lordships; but in their Lordships' opinion he has

failed to do so. It appears to them, therefore, that the principle laid down in the former case is applicable to the present, and that the Maharajah is entitled to recover so much of the land now claimed and in dispute as lies above the northern bank of the channel of 1839.

In the judgment which their Lordships gave upon the last occasion they assumed a certain map of the Ameen, which was numbered 7. 2., and was made in the year 1872 in a great measure from the Thakbust proceedings of 1839 which have been referred to, to be correct. But their attention has now been called—it was not called before—to a statement of the Ameen in which he admits a certain incorrectness in his measurements, especially with reference to the situation of the river in 1839. Their Lordships, therefore, have thought it better and safer in this case to take the Thakbust map of 1839. That being so, their Lordships have come to the conclusion that the decree of the High Court should be reversed, and that it should be declared that the Plaintiff is entitled to recover, and ordered that he do recover so much, if any, of the land claimed by him in this suit as was demarcated by the Thakbust map and proceedings of 1839, as then lying to the north of the northern bank of the River Ganges; the amount, if any, of such land to be ascertained by proceedings in execution, together with the mesne profits of such land (if any). The costs of the cause in India to follow the event according to the rules of the Courts in India. Each party must bear his costs of this Appeal.

Their Lordships will humbly advise Her Majesty to the above effect.

Maharajah Radha Proshad Singh v. Shaik Himmat Ali and others.

This case is No. 53 of 1874, and relates to another mouzah called Kazeo Chuck, which is

also situated on both sides of the line which has been referred to, although apparently the greater part of it would lie on the north of that line. Their Lordships are of opinion that a judgment similar to that just given with respect to Husso Sonki should be given in this case, and will humbly advise Her Majesty accordingly.

Maharajah Radha Proshad Singh v. Meer Muddud Ali and others.

This case is No. 51 of 1874. It relates to a portion of land called Rasoolpore, which manifestly lies at a considerable distance to the north of the line which has been laid down. With respect to this it appears to their Lordships there can be no question. They will therefore in this case humbly advise Her Majesty that the decision of the High Court be reversed, and that of the Subordinate Judge be affirmed, and that the Plaintiff have the costs of this Appeal and all the costs in India. The costs in India include of course the costs incurred in the High Court.

