Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Rani Monmohini Debi and another v. *Robert Watson and Company, Limited, Rani Sarnamoyi Debi* v. *Robert Watson and Company, Limited, and Rani Hemanta Kumari Debi* v. *Robert Watson and Company, Limited* (*Privy Council Appeals Nos.* 78, 79, *and* 80 *of* 1897; *Bengal Nos.* 14, 15, *and* 16 *of* 1896), *from the High Court of Judicature at Fort William in Bengal; delivered the* 8*th July* 1899.

Present at the Hearing:

LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

These are consolidated appeals in suits brought by the several Appellants and others against the Respondents to recover possession of lands in the district of Moorshedabad known as mouzah Diar Shibnuggur. The mouzah consisted of six towzis or revenue paying estates in shares numbered 405, 268, 269, 270, 271, and 1580, the last number not being included in these suits. The lands in dispute were a large number of ascertained chucks or demarcated plots of land belonging to these several estates and shown on the thak map made on a preliminary survey of the mouzah by the Government for revenue purposes, those which belonged to the estate No. 270 being coloured red, to the estate No. 271 blue, and to Nos. 405 268 and 269 uncoloured

7606. 125.—12/99. [39] A

and the chucks being held by the owners of the estate in fractional shares as between themselves. In 1853 the river Pudma which adjoined the mouzah began to diluviate its lands and at some time between that date and 1869 the whole of the lands in dispute in these suits had become diluviated. In 1869 a portion of them had been reformed and a survey was made of it for the purpose of assessing revenue. Shortly afterwards this portion was again diluviated but by 1880 it had been again reformed and was surveyed on behalf of the revenue authorities. In May 1883 the owners of 405 and 270 brought a suit against the Government and the owners of the other estates to recover joint possession of the reformed land on the ground that it was a portion of their estates and had been wrongfully taken possession of by the Government. The owners of 268 and 271 were at first made Defendants but were afterwards made Plaintiffs instead of Defendants. In 1886 the Plaintiffs having come to terms with the Government there was a judgment by consent in their favour as to a portion of the land claimed and they were allowed to withdraw the suit as to the remainder with liberty to bring a fresh suit.

In 1891 a large part of the reformed land which then had an area about two miles in length and one in breadth had become valuable and 600 bighas of it had been sown by the Respondents with indigo and wheat and scattered plots were being cultivated by ryots from the other lands of the mouzah. The servants of the Respondents having in October 1891 whilst they were reaping indigo been attacked by persons at the instigation of the Appellants and driven off the newly formed lands the Respondents brought a suit under the Specific Relief Act to recover possession and obtained a decree under which they were in April 1892 put in possession by the

Court of the whole of the newly formed lands. Thereupon the present suits were brought and were tried together.

In two of the suits 380 and 381 of 1892 the issue framed was whether the lands in suit fell within the Plaintiffs' alleged chucks No. 60 &c. and No. 58 &c. In the third suit 437 of 1892 the issue was in a different form,—Whether the lands in suit fell within the residue of No. 34 of the thak and survey of 1853; and if so were the Plaintiffs proprietors of the same. In the former two suits there was a formal admission by the Defendants' pleader that the chucks as numbered belonged to the Plaintiffs. In the latter suit it does not appear to have been disputed that the residue of No. 34 belonged to the Plaintiffs if the issue raised that question. The real question in all the three suits is whether the sites of the reformed lands claimed are identical with the sites of the lands which belonged to the Appellants before the diluviation. According to the practice of the Indian Courts in such cases from a very early period a commission was issued under the provisions of the Civil Procedure Code to the Civil Court Amin to make a local investigation and to report thereon to the Court. He began his proceedings on the 21st December 1892 and on the 27th May 1893 he made his report with a map annexed to it. The investigation had occupied him 27 days. The report with the evidence which he took is in the record and his investigation appears to have been very carefully made in the presence of the representatives of the parties. In the report he says that "the land-marks given in "the thak map (preliminary survey) correspond "with the land-marks given in the survey (the "final) map and those existing on the boundaries "in the locality; but when the thak is compared "throughout from any one of the aforesaid

" marks or points, the thak lines do not agree " in length with the survey lines and the ridges " in the locality. Evidence has been taken with " regard to the boundaries pointed out on behalf " of the Plaintiff." After referring to this evidence the report says " such discrepancies are " generally found in the boundary lines of the " survey map, therefore this should not be taken " into account." After noticing some discrepancies between the thak boundaries and the state of the locality, the Amin says " such faults occur " in the thak in several cases and I have found " such faults in course of several investigations." In conclusion he says "in places where the " thak and survey map do not agree with each " other it is proper to act according to the " survey, and especially as in this case the " survey map corresponds with the locality, I " determined the boundary line according to the " survey and having plotted the thak chucks " according to it I have determined the disputed " land."

The Subordinate Judge who had before him the thak field book which is in the record of the Appeal in the suit 437 of 1892 as well as the thak map agreed with the Amin that when the thak and survey maps disagreed the survey map ought to be adopted for fixing the boundary line, and after discussing the evidence in the case decided in favour of the Plaintiffs in the three suits for part of the claim in each of them and marked on the Amin's map by lines described in the judgment the lands which he found to belong to them respectively. Finding other issues also for them he made a decree in each of the suits in favour of the Plaintiffs, the Amin's maps being ordered to form part of it. The present Respondents appealed to the High Court, which Court (consisting of the Chief Justice and another Judge) reversed the decrees of the

Subordinate Judge and dismissed the Plaintiffs' suits with costs. Taking the suit 380 of 1892, and saying that if that suit fails the other two must also fail the learned Judges in their judgment say they think the Plaintiffs had failed to make out a *primâ facie* case; that in order to do so the Plaintiffs must prove that it was then possible to find and demarcate upon the reformed land on the bank of the Pudma plots and chucks of land which occupy precisely the same position on the surface of the earth as the plots or chucks which are represented by the colour red on the thak map of 1853; that "this must depend upon whether "the thak map is an accurate representation of the "area and boundaries of the mouzah as it existed "in 1853 and whether the materials then existed "to enable a skilled Amin to lay down upon that "map an accurate map of the area and boundaries "of the mouzah in its present condition;" that there were inaccuracies in the thak map and the survey which the Amin and the Subordinate Judge had rectified; that if the thak map were accurate it would no doubt be possible to find from it the red enclosures upon the land "but "as soon as it appears as it does here from the "Plaintiff's own evidence that the thak map is "inaccurate it must follow that any attempt to "place the fields shown upon it upon the present "surface of the land can be nothing more than "a guess and thus though it is very probable "that the Amin has been nearly successful in "ascertaining where the old chucks were, "still it is nothing more than a probability "which is altogether insufficient to entitle the "Plaintiffs to recover khas possession of land "which may belong to the Defendants or to "the owners of either of the other estates." Their Lordships are unable to agree in this reasoning. It requires an amount of accuracy

in a thak map which cannot reasonably be expected in it. If the learned Judges are right in their view of the accuracy which is necessary there would be very few cases in which the owner of diluviated land would be able to recover possession of it when it was reformed. In most cases the persons who were alert in going upon the land and making any kind of cultivation of it would acquire a title to it. Their Lordships are of opinion that there was sufficient evidence on the part of the Plaintiffs to entitle them to recover possession of the land and they will humbly advise Her Majesty to reverse the decrees of the High Court to order the Appeals to it to be dismissed with costs, thereby affirming the decrees of the Subordinate Judge. The Respondents will pay the costs of the present appeals, but not including the costs of the petition to have the Appeals consolidated or of the petition of the Appellants heard on the 25th day of April 1899 to have the hearing of the Appeals postponed. The Respondents' costs of opposing both these petitions are to be paid by the Appellants.