Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharaja Jagadindra Nath Roy Bahadoor v. The Secretary of State for India in Council, from the High Court of Judicature at Fort William in Bengal; delivered the 13th December 1902.

Present at the Hearing:
LORD MACNAGHTEN.
LORD LINDLEY.
SIR ANDREW SCOBLE.
SIR JOHN BONSER.

[*Delivered by Lord Lindley.*]

The question which their Lordships have to decide in this Appeal is whether certain pieces of land, which were in the year 1881 assessed with Government revenue as fresh additions and surplus accretions to the Appellant's talook (estate) under the provisions of Act IX. of 1847, were or were not lands which were included in his permanently settled estate. This estate included four mouzahs,—Tarapore, Jadabdi, Garamara, and Taragunge.

The Brahmaputra which is a public navigable river ran through these mouzahs. The bed of the river presumably was and is Government property. The bed is not the property of the Appellant and was not the property of his predecessors in title in 1793. Where the river then flowed is not shown by the evidence in these proceedings; but there is evidence to show that in 1838 it was in the same situation as in 1851 and 1853. After that time and before 1881 the river had shifted

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its course; and its former bed had become dry land and it has so remained. This dry land is the land in dispute. Locally it is situate in the Appellant's mouzahs.

In the year 1881, the Deara Survey authorities, on behalf of the Government, purporting to act in accordance with the provisions of Act IX. of 1847, surveyed and marked out the pieces of land in question as surplus accretions and additions to the Appellant's said four villages, and assessed the same accordingly. The Appellant was then a minor under the guardianship of his mother, who disputed the assessment on the ground that the aforesaid mouzahs were included in the Permanent Settlement of 1793 and that the lands in question were part of them. The assessment authorities however considered that the lands in question were new accretions to these mouzahs and as such were properly assessable under Section 6 of the Act of 1847; and they assessed them accordingly. The Appellant's mother did not contest the matter further, but accepted a settlement of these lands for 12 years which expired in 1893. In the Courts below it was contended that the Appellant was precluded by these proceedings and by lapse of time from disputing the validity of the assessment so made; but this contention did not prevail and was not renewed before this Board. It will not therefore be further alluded to.

The Appellant, having come of age, instituted the present suit on the 24th October 1892 for the purpose of having it declared that the assessment of 1881 was illegal and for a return of the assessments paid under it.

The Secretary of State filed an answer to the plaint and stated that both at the period of the Permanent Settlement and the revenue survey that followed, the Deara blocks were covered and entirely enveloped by the deep

navigable stream of the Brahmaputra, and on their appearance they were proved to be fresh additions and surplus accretions to the Plaintiff's estate.

Six issues were settled, but the only one now of any importance is the third issue which runs as follows :—" Is it true that the disputed lands " are the re-formed lands appertaining to the " permanently settled talook of the Plaintiff, or " are they fresh additions on surplus accretions " to the talook as contended on behalf of Govern- " ment ? "

A local inquiry was directed and a Commissioner (Amin) was appointed to conduct it and to report the result. The thak and survey maps of 1851–53 and of 1881 were before him, he took evidence and examined the locality and made a map and report. This map shows that the lands in question were dry in 1881 and since, but that they formed the bed of the river Brahmaputra in 1851–53 and that in those years the river flowed through the Appellant's property and that this property was included in the permanent settlement of 1793. Further the Amin ascertained and gave the acreage of this property and included the bed of the river in that acreage. He did not however find where the river was, nor how the bed of the river was dealt with, when the permanent settlement was fixed in 1793.

Upon this map and report the Court of First Instance decided the above issue in favour of the Appellant and ordered Rs. 1,218 to be refunded to him. The District Judge reversed this decision and dismissed the Appellant's suit with costs. The Appellant then appealed to the High Court; and that Court, although differing from the District Judge on some points, held that he had not committed any error in law affecting the third issue; and the Appellant's Appeal was dismissed accordingly. The Appellant then

applied to the High Court for leave to appeal to His Majesty in Council, and such leave was granted on the ground that "the question involved " appears to be one of very general importance, " viz., as to the true effect of the survey maps " having regard to Sections 5 and 6 of Act IX. " of 1847."

This Appeal has accordingly been brought and argued. The only questions of law which arise are the construction of Section 6 of Act IX. of 1847 and the legal effect of that Section when applied to the facts of the present case.

It has already been decided by this Board and it is plain from the language of the Act of 1847, that the Act has no application to lands included in the Permanent Settlement of 1793 and the assessment of which lands was then fixed for ever. No new assessments of such lands can be lawfully made. See *Secretary of State for India in Council* v. *Srimati Fahamidunnissa Begum* L.R. 17 Ind. App. 40. In that case the lands in dispute were dry in 1793, they afterwards became submerged, and then again became dry. It was held that they ought not to have been re-assessed.

In every case the question what lands were included in the Permanent Settlement is a question of fact and not of law. This question may or may not be satisfactorily proved by subsequent survey maps. The onus of proving that any particular lands were included in the Permanent Settlement of 1793, in other words the onus of proving that the Government Revenue then fixed was assessed upon any particular lands, is clearly on those who affirm that such was the case. But their Lordships are not prepared to say as a matter of law that the Appellant's Counsel were right in contending that the burden of proof was shifted on to the Respondent by the thak and survey maps of 1851–53 and that those maps ought to have been

held sufficient proof that what was part of the bed of the Brahmaputra in those years was included in the Permanent Settlement of 1793. The Brahmaputra was then as it is now a public navigable river and if the lands in question were then part of its bed as they were in 1851 and apparently also in 1838 it is difficult to suppose and it ought not to be assumed that those lands were included in the lands permanently assessed in 1793. No Court can properly act on the assumption that in 1793 a state of things existed different from what appears from any evidence before the Court. Their Lordships are therefore of opinion that the District Judge did not commit any error of law in dismissing the Appellant's suit and that the High Court were right in dismissing the Appeal from his decision.

Their Lordships were however referred by Counsel to numerous authorities on the effect of thak and survey maps and of the application of the Act IX. of 1847 to them; and having regard to the grounds on which leave to appeal was given in this case their Lordships will express their views on the principles applicable to these points so far as they arise in the present Appeal.

Maps and surveys made in India for revenue purposes are official documents prepared by competent persons and with such publicity and notice to persons interested as to be admissible and valuable evidence of the state of things at the time they are made. They are not conclusive and may be shown to be wrong; but in the absence of evidence to the contrary they may be properly judicially received in evidence as correct when made. This is in accordance with the cases reported in 22 Cal. Ind. Rep. 252; 16 ib. 186; 11 ib. 784; 18 Suth. W. R. 64 and 19 ib. 127.

Assuming lands not to be within the Permanent Settlement of 1793 then their Lordships agree

with the contention of the Appellant's Counsel that the last survey made under Section 3 of the Act IX. of 1847 is to be taken as the starting point for deciding, when the next survey is made, whether lands are within Sections 5 and 6 of that Act. But when the question arises whether lands shown on a particular thak or survey map made since 1793 were or were not included in the lands charged with the assessment permanently fixed in 1793 the inquiry is at once enlarged; and it would not be right in point of law to direct the Judge of First Instance that he ought in all cases to act on the last thak or survey map and to treat it as decisive in the absence of evidence to the contrary. In *Sarat Sundari Dabi and others* v. *Secretary of State for India in Council* 11 Cal. Ind. Rep. 784 it is not clear whether the re-formed lands were or were not assessed when the permanent settlement was fixed; but if they were, the case went too far and is not consistent with the case in L. R. 17 Ind. App. 40. Indeed it was distinctly disapproved in India in the case reported in L.R. 14 Cal. 67, *see* p. 92, and afterwards affirmed in L.R. 17 Ind. App. 40. In the case reported in 22 Cal. Ind. Rep. 252 the question was sent back for further inquiry; and in the case before their Lordships the same course might have been taken. But no error in point of law was committed in deciding on theevidence as it stood; and on that evidence the decision of the District Judge was right. It certainly cannot be assumed that the lands in question were dry land in 1793 or that the land forming the bed of a public navigable river was included in the assessment then permanently fixed.

Their Lordships will therefore humbly advise His Majesty that this Appeal should be dismissed.

The Appellant must pay the costs.