Privy Council Appeal No. 37 *of* 1925.

Patna Appeal No. 40 *of* 1923.

Maharaja Bahadur Keshava Prasad Singh - - - - *Appellant*

v.

The Secretary of State for India in Council - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 25TH FEBRUARY, 1927.

Present at the Hearing:

LORD PHILLIMORE.
LORD SINHA.
LORD BLANESBURGH.
SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is an appeal by the Maharaja of Dumraon, who was the defendant in the suit, against a decree of a Division Bench of the High Court of Judicature at Patna, dated the 1st June, 1923.

The suit was brought by the Secretary of State for India in Council to obtain a declaration of the plaintiff's title to certain lands called the Mahal of Turk Ballia, to recover possession of the said lands from the Maharaja, and for mesne profits.

The suit was tried by the learned District Judge of Shahabad, who made a decree in favour of the plaintiff dated the 19th December, 1918. The High Court, by the above-mentioned decree of 1st June, 1923, dismissed the Maharaja's appeal with costs.

The River Ganges separates the Shahabad district in Bihar from the United Provinces of Agra and Oudh. The Ballia district is to the north of the Ganges and the Shahabad district is to the south of the river.

The Mahal Turk Ballia, which consists of a single mouzah of that name, was settled with proprietors, other than the appellant, in the year 1790 as a separate estate, and in 1793 or 1795 was permanently settled and assessed to revenue at Rs. 251. It had a nominal area of 275 bighas, and at that time was situated to the north of the River Ganges.

Between 1871 and 1884 the land of this village was washed away by the Ganges, which was gradually moving northwards, until in 1884 the whole of the village had disappeared.

As the land of this estate became submerged in the river, proportionate remission of revenue was allowed, until at last the proprietors were paying a nominal sum of Rs. 2 per annum in order to preserve their right to the estate in the event of its reappearing. In 1884, however, they were informed by the authorities that this payment was no longer necessary to keep alive their rights, and the Board of Revenue in the United Provinces directed that the payment of revenue should be suspended and written off from year to year in the revenue account. This was accordingly done in the revenue accounts of the collectorate.

As the river altered its position to the northward, accretions took place on the opposite bank in the Shahabad district, and in 1909 correspondence took place between the respective collectors, from which it appeared that Turk Ballia had reformed on the south side of the river.

Accordingly, by two notices issued in the Gazettes of the respective provinces, dated the 25th and 26th May, 1910, it was formally notified that the permanently settled estate of Turk Ballia had ceased to form part of the Ballia district in the United Provinces, and that it formed part of the Shahabad district in Bengal (which at that time included Bihar) in respect of its civil, criminal and revenue jurisdiction.

It is not clear when the Mahal of Turk Ballia began to appear as dry land on the south side of the river. It would, in the natural course of things, be difficult to ascertain this with any accuracy ; the learned Judges of the High Court stated that there could be little doubt that for some years after it emerged, as the river subsided after the floods, it would be again covered during the rainy season, and that it might reasonably be inferred that for some time after its emergence it would be sandy waste unfit for cultivation.

The learned Judge who tried the suit held on the evidence that it did not become cultivable before 1909, and the learned Judges of the High Court agreed with that finding. The above-mentioned date is material to the question whether the Maharaja had acquired a title by adverse possession as against the recorded proprietors when the suit was instituted, viz., on the 8th December, 1916.

This question may be disposed of at once ; the High Court held that no title was acquired by the appellant by adverse possession up to the date when the suit was brought, thus affirming the finding of the trial Court. The learned counsel who appeared

for the appellant on this appeal stated during the argument that he accepted the two findings in this respect, and did not dispute them. Their Lordships see no reason for differing from the above-mentioned findings as to adverse possession.

The village of Turk Ballia having been placed on the rent-roll of the collector of Shahabad, as appears from paragraph 7 of the appellant's case, notices were given to the original proprietors to pay the arrears of revenue alleged to be due in respect of the said estate.

It further appears that no revenue from this estate was paid up to the end of the financial year 1910–1911; and on the 4th May, 1911, when the revenue was in arrear for one year, notification for the sale of the Mahal of Turk Ballia for arrears of revenue was issued under the provisions of Act XI of 1859. The Turk Ballia estate was put up for auction, and in the absence of bidders it was duly purchased by the collector on behalf of the Government.

The collector of Shahabad then began relaying the boundaries of Turk Ballia under the Survey Act, on the basis of the maps of the Revenue Survey and the Diara Survey.

The defendant Maharaja, who was in possession of the lands in suit, objected to the demarcation, and claimed the land as an accretion to his own estate. He refused to give up possession, with the result that this suit was instituted, as already stated, on the 8th December, 1916, by the Secretary of State for India in Council.

The Maharaja's estates in the locality lie mainly on the south side of the river. As the new land formed on the southern side of the river, the Maharaja had treated it as a portion of his property.

As the learned Judge, who tried the suit, pointed out, if this land was an accretion to the property of the Maharaja, it would ordinarily have been liable to assessment of land revenue under Act IX of 1847. But the Maharaja claimed special privileges in respect of alluvial accretions.

The bulk of the estates which form the Maharaja's zemindary were permanently settled at the decennial settlement of 1789–90, which was confirmed by Regulation I of 1793. This included the estate of "Dhakaich Mahal," and in connection with this estate there was a condition agreed to that the Maharaja's predecessor should not claim abatement of revenue for losses by diluvion and he should not be liable to additional assessment on account of alluvial accretions.

To the north of the Dhakaich Mahal, between this estate and the Ganges, were certain villages, not included in the settlement of 1790, which were either waste or uncultivable, or partly or wholly submerged. These villages were settled with the Maharaja in 1800, and form part of the "Jauhi Mahal," and include the villages of Jagdishpur and Parsanpa.

It was as alluvial accretions to these two villages that the Maharaja entered into possession of the lands in suit, as parts of it became fit for cultivation.

It was argued on behalf of the appellant before their Lordships that if the appellant acquired a good title to the lands in suit by reason of their gradual accession to his other lands, it would be necessary for the authorities to assess the accreted land under Act IX of 1847 before revenue could be levied in respect thereof, that as this was not done, the Maharaja could not be said to be in default of payment of revenue, and that consequently the sale was without jurisdiction and was invalid.

The learned counsel argued, therefore, that he need not rely on the settlements of 1790 and 1800, inasmuch as his case was that the Maharaja was the proprietor of the accreted land, and that he had not been assessed in respect thereof.

Their Lordships agree with this part of the learned counsel's argument, and are of opinion that if it could be shown that the Maharaja had become the proprietor of the lands in suit by reason of their gradual accession to his other lands, a fresh assessment of such accreted lands under Act IX of 1847 would be necessary before the Maharaja could be called upon to pay revenue in respect of such accreted lands.

The learned Judges of the High Court seem to have thought that the appeal mainly depended upon the construction of the terms of the settlements of 1790 and 1800. Their Lordships are unable to accept that view for the reasons already stated.

The learned Judges of the High Court came to a further conclusion, as follows :—

> "Having already determined that the settlement of 1800 does not include the lands now in suit, and assuming that the lands never reverted to the Crown by abandonment, it becomes unnecessary to consider whether the appellant has acquired any proprietary interest in the lands or not."

Their Lordships are not able to agree with this conclusion.

The main point argued before their Lordships on behalf of the appellant was that the Maharaja had obtained a good title to the lands in suit by reason of their gradual accession to his estate to the south of the Ganges by reason of the recess of the river to the northward, and their Lordships agree that this is the principal question in the case.

It raises an important issue which goes to the root of the case, and, in their Lordships' opinion, a decision in respect thereof is essential to the disposal of the appeal.

The argument of the learned counsel on behalf of the appellant in respect of the last-mentioned submission—viz., that the Maharaja had obtained a good title to the lands in suit by reason of their gradual accession to his estate on the south side of the river—was based upon the provisions of Regulation XI of 1825, Section 4, clause (1). The clause is as follows :—

> IV.—First. When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed,

whether such land or estate be held immediately from Government by a zemindar or other superior landholder, or as a subordinate tenure, by any description of under-tenant whatever. Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed, to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it from the payment to Government of any assessment for the public revenue to which it may be liable under the provisions of Regulation II, 1819, or of any other Regulation in force. Nor if annexed to a subordinate tenure held under a superior landholder, shall the under-tenant, whether a khoodkasht ryot, holding a mouroosee istimraree tenure at a fixed rate of rent per begah, or any other description of under-tenant liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable.

It was urged on behalf of the appellant that the above-mentioned clause was applicable to the facts of this case.

Before considering this question it is necessary to mention certain findings of fact of the learned District Judge who tried the suit :—

1. The learned Judge found that the Mahal Turk Ballia, which originally lay on the north side of the river, was washed away to a depth of 80 or 100 yards in a year ; that the erosion was slow and gradual in a limited sense, in that it operated by degrees upon the face of the bank ; that it could not be called imperceptible.

2. The learned Judge found that the process of alluvion by which the land in suit was formed on the south side of the river was slow, gradual and imperceptible.

3. He held that it was hardly open to question that the land in suit stands on the site formerly occupied by the Mouzah Turk Ballia ; that is to say, though Turk Ballia formerly lay on the north of the Ganges and the land in suit lies on the south of the river, this land lies in the same geographical position, in the same latitude and longitude as that which was originally occupied by Turk Ballia.

These findings were adopted by the learned Judges of the High Court, and in the argument before their Lordships they were not contested.

It was argued on behalf of the plaintiff (respondent) that, inasmuch as the lands in suit had been identified as the Mahal Turk Ballia, and inasmuch as this was a case of " re-formation *in situ*," the first clause of Section 4 of Regulation XI of 1825 did not apply, but that the fifth clause was applicable and that by general principles of equity and justice it should not be held that the Maharaja was the proprietor of the lands in suit.

The terms of the first clause of Section 4, taken literally and by themselves, may be said to be sufficiently wide and general to include the facts of this case, but the clause has been the subject of judicial decisions, some of them by the Judicial Committee, which appear to their Lordships to place a limitation upon the application of the first clause.

A large number of cases were referred to during the course of the argument, and these have been fully considered; their Lordships, however, do not think it necessary to refer to all the cases, and they are of opinion that it will be sufficient to mention the following:—

In *Lopez* v. *Maddan Mohun Thakore and others* (13 Moore I.A. 467) it appeared that land forming part of a mouzah on the banks of the Ganges, by reason of continual encroachments of that river became submerged, the surface soil being wholly washed away. After recession and re-encroachment by the river, the waters ultimately subsided and left the land re-formed on its original site. It was held by the Judicial Committee, applying the principles of English law and following *Mussumat Iman Bandi* v. *Hur Gobind Ghose* (4 Moore I.A. 403), that the land washed away and afterwards re-formed on the old ascertained site was not land gained by increment within the meaning of Section 4 of the Bengal Regulation XI of 1825. Their Lordships' judgment in that case in the first place stated the rule of English law, and it was noted that it is not a principle peculiar to any system of municipal law, but that it is a principle founded in universal law and justice. It was then mentioned that the principle of law so far as relates to accretions had to some extent been made part of the positive written law of India.

Their Lordships then referred to Regulation XI of 1825, Section 4, clause (1), and proceeded as follows:—

> "It is to be observed, however, that the clause refers simply to cases of gain, of acquisition by means of gradual accession. There are no words which imply the confiscation or destruction of any private person's property whatever. If a Regulation is to be construed as taking away anybody's property, that intention to take away ought to be expressed in very plain words, or be made out by very plain and necessary implication. . . .
>
> "It would certainly seem that something more than mere reference to the acquisition of land by increment, by alluvion, or by what other term may be used, would be required in order to enable the owner of one property to take property which had been legally vested in another. In truth, when the whole words are looked at, not merely of that clause but of the whole Regulation, it is quite obvious that what the then Legislative authority was dealing with was the gain which an individual proprietor might make in this way from that which was part of the public territory, the public domain not usable in the ordinary sense—that is to say, the sea belonging to the State, a public river belonging to the State; this was a gift to an individual whose estate lay upon the river or lay upon the sea, a gift to him of that which by accretion became valuable and usable out of that which was in a state of nature neither valuable nor usable."

That decision was given in the year 1870, but the principle had been stated in 1862 by Sir B. Peacock in *Ramanath Thakore* v. *Chundernarain Chowdhury* (1 Marshall's Reports, 136).

The head-note in the last-mentioned case is as follows:—

> "Lands washed away and afterwards re-formed upon the old site, which can be clearly recognised, are not lands 'gained' within the meaning of Section 4, Regulation XI, of 1825; they do not become the property of the adjoining owner, but remain the property of the original owner."

Sir Barnes Peacock, in giving judgment, is reported to have said :—

> " We are of opinion that the word ' gained ' in Section 4 of Regulation XI of 1825 does not extend to cases of land washed away and afterwards re-formed upon the old site, which can be clearly recognised . . . In such a case we think the land formed by accretion on the old recognised site remains the property of the owner of the original site. . . .
>
> " The principle is that where the accretion can be clearly recognised as having been re-formed on that which formerly belonged to a known proprietor, it shall remain the property of the original owner."

The decision in *Ramanath* v. *Chundernarain Chowdhury* was approved by their Lordships of the Judicial Committee in *Lopez* v. *Maddan Mohun Thakore* (see 13 Moo. I.A. at p. 476).

It was conceded by learned counsel for the appellant that the decision in *Lopez* v. *Maddan Mohun Thakore* was correct, having regard to the facts of that case ; and it was not denied that if, in the present case, after the Mahal Turk Ballia had been wholly submerged, the river had receded to the south and the land had re-formed on the ascertained original site of Turk Ballia, and if such site lay to the north of the river, the land so re-formed would belong to the original proprietors.

It was argued, however, that this principle did not apply when the question arose between two riparian owners, who owned property on either side of the river, and when the land was washed away from one side of the river and re-formed on the other side, even though it was re-formed on the old ascertained site.

Their Lordships are unable to see why the principle should apply in the one case and should not apply in the other.

There is no doubt in this case that the land re-formed on the old ascertained site of Turk Ballia. If the river had receded to the south, and had left the land re-formed on the site of Turk Ballia on the north side of the river, it would undoubtedly have belonged to the original proprietors ; but as the river receded towards the north and left the land re-formed on the old ascertained site of Turk Ballia on the south side of the river, it was argued that the proprietors had lost their property, and that it belonged to the appellant Maharaja by reason of gradual accession.

Their Lordships are not prepared to accept that argument, and are of opinion that the principle laid down in the two above-mentioned cases applies to the facts of the present case.

Their Lordships are confirmed in this opinion by several later decisions to which it is desirable to draw attention.

In *Nogendra Chunder Ghose* v. *Mohomed Esof* (10 Ben. L.R. 406) their Lordships of the Privy Council in 1872 again had to consider Regulation XI of 1825. They discussed the different sections of the Regulation, and stated that—

> " Two observations arise on this Statute :
>
> " (1) There is nothing to show that the first rule contemplates land other than that which commonly falls within the definition of ' alluvion,' viz., land gained by gradual and imperceptible accretion, the *incrementum latens* of the civil law.

" (2) No express provision is made for the case of land which has been lost to the original proprietor by the encroachment of the sea or a river, and which after diluviation, reappears on the recession of the sea or river. But, on the other hand, there is nothing to take away or destroy the right of the original proprietor in such a case ; which must, therefore, be determined by ' the general principles of equity or justice ' under the 5th Rule. That the right of the proprietor in the case last put exists and is recognised by law in India, is established by at least two cases decided at this Board."

It was further stated by their Lordships that—

" It is not easy to see upon what principle a title to alluvion by gradual accretion should prevail against the original ownership established by identification of site; unless it be that where the accretion is so gradual as to be latent and imperceptible during its progress, the law, on grounds of convenience, presumes incontrovertibly that no other ownership can be shown to exist and so bars enquiry."

The case of *Hursuhai Singh* v. *Syud Lootf Ali Khan* (2 I.A. 28) is on the same lines, and was decided in 1874.

It is important both on account of the facts of the case and on account of the decision thereon. The suit was brought by the appellants, the proprietors of the Mouzah Muteor, in Tirhoot, against the respondents, the proprietors of Mouzah Ramnuggur, to recover the possession of a large quantity of land which had been submerged by the River Ganges. It appears that the river flowed between the estates of the plaintiffs and the defendants, and in its course between the two estates there were from time to time various changes. There were two or three defined channels, which at times the river overflowed and formed a pool or lake.

The land which was the subject of the suit was submerged, and when it first became free from water and reappeared, in the view which their Lordships took of the facts, it adhered to and adjoined the estate of Ramnuggar, and " *prima facie* the accretion was to that estate." But upon enquiry made by the Judge of Patna, who went to the spot, heard evidence and took great pains to survey the district, he came to the conclusion that the submerged land, although it had re-formed close to Mouzah Ramnuggur, was, in point of fact, land which belonged to Mouzah Muteor, and that there were means by which he could identify, and did identify, the land as having been before its deluviation part of that mouzah.

Two points should be noted about this case : (1) The river ran between the estates of the plaintiffs and the defendants ; (2) when the land became free from water and reappeared, it adhered to and adjoined the estate of Ramnuggur (*i.e.*, the defendants' estate), and, to use the words of their Lordships, " *prima facie* the accretion was to that estate."

Their Lordships, however, held, on the authority of *Lopez* v. *Maddan Mohun Thakore*, that where land which has been submerged re-forms and can be identified as having formed part of a particular estate, the owner of that estate is entitled to it.

Their Lordships accordingly allowed the appeal and restored the decree originally made by the Judge of Patna, which was to the effect that the plaintiffs (appellants) were entitled to the lands.

In *Rani Sarat Sundari Debya* v. *Soorjya Kant Acharjya* (25 Weekly Reporter 242) (decided in 1876) the head-note is as follows :—

> " Where land re-forms by alluvion on a site capable of identification, the right of the owner of the original site to the chur is indisputable."

This case, which is another decision of the Judicial Committee, is material because the plaintiff sought to establish his title on the ground that the land had, in consequence of the recession of the River Jamoona and by gradual accretion, become part of the village of Juggatpoora, which formed part of his zemindary.

The plaintiff failed in his suit because it was found that the land claimed by him was a re-formation upon land which belonged to the defendants, and it was pointed out that even if the defendants had been plaintiffs and could make out that the land claimed was a re-formation upon land which had belonged to them, they would be entitled to recover it from a party in possession.

In *Radha Proshad Singh* v. *Ram Coomar Singh* and *R. P. Singh* v. *The Collector of Shahabad* (I.L.R. 3 Cal. 796) (decided by the Judicial Committee in 1877) the doctrine in *Lopez's* case was accepted, but it was held that it did not apply to lands in which after their re-formation an indefeasible title had been acquired by long adverse possession or otherwise. The judgment is important, because at page 800 their Lordships are reported to have said :—

> " The doctrine in *Lopez's* case was doubtless in favour of the defendants in both suits; and if they had in no way lost their rights, would give them a title to the land re-formed upon sites identified by the thakbust proceedings of 1864 as within the boundaries of their original mouzahs, which would *prima facie* override a title founded on the principle of the acquisition of that land by the proprietor of the northern bank of the Ganges by means of gradual accretion. Their Lordships conceive, however, that the doctrine in *Lopez's* case cannot be taken to apply to land in which, by long adverse possession or otherwise, another party has acquired an indefeasible title."

In *Sardar Jagjot Singh* v. *Rani Brijnath Kunwar* (27 I.A. 81) (decided in 1900) it was held by their Lordships of the Judicial Committee that land submerged by the wanderings of a river from its course and afterwards re-emerging in a form capable of being identified, does not cease to belong to its original owner. The adjoining proprietor cannot make title to it either under sub-section 1 or sub-section 5 of Regulation XI of 1825, Section 4, or on any known principle.

Lord Robertson, in giving judgment, said :—

> " It is perfectly plain that neither the specific provision of the first subsection nor the general principles of equity and justice lend the slightest support to the pretension of the appellant, which is to land that would be gained not from the river but from a neighbour."

Their Lordships are of opinion, in view of the principles adopted in the above-mentioned decisions, and in view of the above-

mentioned findings of fact, especially the finding that the lands in suit, which appeared on the south side of the river, occupied the site whereon Turk Ballia stood before it was submerged, that the lands did not become part of the Maharaja's estate, and that the Maharaja did not obtain title thereto under the provisions of Section 4, clause (1), of Regulation XI of 1825, but that the title to the land remained in the original proprietors of Turk Ballia. Subject to the question of custom, which is dealt with hereafter, they are further of opinion that it would not be in accordance with general principles of equity and justice to hold that the lands belonged to the Maharaja.

Their Lordships, therefore, are of opinion that the learned District Judge's conclusion on this part of the case was correct.

Much reliance was placed by the learned counsel appearing on behalf of the appellant upon the case of *Rughoobur Dyal Sahoo* v. *Maharaja Kishen Pertab Sahee* (6 I.A. 211).

Their Lordships are of opinion that the question, which is directly in issue in the present case, was not raised in the above-cited case.

In the cited case the two principles, upon which the determination of the Board of Revenue was based, were the existence of an alleged usage, and the inference that by reason of that usage the antecedent interest of the plaintiffs and their predecessors in the land was only of a limited, temporary, and conditional character. Their Lordships of the Judicial Committee held that the trial of the cause had been unfortunate inasmuch as it failed to determine the substantial questions (see page 216); hence the remand and the further trial which was directed.

When the case came before the Judicial Committee the second time, on appeal from the High Court, it appeared that the High Court had based their decision on a finding that the settlements made with the plaintiffs were temporary settlements, and were made on the basis that the River Gunduck was the boundary line not only of the two Zillahs Sarun and Tirhoot, but of the estates appertaining to these districts; that the land in dispute was settled with the plaintiffs on temporary leases, and that those settlements were of a limited and temporary character, and that, such being the case, the finding was fatal to the plaintiffs' suit. It was assumed that the accretion belonged to the plaintiffs by virtue of the first clause of Section 4 of Regulation XI of 1825, and it hardly could have been otherwise because the contention of the defendants was that the title of the land depended upon the course of the river. Their Lordships then proceeded to direct their attention to the question whether the settlements with the plaintiffs were of a temporary character. Their Lordships held that the interest of the plaintiffs was not temporary but permanent, though the assessments were merely temporary, and that the real question was whether there was a clear and established usage that the river should be the constant boundary between the zemindaries on either side. Their conclusion was that the plaintiffs were during twenty years in occupation of the land,

when at the expiration of the settlement of 1847, in consequence of a sudden turn of the River Gunduck, it was on the southern side of the river, capable of being identified; that it still belonged to the plaintiffs unless there was a clear and definite usage that the River Gunduck was the boundary not only between the two districts but also between the zemindaries on either side. It was held that such a custom or usage was not found ever to have existed. Their Lordships accordingly reversed the decree of the High Court and declared that the plaintiffs were entitled to the land in dispute. It is not clear that the defendants were relying on the 1790 settlement as giving them any present right, but rather as a historical event, for the purpose of showing that they were right in their contention that the boundary between the two estates was the main channel of the River Gunduck. In fact, it appears that in order to get rid of the plaintiffs' contention that they had a good title by reason of the settlements of 1837 and 1847, the defendants argued that the proprietary right in the soil might have all along remained in the Government, and that the settlements with the plaintiffs were merely temporary. Their Lordships do not find in the last-cited case anything conflicting with the principles upon which the afore-mentioned decisions of the Judicial Committee were based.

It was next argued on behalf of the Maharaja that he had title to the lands in suit by reason of an alleged immemorial custom in the locality in question, by which land adhering by gradual alluvion to a riparian village becomes a part of the estate to which it accretes.

As the learned District Judge pointed out, the evidence called for the defendant was directed to show that there was a custom by which accretions to the Shahabad side vested in the Shahabad zemindar, viz., the Maharaja.

The first thing to be noted is that the custom which the Maharaja by his witnesses attempted to prove was not the custom pleaded.

The pleading alleged that according to immemorial custom and usage prevailing in the locality, the deep stream of the Ganges is the boundary of the riparian estates and consequently all accretions to an estate by that local custom as well as by the law governing accretions become a part and parcel of the estate to which accretions have formed.

It would be sufficient for their Lordships to leave the matter there, but as their Lordships have come to a clear conclusion on the merits of this question, they consider that it is desirable to state it.

The learned District Judge found that no custom as alleged had been proved to exist. The learned Judges of the High Court on appeal stated that they would be prepared to accept the findings of fact arrived at by the learned Judge, but having already determined that the settlement of 1800 did not include the lands in suit, and assuming that the lands never reverted to the Crown, it became

unnecessary to consider whether the appellant acquired any proprietary interest in the lands or not.

It might be argued that this was a concurrent finding of fact, but however that may be, their Lordships are of opinion that the learned District Judge's finding in this respect was correct, and that the custom alleged was not proved.

It should be noted that up to a comparatively recent time the Maharaja had been upholding the opposite contention, viz., that there was no such custom as that which was alleged by him in this case.

It should be stated that having regard to the facts stated in the earlier part of the judgment, in their Lordships' opinion there is no ground for holding that the proprietors of the Turk Ballia estate abandoned their estate and interest therein.

There remains another point with which their Lordships think it necessary to deal. It was argued on behalf of the appellant Maharaja that even assuming he failed to obtain a title to the lands in suit, either under the Regulation XI of 1825, Section 4, or by reason of the alleged custom, the sale of the lands in suit was invalid, and the plaintiff obtained no title thereby; consequently, it was argued that as the defendant was admittedly in possession of the lands, and if, as the defendant alleged, the plaintiff obtained no title by the sale, the suit should have been dismissed.

In view of their Lordships' decision on the above-mentioned points, the defendant, though in possession of the lands, was merely a trespasser. The question remains whether the sale was good and valid as against the original proprietors of Turk Ballia, so as to give the plaintiff a title on which he could base his suit for possession of the lands. There is no doubt that there was revenue due at the date of the sale, that such revenue was not paid, although, as stated in the appellant's case, notices had been given to the original proprietors to pay the revenue alleged to be due; and their Lordships are satisfied that the collector had jurisdiction to sell, and that the allegations as to irregularities in the sale were not substantiated.

Further, no suit was instituted within a year of the sale, and the provisions of Section 33 of Act XI of 1859, might have to be considered.

For these reasons their Lordships are of opinion that the sale was not invalid, and that the plaintiff did obtain a good title as the purchaser at the sale—and that he was competent to obtain a decree for possession against the defendant, who had no title to the lands.

Though not agreeing, as already stated, with some of the grounds of the High Court's judgment, their Lordships are of opinion that the decree of the learned District Judge was correct, and that the Maharaja's appeal to the High Court was rightly dismissed.

They will, therefore, humbly advise His Majesty that this appeal should be dismissed, and that the appellant should pay the costs of the appeal.

In the Privy Council.

MAHARAJA BAHADUR KESHAVA PRASAD SINGH

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

DELIVERED BY SIR LANCELOT SANDERSON.

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