Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Nogender Chunder Ghose and Another v. *Mahomed Esoff, the Collector of Chittagong, and Others, from the High Court of Judicature at Calcutta; delivered 25th of May,* 1872.

Present:

SIR JAMES W. COLVILE.
SIR ROBERT PHILLIMORE.
SIR MONTAGUE SMITH.

THE subject matter in dispute on this appeal is a portion of Chur land thrown up by the Kurnafoolee, a navigable and tidal river in the district of Chittagong.

The appellants are the representatives of one Anundonarain Ghose, and, as such, are the zemindars of Turruff Tej Sing, situate on the eastern shore of the river. Their estate appears to have been, in 1837, the subject of a careful Government revenue survey, and, as then surveyed and settled, comprehended three mouzahs, named Kolagaon, Chakra, and Lakra, of which the chittahs or measurement papers made on the occasion of that survey are set forth in the record.

The Respondents, other than the Collector,—so far as it is necessary to notice them—are the cosharers in an estate known as Talook Koreban Ally, and situate on the western shore or bank of the river. That estate was also surveyed and measured in or about the year 1839, and the chittas of one of the villages included in it, Bakolea, is set forth in the record.

These parties, though made Respondents, have not appeared on the appeal, which has been therefore

heard against them *ex parte*. Their title however has been fully and ably supported by the learned Counsel for the Government which is in the same interest with them.

From what has been stated it appears that the estates of the Appellants, and these Talookdars, whom it will be convenient to call the Respondents, speaking of the Government, whenever it is necessary to do so, as the Government, were, as originally measured and settled, bounded and separated by the Kurnafoolee.

Sometime before 1847 that river threw up in its main and navigable channel certain islands or churs, of which it is only necessary to specify two, viz.: Chur Durmeean and Chur Dukhin. A settlement of these was made by Government with the Respondents in 1847; the revenue assessed on Chur Dukhin being rs. 200 : 6 : 6. Anundonarain Ghose is said to have presented at least one petition complaining of this proceeding; but for the purposes of this litigation it must be assumed that the Churs in question were the property of Government, and were duly granted to and settled with the Respondents. And it appears from some of the proceedings, that they were treated as appurtenant to Mouzah Bakolea.

Before the end of 1852 the river had swept away the whole of Chur Durmeean, but had formed another low Chur in the vicinity of its site. Nor is there now, if there ever was, any question that this, which was known as Lami or Lamcha Chur, was settled by Government with the Respondents in lieu of Chur Durmeean in December 1852.

Besides this latter Chur, however, the river had before 1854 thrown up a considerable quantity of other Chur land towards its eastern shore. This included the land now in dispute, or so much of it as was then above water. The record shows that Government determined to make no claim to this under Act IX of 1847 as an island thrown up in a large and navigable river, but that, having been claimed by several of the proprietors in the neighbourhood, it was, in order to prevent affrays, attached by the Collector until the right of possession should be determined, and thereupon became the subject of a proceeding under Act IV of 1840 before the magistrate who had to

adjudicate on the *primâ facie* right to possession between no less than sixteen different claimants. That officer began by directing the Darogah to make a local investigation and cause a map to be prepared. The result of this was the Darogah's map No. 43, which is in evidence, and his Report at p. 211 of the record. This map shows four principal Churs on the eastern side of the then main channel of the river, A, B, C, and D. Of these A and B are coloured green, and represent the land then in dispute. C and D are coloured yellow, and are treated as Churs not in dispute which had been settled with the Respondents. D, their Lordships believe, is admitted to be the Lamchi Chur. Whether C is or is not the Dukhin Chur, or whatever remained of that Chur, is still matter of dispute. But it is perfectly clear that it was, in 1854, treated as Chur land which had been settled with the Respondents and was then in their undisputed possession.

A was divided into several portions, and the result of the Magistrate's proceeding was to award possession of these to different claimants; Grindochunder Ghose and Sreemutty Noberungeny Dossee, who then as managers or otherwise represented the estate of Anundonarain Ghose, getting part, and the Respondents getting the larger portion lying to the west of the old channel of the river which was adherent to their settled Chur D. It is, however, unnecessary to pursue this part of the case, since the title to no part of A is now in dispute. B was claimed by those who then represented the Appellants' estate as a reformation on the site of that part of their Mouzah Kolagaon, which had been previously diluviated, or washed away by the river. It was claimed by the Respondents as formed by "alluvion on the east of the Dukhin Chur, within the Chuckbund recorded in their Decree of the Appellate Court." The Darogah found that Chur B was an accretion to the Chur marked C, which had been settled with the Respondents. But he also found that it had been formed by alluvion in the place where the lands of Mouzah Kolagaon, belonging to the Appellant's zemindary were formerly broken; and that during the ebb tide men could walk on foot from the said Mouzah to the said Chur. The Magistrate's proceeding at p. 287 shows how that

officer dealt with the question of possession. He seems to have considered that the disputed Churs, being still under water at flood tide, could not have been effectually in the possession of any of the parties; that claims founded on reformation upon a site capable of identification could not be tried in any but a regular civil suit, and that the adherence of the land in dispute to lands not in dispute constituted a *primâ facie* title by accretion, on which he ought to award possession. He accordingly did award possession of B to the Respondents as the holders of the settled Chur C, and left those who represented the estate of Anundonarain Ghose to their remedy by civil suit. The date of this proceeding was the 22nd of December, 1854.

The present suit was accordingly brought by Mr. Fagan, who had been appointed receiver of Anundonarain Ghose's estate by the late Supreme Court of Calcutta. It was not, however, commenced until the 3rd of May, 1861, *i.e.* more than six years after the date of the Magistrate's award. The Appellants seek to account for this delay by attributing it to circumstances connected with the administration of Anundonarain's estate. However that may be, it is obvious that the consequences of this delay, in so far as it may have occasioned any difficulty in the determination of the questions between the parties by means of the loss of evidence, or the intermediate changes caused by the action of the river, ought to fall upon the Appellants. The suit, as originally brought, was to recover possession of 71 drones of alluvial land; the Defendants to it were not only the co-sharers in Talook Koreban Ally, but also Horo Lal Mohunt, another of the sixteen claimants before the Magistrate; and the lands appear to have been claimed partly as a reformation on sites forming part of the wholly, or in part diluviated villages of Mouzahs Kolagaon, Chakra, and Lakra; and partly as an accretion to such reformed lands. The Collector, as representing Government, was afterwards made a party to the suit; Government having an interest adverse to the claim of the Appellants, inasmuch as it was entitled to the additional revenue assessable on the lands in dispute, if they were an accretion to the Chur land of the Respondents;

whereas it was not entitled to any additional revenue upon them, if they were a reformation on the Appellants' lands, and, therefore, included within the limits of his formerly settled Zemindary.

The first proceeding in the suit which it is material to notice, is the local inquiry made under the order of the Court by the Ameen Moonshee Ashanoollah. His Report, which is at p. 35 of the Record, bears date the 28th of December, 1861; and the map accompanying it is No. 7.

The Report and the map showed, among other things, that of the 71 drones of land claimed, between 8 and 9 drones composed or formed part of a chuck marked in the map with the Bengali letter (Kha); and were in the possession of the Defendant, Horo Lal Mohunt, though claimed adversely to him in another suit by one Abdool Mujeed. A compromise was afterwards effected between Mr. Fagan, as Receiver, with this person, who admitted the Appellants' title, and there is no longer any question touching this portion of the land claimed, or with the Mohunt as Defendant.

The Report and map also proved that between 44 and 45 drones, forming other part of the land claimed, composed the chuck marked in the map with the Bengali letter (Kha); and that they were held by the Defendants, the cosharers in Talook Koreban Ally on the strength of the Magistrate's award. The son and representative of Abdool Ally, one of these Defendants, afterwards made a compromise with the Receiver (admitting the title of the Appellants) in respect of his share which comprised between 4 or 5 drones of the disputed land. It is not easy, if possible, to distinguish these 4 or 5 drones on map No. 7; but they are indicated on map No. 20, which will be afterwards mentioned.

The result of this Ameen's investigation and his Report was altogether in the Appellants' favour. He found that all the land in the two chucks was a reformation on sites which, upon local inquiry and measurement he succeeded in identifying with the Dags appertaining to the diluviated Mouzahs of Appellants' Zemindary; and in paragraph 5 of this Report he seems to intimate that no part of Chur Dukhin was to be found in the disputed land; and that the latter could not be identified

by any Dags as formed on the site of any part of the Respondents' Mouzah Bakoleah. The last sentence of this paragraph, however, suggests a doubt whether he clearly apprehended the Respondents' case; and did not make some confusion between Mouzah Bakoleah, as originally settled, and the Chur Dukhin to which, as they alleged, the land in dispute had accreted. This map did not give in detail the Dags by which the identification of the site was said to have been established.

The suit, at this stage of it, was transferred from the principal Sudder Ameen to the Zillah Judge, who caused a second local investigation to be made by another Ameen named Guggun Chunder Dutt. His report is at p. 39, and the map made by him is that numbered 20. This report and map purporting to be founded on local survey, the comparison of Dags, and the examination of witnesses go to establish these facts,—1st. That the whole of the chur marked A in that map, being all the land that now remains in dispute, was a reformation on the site of the Appellants' diluviated mouzahs; 2nd. That the Chur marked B was a similar reformation, but comprised the lands in respect of which the compromises with the Mohunt and the heir of Abdool Ali had been effected; and 3rd. That the Chur Dukhin settled with the Respondents in 1847 had then been diluviated, no part of it being included in chur A, and its site being assumed to be identical with that of a sandy chur in process of reformation near the western shore of the river. These conclusions were supported by, and in a great measure founded on, the supposed tracing and identification of the Dags contained in the measurement papers of the Appellants' estate as measured and surveyed in 1837. No attempt seems to have been made by this Ameen to trace in the disputed land the Dags of the Respondents' Mouzah Bakoleah, or Kismut Dukhin Chur. His view of the formation of the chur in dispute is thus stated in the 5th paragraph of his report. "The disputed chur has arisen on the site of the diluviated lands of the Plaintiffs at first on the eastern part of the river, and gradually increasing, has accreted on the southern and eastern parts to the Plaintiffs' original land. It is not seen that the alluvion

began as accretion to the Kismut Dukhin Chur alleged by the Defendants to be settled with them.

The suit was after this was heard by the Judge, who erroneously dismissed it on the ground that it was barred by limitation. This was set right by a decree of the High Court dated the 22nd of June, 1863, which remanded the cause, directing the Judge to inquire and decide whether the whole or any portion of the land claimed was in the possession of the Defendants for more than twelve years prior to the suit, and, if not, to try it on its merits and with reference to the provisions of Regulation XI of 1825.

The form of this remand seems to have led to another local investigation by a third Ameen named Gour Mohun Biswas, whose Report, dated the 10th of March, 1865, is at p. 43, and whose map is numbered 29. The object of this investigation was to trace, in the disputed land, if possible, land which had been settled with the Respondents in 1847, or at all events more than twelve years before the commencement of the suit. The Report speaks of Mouzah Bakoleah, but their Lordships conceive that the attempt really was to trace the dags of Chur Dukhin, which after the settlement and survey of 1847, seems to have treated as appurtenant to Mouzah Bakoleah. This Report was altogether adverse to the contention of the Respondents. The investigation occupied fourteen days, and its result was to show that the boundaries of the Respondents' settled land would fall within the then main channel of the river, and considerably to the west of the disputed Chur. This Report, therefore, by negativing the case of the Respondents, went to confirm that made in favour of the Appellants by the Reports of the two other Ameens.

The cause then came on for a second hearing before the Judge who tried it on the following issues: 1st, whether the suit was barred by limitation; and 2ndly, whether the land in suit was a formation on or an accretion to the original site of land in Plaintiffs' estate; or whether it formed a portion of or an accretion to the land, settled with the Defendants. He found both these issues in favour of the Appellants. He seems to have held that the

first was determined by the result of the last local investigation, which showed conclusively that the disputed Chur contained no part of the land settled with the Respondents in 1847. On the second issue he found, in conformity with all the Ameens' Reports, that the land in suit was clearly a formation on the original site of the Plaintiffs' estate, and was connected with it, and that the Plaintiff was, therefore, entitled to be placed in possession of it.

This decision was reversed and the suit dismissed on appeal to the High Court, by a decree dated the 1st of December 1865, which, on a rehearing on review before the same Judges, was confirmed by an order dated the 1st of April, 1867. The present appeal is against that decree and that order on review.

Their Lordships cannot say that either Judgment of the High Court affords satisfactory grounds for the dismissal of the Appellants' suit.

The first deals only with the latest Ameen's Report, and explains away the effect of that by assuming that, in making his measurements, he may not have taken a correct starting point. The Zillah Judge, however, in his Judgment, expressly states twice that no objection was taken before him to the Ameen's starting point. The investigation was carefully conducted in the presence of the Respondents' agents, and it is difficult to suppose that the objection would not have been taken, if there was any foundation for it. Again, the learned Judges of the High Court proceeded on the assumed incompatibility of the case thus made by the Appellants with the state of things which existed in 1854 at the date of the magistrate's proceeding. They came to the conclusion that Chur Dukhin was the Chur marked C in the Darogah's map; that the magistrate had carefully decided against the title set up by the Appellants and in favour of the Respondents; that the disputed Chur, B, was an accretion to Chur Dukhin; and that the latter had never been diluviated.

But if, for the sake of argument, it be admitted that C in the Darogah's map correctly represented what then remained of Chur Dukhin, it would by no means follow that what constituted C in 1854 had not afterwards been washed away, and the conclusion that it still existed as part of the land in

dispute seems to be incompatible with the Reports of all the Ameens, and notably with that of the last. Moreover, as their Lordships have already observed, the magistrate by his proceeding seems expressly to have declined to decide on the rights resulting from an identification of site, and merely to have held that the land in dispute, being adherent to C, was *primâ facie* to be treated as an accretion to it. Again the Judgments under appeal do not seem to their Lordships effectually to distinguish or deal with the questions raised in the cause.

It undoubtedly lay on the Appellants, who were seeking to disturb the Respondents' possession, of nearly seven years' duration, to show a good title to the land in dispute. They seem to have set up an alternative title, claiming the land either as a re-formation on a site identified with that of their diluviated Mouzahs; or as an accretion to their estate by reason of its being a formation opposite to their lands, and only separated from them by a small channel, fordable at low water. This latter was the question chiefly discussed on the review, and if it had been the only ground on which the Appellants could recover, their Lordships would have great difficulty in saying that they had made out a good title, or had shown that the magistrate was wrong in treating the land in question as an accretion to the Respondents' settled land represented by C, and in awarding possession of it accordingly. But it seems to their Lordships that, inasmuch as the result of all the local investigations, including that of the Darogah, was in favour of the assertion that the land now in dispute was a re-formation upon the site of the Appellants' diluviated Mouzahs, the Zillah Judge was right in finding that fact to be proved. The question then arises, what is the legal result of such a finding? Is the *primâ facie* title to the land thus shown capable of being displaced by any better title existing in the Respondents? According to their Lordships' view of the evidence no part of Chur Dukhin, at the date of the Decree, formed part of the disputed land, which may be assumed to be correctly indicated by Chur A, in the map No. 20 of Gugguchunder Ameen. They are, however, not

so clear that Chur C, in the Darogah's map, did not correctly indicate what remained of Chur Dukhin in 1854. This supposition is no doubt inconsistent with the report of the last-named Ameen, confirmed in some measure by the map of a deputy collector made in November 1852 (No. 30), which also assigns a different site to the now diluviated Chur Dukhin.

On the other hand, it is difficult to see how the award of the magistrate ever came to be made, if C in the Darogah's map did not correctly indicate land settled with the Respondents, and then in their possession. And this latter map is on that point consistent with the Collector's map, No. 46.

Whilst, therefore, their Lordships think that the Appellants have established the identity of the site of the land in dispute with that of lands originally included in their Zemindary, and afterwards washed away by the river, they will, for the determination of this Appeal, take as also proved, that the chur marked C on the Darogah's map, though it has since been swept away, existed in 1854 as a chur settled with, and in the possession of the Respondents, and that the land in dispute was then adherent to it. They here advisedly use the term "adherent," because it appears to them that there is an important distinction between mere physical adhesion and that "accretion" or *incrementum latens*," which, by reason of its gradual and imperceptible formation, is recognized by the law as belonging to the persons to whose land it is adjacent. In the present case, the evidence touching the manner in which the chur in question was formed, is extremely scanty; and their Lordships are by no means satisfied that it was such as would make the land an "accretion" according to the strict legal definition of the term.

Their Lordships have now to consider what is the law applicable to the facts thus found, and what are the rights of the parties thereunder. And the long and able arguments addressed to them on this subject, render it desirable to review the law of alluvion which obtains in Bengal, as declared by the positive provisions of Regulation XI of 1825; or by the decided cases, which the

learned Counsel for the Respondents have contended cannot easily, if at all, be reconciled with each other.

The first section of the Regulation after specifying as the subjects which called for legislation the following cases, viz., 1st, the throwing up of churs or small islands in the midst of the stream or near one of its banks; 2ndly, the carrying away of portions of land by an encroachment of the river on one side, and an accession of land at the same time or in subsequent years, gained by the dereliction of the water on the opposite side; and 3rdly, similar instances of alluvion encroachment and dereliction on the sea coast bordering the southern and south-eastern limits of Bengal—enacts that the rules declared by the following sections shall have force of law throughout the Presidency of Fort William. The second section provides that local usage, whenever it exists, shall prevail. The third, that when there is no local usage, the general rules declared in the fourth section shall be applied to the determination of all claims and disputes relative to lands gained by alluvion or by dereliction either of a river or the sea.

This 4th section is divided into five clauses.

The first deals with land gained by gradual accession (*i.e.*, alluvion in the proper sense of the word) and provides that it shall be considered an increment to the tenure of the person to whose land or estate it is annexed, subject to the right of Government to assess additional revenue upon it.

The second provides that the former rule shall not be applicable to cases of sudden avulsion, where the identity of the land is not destroyed, preserving in that case the rights of the original owner.

The third makes a chur or island thrown up in a large navigable river (the bed of which is not the property of an individual) or in the sea the property of the Government, if the channel between it and the shore be not fordable, but provides that if such channel be fordable at any season of the year the chur shall be considered an increment by alluvion to the tenure of the person whose estate is most contiguous to it, and shall be subject to the provisions of the first clause.

The 4th clause deals with churs in small rivers,

the beds of which have been recognized as he property of individuals; giving them to the proprietor of the bed of the river. And the 5th clause provides that, in all cases of claims and disputes respecting lands gained by alluvion, or by dereliction of a river or the sea, which are not specially provided for by the foregoing rules, the Courts shall be guided by local usage, if any be established as applicable to the case; and, if not, by general principles of equity, and justice.

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 recognized by law in India is established by at least two cases decided at this Board, and therefore binding on their Lordships, viz.: the case of Mussumat Imam Bandi and another *v.* Hurgovind Ghose (4 Moore's I. A), and the recent case of Lopez *v.* Muddunmohun Thakoor and others, decided on the 11th July, 1870.

The former is a clear authority that the identity of the site may be established by maps and ancient documents; although by the long submergence of the land all external marks and means of identification have been obliterated. It is not, however, very clear in that case whether the question between the parties was one of boundaries of the original estates; or of dispute between one party claiming the land as a reformation on his original land; and the other claiming it as an accretion under the first clause of the 4th section of the Regulation.

The latter, however, was clearly the issue between the parties in Lopez' case. It may,

however, be said that that case is distinguishable from the present by its peculiar circumstances, inasmuch as in the former the encroachment of the river had in the first instance swept away the surface of the Plaintiff's Mouzah, and made the Defendant who held lands behind those so swept away, for the first time a riparian proprietor; and because the Plaintiff had, by the preparation of the Tannabundee map and otherwise, taken peculiar precautions to preserve and protect his right in the soil against his neighbour as well as the Government.

It was, morever, contended that some at least of the principles laid down in Lopez' case are in conflict with the previous decision of this Board in the case of Eckowrie Sing and Heeraloll Seal 12 Moore's I. A. 136. That case had not been reported when that of Lopez was decided, and does not appear to have been cited in the argument. Their Lordships cannot, however, perceive any inconsistency between the two judgments. The decision in the 12th Moore seems to have proceeded on two grounds, namely: 1st, that it was not competent to the Plaintiffs, who had alleged a title to the land as an accretion to their estate, to raise at the hearing of their appeal a different case, viz., "one simply of original ownership of the site of the lands re-formed;" and 2ndly, that had such a title been properly pleaded, the evidence failed to establish the identification of the site. The case of Imam Bandi is cited in the judgment, which throws no doubt upon the validity of such a title if properly pleaded and proved.

Again the learned Counsel for the Respondents, and in particular Mr. Pontifex, argued broadly that by diluviation into a *navigable* river, land is permanently lost to the original proprietor, and becomes the property of the State; and in support of this proposition they relied much on an American work, "Houk on Navigable Rivers," which they argued was the more deserving of attention, by reason of the similarity which exists between the great rivers of America and those of India in their conditions, and mode of action. This authority, however, does not appear to their Lordships to assist the Respondents' case. The law of alluvion in America seems to be less favourable

to riparian proprietors than that of India or of England. For Mr. Houk draws a distinction between estates consisting of a given quantity of land, and defined by a mathematical line, though by one on the margin of a river, and those of which the river is the nominal boundary. He holds that in the former case alluvion, however small, and however gradually and imperceptibly formed, is the property of the State. And after dealing with this question, he says, in section 258, "Nevertheless it is possible that, by the action of the sea, or a change of the channel of a river, the land so granted may be partly lost. No doubt in case afterwards the land should be washed up again, it would belong to the former owner of the estate originally purchased, and no further. While however, the land is submerged in the river, the title is in the State." This is consistent with the Civil Law, Dig. Lib. XLI, tit. I, s. XXX, and with the law of England as declared in the passage cited in Lopez' case, from Hale "De Jure Maris."

In India the point thus taken seems to be concluded by the authority of the decided cases. The learned Counsel did not contend for a distinction between a tidal river and a navigable river, which has ceased to be tidal. Their Lordships have no reason to suppose that, in India, there is any such distinction as regards the proprietorship of the bed of the river, though in respect of the mode of accretion there must be some difference between the effects produced by the daily flux and reflux of the tide, and the changes which are mainly consequent on the annual floods. Now, if there is no such distinction, it is clear that the Ganges at Bhagulpore, as in Lopez' case, and at Patna, as in the case in the 4th Moore, is a navigable, though no longer a tidal, river; and, consequently, that these cases are direct authorities against Mr. Pontifex's proposition. Their Lordships accede to what is said in Lopez' case, to the effect that a proprietor may, in certain cases, be taken to have abandoned his rights in the diluviated soil. It is unnecessary to consider whether this might not be the result of a successful application for remission of Revenue under Act IX of 1847, sec. 5. For in the present case there is nothing from which such abandonment

can be inferred. If an application for remission of revenue was made, that application was refused.

The appellants having then established a *primâ facie* title to the land in dispute as a re-formation, the question is whether the Respondents have a superior title to it as an accretion to their settled chur. 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 inquiry.

In the present case it appears to their Lordships that such a gradual and imperceptible accretion as the law contemplates is not proved, and that there are peculiar reasons why the title of the Plaintiffs should be preferred to that of the Defendants. The latter do not claim the land as an accretion to their original estate. They claim it as an accretion to the Chur cast up by the river, and settled with them by Government. Let it be granted that the first effect of the retrocession of the river was to leave bare this Chur in the midst of the stream, and that the land then cast up was beyond the confines of the Plaintiffs' estate. The river continues to recede, more land appears, and the new land, though adherent to that first discovered, is really a deposit on the ancient site of the Plaintiffs' land. Why should the ownership of that which is thus regained be altered by the fact that, from some accidental cause, land forming the outer edge of it first emerged as an island. The Darogah's map seems to show that this must have been the course of the river's action. Nor, as their Lordships have already observed, is there any trustworthy evidence which traces the history of the disputed land, or shows that by gradual and imperceptible accretion it became adherent to the Chur, which upon the whole evidence must be taken to have now ceased to exist. Such a case as the present is very distinguishable from the ordinary case contemplated by the regulation in which a river,

gradually shifting its channel in one direction, continually eats into one bank, and leaves the other, never ceasing to flow between the competing estates.

Their Lordships are not insensible to the difficulties of identification, and to the danger of encouraging claims of this kind on insufficient evidence. They lay down no rule as to the strictness of proof which the Courts in India may require in such cases.

They also consider that a title founded on the original ownership and identification of site is to be confined *primâ facie* to the re-formation on that site. And if, in the present case, it had appeared that some part of the land in dispute had been thrown up beyond the original boundaries of the Appellants' estate, a question might fairly have arisen between the Appellants' and the Respondents' whether that was to be taken to be an accretion to the estate of the former, or to the settled chur of the latter. But upon the evidence they are satisfied that the whole of the land which continues to be the subject of the suit is a re-formation within the limits of the Appellants' original estate. This being so, their Lordships are of opinion that the Zillah Judge was right in decreeing the whole to the Appellants. And they will humbly advise Her Majesty to allow the Appeal; to reverse the decree of the High Court, and to order that, in lieu thereof, a decree be made dismissing the appeal to that Court and affirming the decree of the Zillah Judge. The Appellants must have from the Respondents, the ~~Plaintiffs~~ Defendants in the suit, the costs of the litigation in India, and those of this appeal. There will be no order as to the costs of Government on this appeal.

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