Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Thakurain Ritraj Koer v. *Thakurain Sarfaraz Koer, from the Court of the Judicial Commissioner of Oudh; delivered the 29th June* 1905.

Present at the hearing:

LORD MACNAGHTEN.
SIR FORD NORTH.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

The parties to this Appeal are the owners of estates situated on opposite sides of the River Gogra, in the Province of Oudh. The Plaintiff, who is now the Appellant, is the widow and heiress of Thakur Rachpal Sing, and as such the present holder of the taluka of Kamyar in the District of Barabanki, on the south bank of the river; and the Defendant now on the Record (the Respondent) is the widow of the son of the original Defendant, Thakur Raghubir Sing, the Talukdar of Dhanawan, in the District of Gonda, on the north bank of the river. The suit was brought to recover possession of certain alluvial lands, 2,062 acres and 10 roods in extent, which the Plaintiff claimed as an accretion to her estate of Kamyar, by reason of a change in the channel of the river. The Subordinate Judge of Gonda made a decree in favour of the Plaintiff, but this was reversed on appeal by the Judicial Commissioner, and the suit was dismissed with costs.

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The law of India in relation to cases of this kind is contained in Bengal Regulation XI. of 1825, which was applied to Oudh, with some unimportant modifications, by Act XVIII. of 1876. The principle laid down in this Regulation, as Lord Justice James observes in giving the Judgment of this Committee in the well-known case of *Lopez* v. *Muddun Mohun Thakoor* (13 Moore I. A. 467), "is one not merely of English law, not a prin- "ciple peculiar to any system of municipal law, "but it is a principle founded on universal law "and justice; that is to say, that whoever has "land, wherever it is, whatever may be the "accident to which it has been exposed, whether "it be a vineyard which is covered by lava or "ashes from a volcano, or a field covered by the "sea or by a river, the ground, the site, the "property, remains in the original owner."

The first point to be ascertained, therefore, is, who was the original owner of the property in dispute in this suit; and on this point their Lordships are of opinion that there is no room for doubt that it was the property of the Respondent's predecessor in title. Indeed, the Plaint itself describes the land as "situate "in the villages Raksaria, Bharsanda, Pura "Angad, and Dulahpur," which admittedly form part of the Respondent's taluka; and the Subordinate Judge is clearly mistaken in treating it as land "opposite" to those villages. For, not only is the statement in the Plaint perfectly definite on the point, but it is repeated six years after the filing of the Plaint, and after issues had been settled in which the question of the position of the land had been specifically raised, in a Petition in which the Plaintiff impeached the correctness in other respects of a map prepared for the suit by an *Amin*, or Commissioner, appointed by the parties.

Presumably land situated in the Respondent's villages would belong to the Respondent whether covered by water or not, and however it might be intersected by the river in its devious course from year to year. This view was adopted by the local authorities in proceedings taken in 1883 under the Code of Criminal Procedure for possession of the land, and upon application to the Revenue officials in 1885 for demarcation of boundaries. And in July 1885 the Revenue Settlement of "the alluvial and diluvial land" of these villages was made with Thakur Raghubir Singh, the Respondent's predecessor in title. It would require very strong evidence on the part of the Appellant to disturb the conclusion thus arrived at, and no such evidence has been adduced.

The learned Counsel for the Appellant contended that, whoever may have been originally entitled to the land, it had gradually become accreted to the Appellant's property by an alteration in the course of the river; and he relied, in support of his contention, on a passage in the Judgment in the case of *Lopez* v. *Muddun Mohun Thakoor* (*ubi supra*), in which it is stated that "where there is an acquisition of land "from the sea or a river by gradual, slow, and "imperceptible means, there, from the supposed "necessity of the case, and from the difficulty "of having to determine year by year to whom "an inch or a foot or a yard belongs, the "accretion by alluvion is held to belong to the "owner of the adjoining land." Of the correctness of this proposition there can be no doubt; but in the opinion of their Lordships, it is entirely inapplicable to the present case. Here is no question of a gradual and slow process of acquisition to be measured by the inch or the foot or the yard; here land to the extent of more than two thousand acres is claimed, not on

the ground that the action of the river has been slowly and gradually to push forward the northern boundary of the Appellant's land, but that the northern channel of the river, however it may shift, must be taken to be that boundary. Nor is it the case here that the land laid bare by the alteration of the river's course adjoins the land of the Respondent; on the contrary, the evidence is that there is still a channel of the river between the two properties, although the main stream has shifted to the north.

It appears to their Lordships that this is one of the cases provided for by the second clause of the fourth section of the Regulation, which enacts that the rule as to gradual accretion "shall not be considered applicable to cases in "which a river, by a sudden change of its "course, may break through and intersect an "estate, without any gradual encroachment, or "may, by the violence of stream, separate a "considerable piece of land from one estate and "join it to another estate without destroying "the identity, and preventing the recognition, of "the land so removed. In such cases the land, "on being clearly recognised, shall remain the "property of its original owner." This is in accordance with the English law, as laid down in the case of *The Mayor of Carlisle* v. *Graham* (L. R. 4 Ex. 361, at p. 368), "All the autho-"rities, ancient and modern, are uniform to the "effect that if, by the irruption of the waters of "a tidal river, a new channel is formed in the "land of a subject, although the rights of the "Crown and of the public may come into "existence and be exercised in what has thus "become a portion of a tidal river, . . . the "right to the soil remains in the owner, so that "if at any time thereafter the waters shall "recede, and the river again change its course "leaving the new channel dry, the soil

" becomes again the exclusive property of the " owner, free from all rights whatsoever in " the Crown or in the public." It is, perhaps, unnecessary to add that, although the specific reference in that case is to a tidal river, their Lordships consider the principle equally applicable to a non-tidal river.

Their Lordships will humbly advise His Majesty that this Appeal ought to be dismissed and the Decree of the Judicial Commissioner confirmed. The Appellant must pay the costs the Appeal.