Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Chutterput Singh v. *Dwarka Nath Ghose and Another, from the High Court of Judicature at Fort William in Bengal; delivered* 31*st July* 1897.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

This is an appeal from a judgment and decree of the High Court of Calcutta by which the Court varied a decree of the Subordinate Judge of Rajmehal. The litigation arises thus. The estate of Chowkia Paharpore was a mouzah comprised in the zemindari of Kankjole of which the Plaintiff Chunder Narain Singh deceased who is now represented by his executors the Respondents was the proprietor at his death.

A Mr. Taylor was the Zemindar of Gadai Maharajpore which lay on the opposite side of the Ganges from Chowkia Paharpore. The Ganges had for many years prior to 1868 shifted its channel and diluviated the lands of Chowkia Paharpore and had thrown up a large accretion or chur on the opposite side of the river adjacent to the lands of Gadai Maharajpore. When property is submerged by a river any land forming afterwards upon the site remains the property of the owner of the site and does not become the property of an adjacent proprietor.

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A settlement of estate took place with Mr. Taylor from whom the Appellant derives in 1868. Mr. Richard Ewing an assistant surveyor of the survey of India was in March 1883 appointed to hold a local investigation. He did so and after his examination he prepared a map in June 1883. This map was destroyed by accident between the hearing before the Subordinate Judge and the hearing before the High Court. He deposed at the trial that the line *a a a* laid down by him was the east bank of the river—that the line *c c c* was the west bank of the river. There is also a line *b b b*. The Appellant contends that Mr. Ewing improperly laid down the line *d d d* and that the line *b b b* on map A was the northern and eastern limit of the settlement made with Taylor and confirmed in 1868. Mr. Ewing deposed that the line *d d d* on map A was the line of the west bank of the river at the settlement survey in 1867–1868. The First Court held that the line *b b b* was the real boundary and that the line *d d d* was wrongly located and consequently decreed to the Plaintiff the land east of the line *b b b* awarding all west of said line to the Defendant. The learned Judge in arriving at his conclusion seems to doubt the impartiality of Mr. Ewing. He further arrives at the conclusion that the line *b b b* represents the eastern boundary of the land settled with Mr. Taylor as an accretion to Gadai Maharajpore. The High Court of Calcutta held that the First Court had no sufficient reason for rejecting the report and map made by Mr. Ewing in his demarcation on the survey map of 1847–1848 which showed the estate of the parties at that date. It has been admitted by the Counsel for the Appellants that the only question calling for decision by their Lordships is whether the line *d d d* on Mr. Ewing's map is correct. It has been strenuously urged that it is a mistake for the

line *b b b* and that the latter is the true boundary.

The argument goes either upon some supposed partiality of Mr. Ewing the surveyor or some mistake on his part. Their Lordships concur with the High Court that Mr. Ewing had much more ample materials on his local investigation to lay down the proper line in this constantly changing course of the river than any investigation by referring to maps which do not and could not point out the varying course of the river. Their Lordships see no reason for doubting the impartiality of Mr. Ewing and they are of opinion that the First Court should have acted on his survey. Their Lordships will therefore humbly advise Her Majesty that the decree of the High Court dated the 20th of April 1892 be affirmed. The Appellant must pay the costs of this appeal.