

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Baboo Puhlwan Singh and others v. Maharajah Muheshur Buksh Singh, from the High Court of Judicature, North Western Provinces, Agra; delivered 8th June 1872.

Present:

SIR JAMES W. COLVILLE.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE question with which their Lordships have at present to deal is that upon which the judgment of the High Court of the North-Western Provinces which is under appeal has entirely proceeded, viz., whether the Ghazeepore courts had jurisdiction to try the cause, having regard to the 14th section of the Code of Procedure? That article is in these words: "If, in a
" suit for land situate on the borders of the
" Court's local jurisdiction, the Defendant object
" to the hearing of the suit on the ground that
" the land is not included within the local jurisdiction of the Court, the Court shall have
" power to determine the point, and if the Court
" shall find that the land is included within its
" local jurisdiction, it shall proceed to try the
" suit. Provided that, if it be shown that the
" land in dispute has been adjudged by competent authority to belong to an estate, village,
" or other known division of land, situate within
" the local jurisdiction of another Court, the
" Court in which the suit is brought shall reject
" the plaint, or return it to the Plaintiff, in order
" to its being presented in the proper Court."

The High Court of Agra have come to the conclusion that that section was a bar to the

present suit, and that it was their duty to act under the latter part of the clause in question. Their Lordships are of opinion that that was a correct decision upon the section as applied to the facts of this case.

The question, as it seems to their Lordships, is what was the *res decisa* in the former case? In that suit an objection was taken similar to that which is taken in this suit to the jurisdiction of the Shahabad Court. It was treated as if the land in dispute was within Zillah Ghazeepore, or an accretion to land in the possession of the Defendants, which belonged to Zillah Ghazeepore, and it was contended that by reason of a former decision of the Collector of Ghazeepore the latter part of this section applied, and that the Court of Shahabad had no jurisdiction to entertain the suit. That was decided against the Defendants in that suit, who are the Plaintiffs and Appellants in this suit.

In order to decide that case, the Principal Sudder Ameen, who was the judge of first instance, thought it advisable to try the question of jurisdiction, together with the merits of the suit, and he came to the conclusion that the whole of the land coloured yellow in the map which has been produced in both suits,—and it is the most favourable way of putting the case for the Appellants to suppose that nothing but that land was then in dispute,—was an accretion to the Plaintiff, the Maharajah's, settled estate in Shahabad. That decision was confirmed by the High Court. It then came here upon appeal, and this Board, confirming generally the decisions of the two courts, held that, treating the whole of the yellow land as alluvial accretion, there were grounds for giving a portion of it to the Defendants, the present Appellants, as an accretion to their land, which had formerly, at all events, been in Ghazeepore; but that the other land, the portion on the other side of the line which they drew, was to be treated as an accretion to the

land marked green ; and that the Plaintiff, the Maharajah, in that suit, was entitled to recover that as an accretion to his settled estate ; affirming, therefore, with the above exception, all that had been done by the Courts below, viz., that the land was alluvial land, and that it was an accretion to the settled estate of the Plaintiff in Shahabad.

Now, no doubt, it might be possible to suppose cases in which the decision as to the accretion might not necessarily be a decision that the land to which it was accreted was within the local jurisdiction of the court which had dealt with it. But all these questions must be tried with respect to the subject matter in the particular suit. And it seems to their Lordships impossible, in construing the section with reference to what was in issue in the former suit, to come to any other conclusion than that the decision did, by necessary implication, find that the green land was within the settled estate of the Maharajah in Shahabad. He came as Plaintiff into court ; he claimed the whole of the land as an accretion to his settled estate in Shahabad. From the map and the evidence, it is obvious that, if an accretion to his land, it could be an accretion to nothing but the green land. The accretion was found to be an accretion to his land in the settled estate of Shahabad, and that proposition necessarily implied that the green land was a part of the settled estate in Shahabad.

It seems, therefore, to their Lordships that the decision of the High Court of the North-Western Provinces was correct, and that being the case, their only duty is to advise Her Majesty to dismiss this Appeal, with costs.

