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November 14.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice  
Sir William Burkill.*

RAI KRISHAN CHANDRA (PLAINTIFF) v. SAIDAN BIBI AND OTHERS  
(DEFENDANTS).\*

*Bengal Regulation No. XI of 1825, section 4—Alluvion—Gradual accession  
—Change of course of a river within a short space of time.*

Certain land belonging to village P. on the river Gomti was submerged, and after remaining submerged for a not very lengthened period again reappeared. But on its reappearance it was found to be on the opposite side of the river and adjoining village T. *Held* that the land thus cut off from village P. could not be said to have become part of village T. by "gradual accession" within the meaning of section 4 of Bengal Regulation No. XI of 1825, but was rather land merely separated from the village of which it formed part by a sudden change in the course of the river, and, this being so, no change of ownership had occurred.

"Gradual accession" or "alluvion" means an imperceptible increase; and land is said to be acquired by alluvion when it is acquired so gradually that it cannot be said how much is added at any particular moment of time. *Lopez v. Muddun Mohun Thakoor* (1) and *Hursubai Singh v. Syud Looft Ali Khan* (2) referred to.

THE plaintiff in this case claimed possession of some 170 bighas of land which were originally situate in the village of Poha, in the district of Benares, on the south-east bank of the river Gomti, but by a change in the course of that river were cut off from the village of Poha and reappeared on the north-west bank attached to the village of Tatarpur in the Jaunpur district. The plaintiff's case was that the land in suit was cut off from his village of Poha by a more or less sudden change in the course of the river which occurred in the year 1891. The defendants, on the other hand, whilst admitting that the land in dispute did formerly belong to the plaintiff's village, alleged that the change in the course of the stream was gradual and that they acquired the land by gradual accretion. They also set up a title by adverse possession. The Court of first instance (Subordinate Judge of Gorakhpur) found that the land had, according to the plaintiff's witnesses, become submerged in 1891, and after remaining submerged for some little time had reappeared; when it was found that the river had altered

\* First Appeal No. 250 of 1903, from a decree of Maulvi Syed Muhammad Tajammul Husain, Subordinate Judge of Ghazipur, dated the 16th of September, 1903.

(1) (1870) 13 Moo. I. A., 467.

(2) (1874) L. R., 2 I. A., 28.

its course, and that the land in suit was cut off from the plaintiff's village. The Court, however, considered that this state of things indicated a "gradual accession" to the defendants' village within the meaning of section 4 of Regulation No. XI of 1825, and accordingly dismissed the plaintiff's suit. The plaintiff appealed to the High Court.

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The Hon'ble Pandit *Sundar Lal*, Mr. *S. Sinha* and Mr. *R. Malcomson*, for the appellant.

Messrs. *Karamat Husain* and *Ishaq Khan*, and Pandit *Moti Lal Nehru*, for the respondents.

STANLEY, C.J. and BURKITT, J.—The suit which has given rise to this appeal was one for the recovery of 170 bighas of land, which were situate in the village of Poha, in the district of Benares, on the south-east bank of the river Gomti, but by a change in the course of that river are now on the north-west bank in the Jaunpur district. The plaintiff's case is that there was a sudden change in the course of the Gomti in the year 1299 Fasli (corresponding to the year 1891), and that the area of land now sought to be recovered was cut off from the plaintiff's village. The defendants admit that the land in dispute did formerly belong to the plaintiff's village, but they say that the change in the course of the stream was gradual, and that they have acquired the land by gradual accretion. They also set up a title by adverse possession.

The Court below held that a title by adverse possession was not established, but that the defendants have acquired the land in dispute by gradual accession. From this decision the plaintiff has appealed.

It is admitted that no custom exists as regards alluvion, and consequently the dispute between the parties must be decided on the basis of the rules provided by Regulation XI of 1825. By section 4 of this Regulation it is laid down that "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 zamindar or other superior landholder, or as a subordinate tenure by any description of under-tenant

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whatever;" and in the second paragraph it is provided that the rule so laid down "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 its 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."

In the plaint the plaintiff says that in the year 1891 there was a heavy flood in the Gomti and that the river, bursting its bank, made a sudden diversion of its course and, having left its original channel, began to flow within mauza Poha, and that owing to this a large tract of mauza Poha, measuring about 100 bighas, was thrown up on the west and north side of the stream. It is admitted that there was a great flood in the Gomti in 1891, but the defendants say that long prior to this date the river had been gradually encroaching on the plaintiff's village and that the lands in dispute had gradually accreted to their village, mauza Tatarpur. A number of witnesses were examined on both sides, but we are not disposed to attach much weight to their evidence, except so far as it is supported by documentary evidence. But we may say that the weight of the oral evidence appears to us to support the plaintiff's case. The witnesses for the plaintiff said that the land in dispute was cut off from the plaintiff's village in the year 1891, by a sudden diversion of the river Gomti, while the witnesses for the defendants alleged that it gradually emerged on the Tatarpur side of the Gomti during the years succeeding the year 1881.

The question turns upon the true meaning of the expression "gradual accession" as used in the Regulation. The learned Subordinate Judge seems to think that if a considerable tract of land adjoining a stream is submerged and cut off in the course of a month or two, and, when the water has subsided, the course of the stream is found to have been diverted and the land emerged on the opposite bank of the stream, the accession thus created is gradual. Referring to the evidence of Sheo Baran Singh, one of the witnesses for the plaintiff, who testified that

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so much as 100 or 125 bighas of land reappeared on the side of the defendant's village owing to the sudden dereliction of the Gomti, the learned Subordinate Judge observes that in cross-examination the witness admitted that "the tract that was cut off in the first year had been cut off from the month of *asarh* to the month of *katik*" (*i.e.*, from July to October), "and this clearly means that the said tract was carried away by degrees." He deals with the evidence of other witnesses for the plaintiff in the same way; for example, his comment on the evidence of Mahabal Singh, who deposed that the tract which was first carried away was carried away in the course of a month, is, "consequently this, too, does not prove the statement on which the plaintiff's suit is based."

The rule laid down in the Regulation of 1825 in regard to alluvion substantially follows the English law on the subject, and is based upon the Roman law. According to Justinian, "Whatever is added to a man's property by alluvion becomes his by natural law," and alluvion is thus defined by him:— "*Alluvio incrementum latens; per alluvionem autem id videtur adjici, quod ita parvulim adjicitur ut intelligere non possis quantum quoquo momento temporis adjiciatur.*" (Institutes, Lib. II, Tit. I, section 20.) Alluvion is described as an imperceptible increase (*incrementum latens*) and land is said to be acquired by alluvion when it is acquired so gradually that one cannot say how much is added at any particular moment of time. But if by the violence of a river a portion of land is added to the estate of an adjoining owner, the land continues to be the property of the original owner. "*Quodsi vis fluminis partem aliquam ex tuo prædio detraxerit et vicini prædio appulerit, palam est eam tuam permanere.*" (Lib. II, Tit. I, section 21.) This gives an indication of the true meaning of "gradual accession." The leading case of *Lopez v. Muddun Mohun Thakoor* (1) is instructive. In that case land forming part of a mauza on the banks of the Ganges by reason of continual encroachments of the river became submerged and the surface soil was wholly washed away. After recession and re-encroachment by the river the waters ultimately subsided and

(1) (1870) 13 Moo, I. A., 467.

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left the land reformed on its original site. It was held that the land washed away and afterwards reformed on the old ascertained site was not land gained by increment within the meaning of section 4 of Regulation XI of 1825. Lord Justice James, who delivered the judgment of their Lordships of the Privy Council, in the course of his judgment observed that it was a principle, not merely of English law or peculiar to any system of municipal law, but a principle founded in universal law and justice 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;" and he then refers to the principle on which title by gradual accession is acquired in these words:—"There is, however, another principle recognised in the English law, derived from the civil law, which is this:—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 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." From this we gather the meaning of "gradual accession;" it must be by gradual, slow and imperceptible means.

In the later case of *Hursuhai Singh v. Syud Lootf Ali Khan* (1) their Lordships of the Privy Council reaffirmed the principle laid down in *Lopez v. Muddun Mohun Thakoor*, namely, that where land which has been submerged reforms and can be identified as having formed part of a particular estate, the owner of that estate is entitled to it. In the case before us there is no difficulty as regards the identification of the land. The course of the stream is defined upon maps prepared in the years 1881 and 1883. These maps are admitted, and it is also admitted by the respondents that the mid-stream of the river as shown in these maps formed the boundary between the villages of Tatarpur and Poha. In a map which was prepared in 1886 for the purposes of litigation then pending between the parties to

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the present appeal in reference to a piece of land on the west side of the river, the course of the stream is shown as it existed in 1881; and it is also shown by this map that a considerable tract of mauza Poha lying to the east of the river had been submerged. The *khassra* of mauza Poha for the year 1294, corresponding to the year 1887, shows that a number of fields and portions of fields belonging to that village had been cut away by the river. The amount so cut away amounted to over 25 bighas. In the next year about six bighas were submerged, and in the following three years nearly 80 bighas were submerged. In the year 1298 Fasli, corresponding to the year 1892, that is, the year after the great flood of 1891, land appears for the first time to have emerged on the Tatarpur side of the Gomti. This we gather from a statement in the *khassra* of mauza Poha for that year. Over 10 bighas are therein stated to have appeared on the other side of the river, and this area is described as being part of the river Gomti. Until the year 1892 an increase in the area of Tatarpur is shown. In the rent-roll of mauza Tatarpur for the year 1298 Fasli the area of the village is given as 922 bighas 1 biswa 4 dhurs. This area corresponds with the area of the village in 1289 Fasli, as appears from the *khassra* of that year. It was not until the year 1299 Fasli (that is, the year of the flood) that the area was increased. In that year the rent-roll shows an area of 1,014 bighas 9 biswas and 8 dhurs, that is, 92 bighas in excess of the areas given in the rent-roll of the preceding year. In 1300 Fasli the area given is 1,013 bighas 8 biswas 4 dhurs, and in 1301, 1,038 bighas 8 biswas and 9 dhurs. The evidence inclines us to think that, though the Gomti frequently overflowed its banks from the year 1881 onwards, there was no actual change in the course of the stream until in the great flood of 1891 the river forced a new passage through the land in dispute. This could only be discovered when the water subsided. We have no hesitation, therefore, in coming to the conclusion that the defendants respondents did not acquire title to the property which they claimed by gradual accession. It was by a sudden change in the course of the Gomti that the land in dispute emerged on their side of the river,

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As we have come to the conclusion that there was no gradual accretion of the lands in dispute to the defendants respondents' village, it is unnecessary to consider the case of *Debi Bahksh Singh v. Tirbhawan Singh* (1), upon which the learned counsel for the respondents relied.

As regards the claim of title by adverse possession which the respondents put forward as well in the Court below as in this Court, we agree in the view taken by the Court below. The respondents have wholly failed to show that they have acquired any title by adverse possession.

We therefore allow the appeal, set aside the decree of the Court below, and give a decree to the plaintiff for possession of the land as claimed in the plaint. The plaintiff claims mesne profits for the years 1307-1309 Fasli. To these he is entitled, and we so award, and direct that the amount of mesne profits be ascertained in execution. We give the plaintiff the costs of this appeal and also the costs in the Court below.

*Appeal decreed.*

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November 16.

*Before Mr. Justice Banerji and Mr. Justice Richards.*  
MAHARAJA OF BENARES (DECREE-HOLDER) v. PATRAJ KUNWAR  
(JUDGMENT-DEBTOR).\*

*Execution of decree—Application for attachment of debts said to be due to judgment-debtor—Denial of debts by alleged debtors—Procedure.*

Where a Court is asked in execution of a decree to attach debts alleged by the decree-holder to be due by third persons to the judgment-debtor, it is no business of the Court to determine in the first instance whether the debts are really due or not, or to refuse execution if the parties alleged to be debtors to the judgment-debtor deny that they are so. But after attachment the Court may either sell the debts after giving notice to the intending purchasers that the existence of some of them is denied by the alleged debtors, or may appoint a receiver to realize the debts by bringing suits against the debtors.

In this case the Maharaja of Benares, holding a decree for a large sum of money by way of rent against Musammatt Patraj Kunwar, sought to realize the decretal money by attaching sundry debts which he alleged to be due by various persons to his judgment-debtor. Several of these alleged debtors came into Court

\* First Appeal No. 147 of 1905, from a decree of E. B. D. Gordon, Esq., Assistant Collector, 1st class, of Benares, dated the 27th of October, 1904.

(1) (1897) I. L. R., 19 All., 238.