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recovered from the Bil (and great part of the land in question has been admitted to have been so reclaimed since the date of sale) would so pass. Yet the argument at the har went the full length of contending that the whole site of the Bil, if cleared of water and made capable of cultivation, would fall into, and become part of, the respondents' village, Jhanpagram, though whilst it was covered with water it remained under the dominion of the appellant. For such a contention their Lordships can see no ground. The decision of the Fouzdari Courts, as to the point of possession, was final. The question in this suit was, whether the plaintiffs, by showing a better title than the defendants, could recover possession from them. In their Lordships' judgment, the original title to this land was in the appellants' ancestors, and it has not been shown that they ever lost it. It is possible, though not very probable, that if there had been fuller evidence of the original settlement of these properties, and of what passed by the revenue sale, this might have been done. Their Lordships, therefore, in the peculiar circumstances of this case, though they think that the appeal ought to be allowed, and the present suit dismissed with costs, and will make their humble recommendation to Her Majesty accordingly, will also recommend that Her Majesty's order be made without prejudice to the right of the respondents to bring, if they shall be so advised, a new suit for the recovery of the lands in question, upon the ground that the title to these lands passed to the Pal Chowdhrys, from whom the respondents derive their title by the revenue sale.

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ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Chur Lands—Proof of Title by Claimant.

10 B. L. R. 429

The reformation of land in the b d of a navigable river is not *primâ facie* to be ascribed to a loss from any particular riparian estate, nor is the land which

* *Present:* LORD CHELMSFORD, SIR JAMES WILLIAM COLVILE, SIR ROBERT PHILLIMORE, AND SIR LAWRENCE PEEL.

has been removed from an estate by sudden avulsion reclaimable, unless the circumstances supply evidence of identity. A title by accretion is not established by mere proof of general inclusive boundaries at a time preceding the formation of the chur, but there must be proof of the nucleus of accretion. The land gained will follow the title of the particular land forming the nucleus.

The cultivation of chur lands, like that of waste or jungle lands, carries no *primâ facie* character of usurpation or wrong; and the claimant against a purchaser, *bonâ fide* and without notice, in possession, must strictly prove his title.

EKOWRI SING and others brought this suit against Hiralal Seal, to recover possession of certain chur lands.

Plaintiffs alleged that the site of the disputed lands originally lay within the bounds of their putni talook; that a great part of this talook had been washed away by the action of the tidal river on which the estate lay, but that between the years 1842—48 the land began to re-form and accreted to their putni lands, and was in the possession of plaintiffs' father, who died in 1847; that after plaintiffs' father's death, the reformed lands were illegally taken possession of by defendants' predecessors; plaintiffs being at the time minors, under the Court of Wards. Defendants claimed the lands as being part and parcel of certain mauzas in their zemindari, which they had purchased *bonâ fide* and without notice of objection; and they stated that they and their predecessors had held continuous possession of the lands since their re-formation.

The first Court (Principal Sudder Ameen of Midnapore), on the 30th August 1861, found in favor of plaintiffs, relying mainly on the report of an Ameen, whose local enquiry went to show that the mauzas alleged by defendants to be those to which the chur had accreted did not exist, while it was actually attached to plaintiffs' putni lands.

Defendants appealed to the High Court urging—

1. That the plaintiffs had not proved that the original site of the chur had been in their possession prior to diluviation; or that the villages to which it was said to have accreted existed at the time of the re-formation.

The High Court (BAYLEY and E. JACKSON, JJ.) on 8th December 1863, reversed the lower Court's decree and dismissed the suit, for the following reasons:

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That plaintiffs must, before they could oust defendants, who had been for many years in possession, make out a strong case of superior title, and prove that they (plaintiffs) were in possession previous to those years, and that the land did then form part of the villages they alleged. The plaintiffs had indeed proved that the villages named by them were part of their putni talook, and they produced a former darputnidar who swore that the land in dispute had been held by him as part of those villages. But this evidence was weak in itself, and being supported only by two old chittas, one unattested and unaccounted for, and the other prepared by the darputnidar himself, it was obviously insufficient. The Courts held that oral evidence unsupported by documentary proof could not prevail against an undisputed possession of twenty years.

The plaintiffs appeal to Her Majesty in Council.

Their Lordships' judgment was as follows:

THIS SUIT is brought to recover about 1,000 bigas of land claimed as alluvial, and contained within the boundaries given in a map annexed to the plaint. The plaintiffs must succeed or fail on their title to the land as alluvial. It is not competent for them now, the cause having been decided on this title, 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. Had that been the case alleged, some defence might have been made, founded on the nature of a boundary river, the ownership of its soil, the character, sudden or gradual, of the original loss of land, and the effect of change from such causes in the land itself or the ownership in the soil; which defence, as is apparent from the frame of the Regulations of 1825, would admit of variation with varying circumstances of inundations, identification, and accretion. The cause was tried before the Principal Sudder Ameen, who decided in the plaintiffs' favor. On appeal to the High Court, that decision was reversed, and from that decree of reversal, the present appeal has been preferred. The High Court simply decided that the proofs adduced by the plaintiffs were insufficient to justify a decree in their favor. Had this been a case of ordinary claim to lands, wherein a

plaintiff might advance, prove, and recover on a *primâ facie* title, calling for some answer of title in a defendant, and entitling him to a decree in default of such an answer being made and proved, the propriety of the decision of the Hight Court might have been assailed with more prospect of success. But this is a case of a claim to land washed away and re-formed in the bed of a navigable river, the ownership of the soil of which is not commonly in the riparian proprietors of its banks, and which is not proved in this case to have belonged to the predecessor in title of either disputent. The re-forming of land in such a stream, after a considerable interval and frequent floods, is not *primâ facie* to be ascribed to a loss from any particular portion of territory, nor is the land which has been removed by a sudden avulsion reclaimable, unless the circumstances supply evidence of identity, which is wanting in the case before us. This re-formed land is not ascribed to avulsion, and several years elapsed between the loss of the plaintiff's land and the appearance of this chur. The title by accretion to a new formation generally is not founded on equity of compensation, but on a gradual accretion by adherence to some particular land which may be termed the nucleus of accretion. The land gained will then follow the title to that parcel to which it adheres. It is obvious, therefore, that such a title is not established by mere proof of general inclusive boundaries of land, at a time long preceding the actual formation of the chur, since the lands that have such a fluctuating boundary, as a tidal river, and which are themselves subject to loss and gain of quantity by acts independant of the owner's concurrence, and which may pass from side to side of the river boundary, have not the ordinary element of fixedness which belongs to immovable estate, in the common course of things. A detached chur, independent of usage, in such a stream, would belong to neither riparian proprietor; and the circumstances that it was subtended by the land of one, would not be enough to entitle him to it. The decision of this case in the Court below seems to have proceeded on the mere presumptions which would have regulated the decision of a question of parcel or no parcel in an ordinary boundary dispute; for no evidence whatever was given by the plaintiffs of the nature of the original formation of the chur,

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where it first appeared, to what it first adhered, and the case even now affords no ground for concluding any thing with reasonable certainty, as to the original title to it.

The defendants, it was conceded by their able Counsel, might be unable to sustain a title to the chur as plaintiffs; but it was urged with force and reason that, by reason of their long enjoyment and being innocent purchasers for value, they were entitled to put every claimant to strict proof of title. They are purchasers for value without notice of any prior or superior claim. Acquisitions of the nature of this chur are often doubtful in their origin; they must depend much on oral testimony, which time is constantly destroying or impairing, and it is often hard to say who is the person to whom the law would ascribe the legal ownership of them. The mere cultivation of them, like that of waste or jungle lands, carries with it no *primâ facie* character of usurpation or wrong. An undisputed possession and cultivation, even though for a few years only, would the more readily induce a purchase, and a purchaser *bonâ fide* and without notice might, with perfect honesty, and even with the favorable construction by a Courta of Justice of his acts, defend his possession by insisting on strict legal proof of an adverse title.

The High Court appears to have acted upon this principle, though the Judges have ascribed too long a possession to the defendants, and may have erred in their view of portions of the evidence. The grounds of their decision seem to their Lordships correct; the *ratio decidendi* is not a mistaken one, though it is supported in part by mistaken reasons. They have acted, in requiring adequate documentary proof in a conflict of oral proof, in accordance with the course adopted by the Judicial Committee itself on this point, in a somewhat similar case, *Musst. Imam Bandi v. Hargovind Ghose* (1). They were dissatisfied with the documentary proof exhibited; they have said that better might have been brought forward had the case of the plaintiffs been well founded. Their Lordships are not prepared to dissent from either expression of opinion. To admit documents, not strictly evidence at all, to prop up oral evidence too weak to be relied upon, is not

(1) 4 Moore's I. A., 403.

a course which their Lordships would be inclined to approve; and none of the chittas which have been laid aside by the High Court are shown to have been admissible in evidence according to the laws of evidence regulating the decisions of those Courts. It would expose purchasers to much danger if their possession could be disturbed by inferences from, or statements in, documents not legally admissible in proof against them. The docnment (1) on page 19 appears to be only a copy, and it is introduced by no evidence preparing the way for its reception. Whatever might be the value of the chittas in general in questions between the zemindar and his tenants or ryots, to receive them as evidence of boundary against a rival proprietor without further account, introduction or verification, would, if it obtained as a practice—and each relaxation is apt to become a precedent for another—tend further to encourage the manufacture of evidence in a place already too prone to the fabrication of it. Their Lordships, therefore, are unable to ascribe any error to the way in which the High Court has dealt with the documentary evidence in this cause.

It has not unfrequently happened that their Lordships, in a conflict of decisions on questions of fact between the Judge who heard the evidence and the Court which reviewed it, have followed the finding of him who saw the witnesses and heard them give their evidence; but in this case the Judge below appears not to have sufficiently regarded the nature of the claim and the proof it should receive. He appears further to have acted mainly on the report of the Ameen, and that report, like the judgment which was founded upon it, appears to their Lordships to proceed upon a mistaken view of the issue between the parties and of the burthen of proof which the plaintiffs in this suit had to support. The conclusions of both are founded more upon the want of proof to support the title alleged by the defendants than upon proof of that title which it was necessary for the plaintiffs to establish in order to disturb the possession of the defendants.

The map of the Ameen itself shows that there were lands of other owners than the plaintiffs, so situated that they might

(1) A chitta showing original measurement of plaintiffs' lands.

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have been, in course of things, a nucleus to the increment; and, therefore, an inquiry into its origin and direction was one that ought not to have been neglected. The case itself is one turning on views of evidence on which their Lordships would be reluctant to differ from the opinion of a Court more likely to know, than their Lordships can be, what weight of proof would satisfy in India the just expectations of a Court of Justice.

Their Lordships, therefore, agreeing with the High Court in their disregard of the chittas, and with their conclusion that the case was not sufficiently proved, will humbly recommend to Her Majesty that the appeal be dismissed with costs.

RANI SWARNAMAYI v. SHASHI MUKHI BARMANI AND OTHERS.

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ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Limitation—Section 32 *of Act X. of* 1859—*Cause of Action—Trespass.*

See also 13 B. L. R. 452 8 B. L. R. 537.

A, a zemindar, sold the rights of B, his putnidar, for arrears of rent, under Regulation VIII. of 1819. This sale was subsequently set aside at the suit of B for irregularity. A then sued B for the arrears, under Act X. of 1859, and B raised the defence that the suit was barred, more than 3 years having elapsed from the close of the year in which the arrear became due.

Held (reversing the decision of the High Court), that upon the setting aside of the putni sale, the putnidar took back the estate subject to the obligation to pay the rent; and that the particular arrears of rent claimed must be taken to have become due in the year in which that restoration to possession took place, and plaintiff could sue within three years from the close of that year.

Also *held*, that A was not guilty of a trespass in bringing the property to sale under a defective notice, and A could not have sued for the arrears pending the proceedings to set aside the sale.

THIS case was decided by the High Court, on the 9th August 1864 (BAYLEY and PHEAR, JJ.), on an appeal from the decision of the Deputy Collector of Nuddea, dated 22nd December 1863.

The facts are sufficiently explained in the following judgment of the High Court, which was delivered by

PHEAR, J.—This suit is brought for arrears of rent of a putni talook, due in 1857, with interest thereon.

* *Present:* LORD C. CHELMSFORD, SIR JAMES W. COLVILE, LORD CHIEF BARON, AND SIR LAWRENCE PEEL.