did not direct the Master to inquire as to whether more could have been made by Mohes Chunder if he had not been guilty of wilful default, but merely to take an account of the assets which he had received; and that is all that the Master did. He found what Mohes Chunder had received, and stated that there was a small balance due from him to the estate; but he did not enter at all into the question of whether Mohes Chunder had committed waste; nor could he, under the order which was made by the Court, have entered into that question. When the matter was brought before the first Court, Mr. Justice Morgan says:—"One "point made by the defendants is that the "same points have been raised by an admin- "istration summons by the present plaintiffs "against the executor. The Master, how- "ever, porperly declined to enter on an "investigation of this matter;" and the Master never did, nor did Mr. Justice Levinge, who made the order, direct the Master to enter into such an investigation. He could not, and did not, make such an order, and the matter never came before the Master at all.

Well, then, assuming that Mohes Chunder had been decreed to account for the 5,000 rupees which he had received from Juggut as the purchase-money of the estate, that circumstance would be no reason why the heirs of Hurrish Chunder should not have the purchase made by Juggut Chunder set aside upon returning the amount to him. The two causes of action are quite different. The present suit is not in the nature of a review of the decree which has been made against Mohes Chunder. It is a suit against Juggut Chunder as a purchaser in his own right, and not as executor of Hurrish Chunder. The other suit was against Mohes Chunder, to account for what he had received as executor of Hurrish Chunder.

It appears, therefore, to their Lordships that the Lower Court was right in declaring that the points raised by the administration summons, and the order and the reference to the Master, did not preclude the plaintiffs from bringing this suit against Juggut Chunder. It is true that Mohes Chunder was made a party to the present suit, but whether it was necessary or not is immaterial. Possibly this decree might have been obtained against Juggut Chunder without making Mohes a party; but Mohes did not object to being made a party, and he does not appeal in this case. He is made a respondent in this suit; he is not an appellant.

Their Lordships do not repudiate the authority of any of the cases which were cited by Mr. Cochrane. Admitting them to their fullest extent they are not applicable to the present case.

Mr. Justice Norman says, "I see no rea- "son why an account should not be taken "against one executor on one principle and "against another in respect of a separate "wrong committed by him or separate relief "sought against him." It appears to their Lordships that that remark is not applicable to the case. They have already pointed out that this is not a suit against Juggut Chunder as executor of Hurrish Chunder, nor for a wrong committed by him in that capacity. The relief to which the plaintiffs are entitled is upon the ground that the purchase which Juggut Chunder made was invaild, not because he was executor of Hurrish Chunder, but because he was executor of Sumboo Chunder, and as such executor held, for the benefit of Hurrish Chunder's heirs, the share which he purchased from Mohes Chunder as executor of Hurrish Chunder.

Under these circumstances their Lordships think that the Lower Courts came to a right decision, and they will therefore humbly recommend Her Majesty that the decree of the High Court be affirmed. As there is no party appearing on the other side, it will be without costs.

The 6th November 1874.

Present:

Sir James W. Colvile, Sir Barnes Peacock, Sir Montague E. Smith, Sir Robert P. Collier, and Sir Lawrence Peel.

Diluvion—Re-formation.

*On Appeal from the High Court of Judicature at Fort William in Bengal.**

Hursuhai Singh and others,

versus

Syud Lootf Ali Khan and others.

Where land which has submerged re-forms, and can be identified as having formed part of a particular estate, the owner of that estate is entitled to it.

THEIR Lordships, considering the turn that the argument has taken, do not think

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*From the judgment of Bayley and Pundit, JJ., in Regular Appeal No. 401 of 1865, dated 4th June 1866.

it necessary to go at any length into this case. The suit was brought by the appellants, the proprietors of Mouzah Muteor, in Tirhoot, against the respondents, the proprietors of Mouzah Ramnuggur, to recover the possession of a large quantity of land which had been submerged by the river Ganges. It appears that the river flowed between the estates of the plaintiffs and the defendants, and in its course between the two estates there were from time to time various changes. There were two or three defined channels, which at times the river overflowed, and formed a pool or lake. The land which is the subject of the present suit was submerged, and when it first became free from water and reappeared, it adhered to and adjoined the estate of Ramnuggur, and, *primâ facie*, the accretion was to that estate; but upon an inquiry made by the Judge of Patna, who went to the spot, heard evidence, and took great pains to survey the district, he came to the conclusion that the submerged land, although it had reformed close to Mouzah Ramnuggur, was, in point of fact, land which belonged to Mouzah Muteor, and that there were means by which he could identify, and did identify, the land as having been, before its diluviation, part of that mouzah. He found those facts, and applying the law as he understood it to the facts, namely, that when submerged land can be identified upon its reappearance as belonging to a particular estate, the proprietor of that estate is entitled to it because in truth he had never lost the land, the land was always his, and the difficulty of identification being removed by evidence—the land being in fact identified—there was no reason why the property should not be regained by him. He acted upon this principle of law, which had been at that time affirmed by the High Court of Calcutta in a case in which Sir Barnes Peacock, with two other Judges, had given the judgment. That, however, was the judgment of a Division Bench; and the High Court, upon appeal in the present suit, decided that they were bound by a subsequent decision of a Full Bench of the High Court, which had come to a contrary conclusion, and had held that land which reappeared under circumstances like the present, must be held to belong to the proprietor of the estate to which it had apparently accreted; and they remanded the cause to the Judge of Patna, who, without altering his finding on the facts, decided according to this view of the law, and his judgment was, as might be expected, upheld by the High Court in the judgment now under appeal, on the case again coming before it upon the appeal of the present appellants.

The question of law involved in these decisions, which is a very important one, was brought before this Committee, in a case of Lopez *v.* Muddun Mohun Thakoor, 13 Moore, I.A., 467,* in which the principles which should govern cases of this description were very fully discussed and elucidated, with the result that it was laid down by the authority of this Committee 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. It is admitted by Mr. Leith, the Counsel for the respondents, that the authority of this case, and others which have followed it before this Committee, cannot be disputed. Their Lordships think the principles laid down in those cases are perfectly correct, and are distinctly applicable to the present; and that, if the facts are to be taken as they were found by Mr. Justice Ainslie, the judgment below must be reversed. Their Lordships, for the reasons they gave during the argument, think it is impossible those facts could be disputed with any effect at their bar, and therefore both law and fact are in favor of the appellants.

Mr. Leith endeavoured to distinguish between the lands which were the permanently settled lands of Muteor and some lands which had been in themselves an accretion, and which were temporarily settled only with the proprietor of Muteor. Their Lordships think, however, that this distinction cannot prevail. There is evidence from which it may be presumed that those lands accreted to the estate of Muteor, and it may be inferred from the mode of accretion that the Government settled with the proprietor upon the ground that they had so accreted, and therefore that he was entitled to the settlement.

On these grounds their Lordships think that the judgment of the High Court must be reversed, and they also think that the decree originally made by the Judge of Patna before the remand is the correct decree. They find there is no formal petition of appeal against the decree of the High Court which remanded the suit, but this judgment ought not to be allowed to stand in the way of the proper decree to be made in the cause, and will be nullified by the course their

* 14 W. R., P. C., 11.

Lordships propose to take, *viz.*, humbly to advise Her Majesty to reverse the judgment of the High Court now under appeal, and the second judgment of the Zillah Judge, and to direct a decree to be made in the suit to the effect of the original decree of the Zillah Judge. The respondents must pay the costs of the litigation in India, and of this appeal.

The 24th November 1874.

Present :

The Hon'ble J. B. Phear, *Judge.*

Lease—Forfeiture—Construction.

Case No. 525 of 1874.

Special Appeal from a decision passed by the Subordinate Judge of Dacca, dated the 20th January 1874, reversing a decision of the Additional Moonsiff of Moonsheegunge, dated the 5th July 1873.

Ram Nursingh Chuckerbutty and others (Plaintiffs), *Appellants,*

versus

Dwarkanath Gangooly and others (Defendants), *Respondents.*

Baboo Kalee Mohun Dass for Appellants.

Baboos Gopal Lall Mitter, Doorga Mohun Dass and *Bama Churn Banerjee* for Respondents.

A condition of forfeiture should not be extended beyond the words in which it is expressed ; unless, perhaps, it is impossible without so extending it to give a reasonable construction to the instrument in which it appears.

I THINK that sitting here as I do now on special appeal, I ought not to disturb the decision of the Lower Appellate Court.

The facts of the case are thus very shortly stated by the Subordinate Judge :—" It appears that in 1229 B.S., the ancestor of the plaintiff leased out the disputed land, which is a very small piece of land adjoining to the bastoobarry of the defendants, and the lease was in the name of Puddo Lochun alone. But the two brothers of Puddo Lochun who were joint in property and family continued to be in possession of the land. In the like manner, the heirs of Puddo Lochun, with the sons and heirs of his two brothers, have been in possession. Soon after the members of the family having increased in number, the sons of Puddo Lochun for sake of convenience having left their sister's sons to enjoy their share in the bastoobarry, removed to some other place, and the sons and heirs of the two brothers of Puddo Lochun are still in their original residence."

It must be added that the suit is brought by the lessors against not only the sons and heirs of the two brothers of Puddo Lochun, who are still living in the original residence, but also against the direct heirs of Puddo Lochun himself. And these latter assert in defence that the property is theirs, and that the other defendants are in possession thereof with their leave and license.

On these facts, and the evidence in the case, the Subordinate Judge has raised the inference of fact that the original pottah was intended by the lessors to be for the benefit jointly of Puddo Lochun, who was alone named as lessee, and his brothers who were jointly in possession of the baree with him. I am not prepared to say that there is any error of law in this conclusion of the Subordinate Judge. The words of the lease, no doubt, if construed strictly, must be taken to mean that the lease was granted to Puddo Lochun himself alone and his immediate personal heirs. But the circumstances of Hindoo society and the mode in which Hindoo property is so commonly held in this country, may very properly justify the conclusion which the Subordinate Judge has drawn from all the facts of the enjoyment of the property under the lease, namely, the conclusion that notwithstanding the narrowness of the words of the lease itself it was intended to operate in favor of Puddo Lochun and his brothers who were living with him. But it seems to me that on this appeal it is not necessary for me judicially to determine this question. The lease undoubtedly according to its terms operates in favor of those of the defendants who are the direct descendants of Puddo Lochun, and they cover, if necessary, the other defendants with the protection of their leave and license. This being so, the only question that is left in the case is the question whether the condition that appears in the lease has the effect on the facts, and in the events which have occurred of putting an end to the lease altogether.

The Lower Appellate Court has not, in express words stated that it has given attention to this point. But the first Court says :—" It has been said that the plain words of the pottah indicate that the grant would fail on Puddo Lochun leaving