CALCUTTA HIGH COURT

Saudamini Dassya

Vs

Secretary of State

(Asutosh Mukerjee and Rankin , JJ.)

10.04.1923

JUDGMENT

Asutosh Mukerjee, J.

1. This is an appeal by the plaintiffs in a suit instituted by them with a view to test the legality of an assessment of revenue made under the Bengal Aluivion and Diluvion Act (IX of 1847). The case for the plaintiffs is that the disputed lands, which have been assessed, with revenue, belonged, to them as appertaining to their estate No. 4823, on the Revenue Rod of the Collector of Backerganj. They maintain that the assessment could nut have been validity made under the provisions of Act IX of 1847 as the lands and not added lands within the meaning of that Statute and they ask for a declaration that the assessment proceedings are without jurisdiction, that the settlement made with the defendants by the Secretary of State is illegal and for consequential reliefs. On behalf of the Secretary of Stat, who is the first defendant, the claim has been resisted on the ground that the disputed lauds are not included within estate No. 4823 but are accretions to estates Nos. 1721 and 1722 held by the other defendants and have been rightly assessed with revenue. Tae Subordinate judge has held that the disputed lands form an alluvial increment to estate in a 4823, that the plaintiffs as proprietors of that estate are entitled to hold the hinds subject to the payment of the revenue assessed, and that the settlement made with the defendants is invalid and inoperative. The plaintiff as well as the defendants other that the Secretary of State are dissatisfied with this decision. The plaintiffs have appealed on the ground that the lands are included in their permanently settled estate and are not liable to be assessed with revenue. The defendants have appended on the ground tint the Lands are accretions to their estate and have been rightly settled with them. The appeal preferred by the plaintiffs (No. 237 of 1919) requires examination first, in the light of the relevant statutory provisions.

2. Tint provisions of Act IX of 1847 were analysed in the judgment of the Judicial Committee delivered by Lord Herschell in the case of *Secretary of State v. Fahamidannissa Begum* [1] the

Judicial Committee affirmed the decision of the majority of the Full Bench *in Fahamidannissa Begum v. Secretary of Stale*[2] which had overruled in part the decision of Wilson, J., in *Saratsundari Dabi v. Secretary of State*[3] was named lot the assessment of lands gained from sea or from rivers by alluvion or dereliction. Section 3 empowers the Government to direct new surveys of riparian lands, and provides as follows: Within the Paid Provinces it shall be lawful or the Government of Bengal, in all districts or parts of districts of which a Revenue Survey may have been or may hereafter be completed and approved by Government, to direct from time to time, whenever ten years from the approval of any such survey shall have expired, a new survey of lands on the banks of rivers and on the shores of the sea, in order to ascertain the changes that may have taken place since tie date of the last previous survey, and to cause new maps to be made according to such new Survey.

3. Section 4 lays down that the approval of the Revenue Surveys of districts or parts of districts, which may be hereafter surveyed, shall be deemed to have taken place on such day as my be specified as the day of such approval in the Calcutta Gazelle. Sections 5 and 6 deal, respectively, with the question of deduction from jama of estates from which lands have been washed away, and the question of the assessment of increments to revenue paying estates. Section 6, which is relevant in the case before us, provides as follows: Whenever on inspection of any such new map it shall appear to the local Revenue Authorities that land has been added to any estate paying revenue directly to Government, they shell without delay assess the sama with a revenue payable to Government according to the rules in force for assessing alluvial increments, and shall report their proceedings forthwith to the Board of Revenue, whose orders there upon shall be final.

4. The expression "any such new map" plainty refers to the "new map" made according to "new survey" as contemplated in Section 3. That section provides for periodical surveys at intervals of not less than ten years, alter a Revenue Survey has been completed and approved. The object of the "new survey" is to ascertain the "changes" that may have taken place since the date of the last previous survey,--that is, changes by alluvion or dereliction (not changes by possession); *Bibi Wakilan v. Deo Nandan Prasad*[4] Section 6 then imposes upon the Revenue Authorities the duty to assess what may be called added land, whenever, on inspection of the new map, it appears that land has been added to an estate paying revenue directly to Government. There must consequently be a comparison between two maps, made at an interval of rot less than ten years and each stowing the revenue paying estate concerned. That estate must, accordingly, be in existence as a revenue paying estate, if not before, at least on the date of the first of lie two maps taken as the basis for comparison. We may usefully re-call here the following passage from the judgment of Wilson, J., in *Saratsundari Dabi v. Secretary of State*[5] which except in one particular, remains unaffected by the decision of the Full Bench and of the judicial Committee in *Fahamidannissa Begum v. Secretary of State*[6] *and Secretary of State v. Fahamidannissa Begum*[7]

"The object of the Act is to provide for the assessment of riparian estates from time to time, in accordance with the changes which periodical surveys may show to have taken place in their area and boundaries. Section 3 of the Act refers to a Revenue Survey which is to be approved by Government as fixing the boundaries of estates, and provides that at intervals of not less than ten years, fresh surveys of such estates may be made. Section 5 then provides for a reduction in the sudder jama when on a comparison of two successive surveys it appears that the area of an estate has been diminished, and Section 6 provides for an addition to the jama, when on inspection and comparison of the new map land appears to have been added to the estate since the last survey. In every case the stating point is to be the Revenue Survey which it world appear, is to be taken as representing the boundaries of the estate as they existed at the time of the Permanent Settlement, and it is apparently not open to the Revenue Authorities to go behind that survey and enquire whether in fact the boundaries at the time of settlement were not other than therein represented.

5. Wilson, J., in this passage, had apparently in view the case of an estate which was in existence at the time of the Permanent Settlement of 1703. Section 3 of Act IX of 1847, is, however, all comprehensive in score, and sections 5 and 6 both refer to all estates paying revenue directly to Government no matter whether they were or were not in existence in 1793. What is essential to attract the application of Act IX of 1847 is that there should have been, in the case of the estate concerned, a Revenue Survey. This prima facie furnishes the boundaries, as presumably, though not conclusive, accurate; see the judgment delivered by Willson, J., on behalf of the majority of the full Bench in *Fahamidannissa Begum v. Secretary of State*[8], which to this extent, overruled his previous decision in *Saratsundari Dabi v. Secretary of State* [9] The true position is that the Revenue Survey map is taken as the basis of comparison; but the comparison of tie maps is not conclusive. The comparison sets the Revenue Authorities in motion, and they may, then, on the best materials they can procure, proceed to assess that land they deem to be assessable. This view is confirmed by the observations of Lord Herschell in *Secretary of State v. Fahamidannissa Begum*[10] Section 3, according to him, empowers the Government of Bengal, in any district in which a Revenue Survey has been completed and approved by the Government, to direct decennially a new survey of lards en the banks of rivers, and in the shores of the sea, in order to ascertain the changes that may have taken place since the last previous survey and to cause new maps to be made according to such new survey. Section 6 then provides that whenever, on inspection of any such new map, it shall appear to the local Revenue Authorities that land has been added to any estate paying revenue directly to Government, they shall, without delay, duly assess the same according to the rules in force for assessing alluvial increments. Such added land cannot obviously be land which was already comprised in a Permanent Settlement but had become derelict of the sea or river; for it would be a contradiction in terms to maintain that such land had been 'added' to the estate to which they already belonged. Lord Herschell then refers to Section 5 which deals with the question of deduction from jama of estates from which lands have

been washed away, and points out that the Act provides no machinery for making such abatement where the land was covered with water at the time of the original survey; it is only "when on inspection of the new map" it appears that land has been washed away that there is any legislative authority for making an abatement. These remarks apply equally to a case under Section 6, and it is only when on inspection of the new map it appears that land has been added that there is legislative authority for assessment of additional revenue. Lord Herschell finally adds that it would be an erroneous interpretation of Act IX of 1847 to hold that it rendered the Board of Revenue supreme and enabled them to make valid and effectual a proceeding on their part which the law had declared to be wholly illegal aid invalid.

6. In the case before us, the history of the estates mentioned by the plaintiffs and defendants respectively has been traced. Dapdapia was a mouza on the bank of the Barisal river, a public navigable river, at the time of the Permanent Settlement of 1793. This mouza appertained to estates Nos. 1721 and 1723. Lands accreted to the mouza owing to the recession of the river and steps were taken in 1846 for the assessment of the new lands. At that time the proprietors of estates Nos. 1721 and 1722 refused to take settlement with the result that the excreted lands were constituted into a new estate which was permanently settled with the predecessors of the plaintiffs on the 30th December 1848. The plaintiffs accordingly became proprietors of the new estate, which was numbered 4823, while the original estates numbered 1721 and 1722 created in 1793 remained the property of the predecessors of the defendants.

7. On the 2nd July 1912 proceedings were instituted by the Revenue Authorities, under Section 6 of Act IX of 1847, on the allegation that new maps had been prepared for the lands of East Chat Dapdapia, and West Char Dapdapia, which had been compared with the Revenue Survey Maps of 1860-61 as well as with the Deara Settlement Chita of 1846-47, and that from such comparison it appeared that lands had been added to estate No. 4823 which would be assessed with revenue payable to Government according to the rules in force for assessing alluvial increments. The notice, which was issued on the 3rd July 1012 mentioned, however, only the Daimi Settlement chita and not the Revenue Survey map. When the matter came to be heard before the Revenue Authorities on the 13th February 1913 three objections were urged against the assessment: (1) that the new map should have been compared with the Revenue Survey map and not with the Daimi Settlement chita prepared in 1846-47; (ii) that the riverbed was included in the permanently settled estate; and (iii) that as the District Settlement Record had been finally published and as the objectors had been in possession of the disputed area for upwards of 60 years, no proceedings for assessment could be taken under Act IX of 1847. These objections were overruled. The first objection, the Deputy Collector pointed out, was opposed to the decision of the Judicial *Committee in Secretary of State v. Fahamidannissa Begum*[11] The second objection was held untenable, inasmuch as the Revenue Survey map showed that the river-bed

was apart of the public domain and the river, was excluded from the Daimi Settlement. The third objection was manifestly groundless. The proceedings of the Deputy Collector were confirmed by the Collector on the 7th July 1914. He held that there was no foundation for the contention that only such accretions are liable to assessment as can be shown to have taken place since the date of the Revenue Survey map, and he relied upon a resolution of the Board of Revenue in a case which culminated in the litigation mentioned in *Secretary of State v. Narendra Nath Mitter*[12] The view taken by the Collector appears to have been approved by the Board of Revenue and Settlement was made with the defendants On the 12th November 1914. The plaintiffs now contest the validity of the proceedings for assessment of revenue on the accreted lands under Act IX of 1847.

8. It is plain that the proceedings for assessment cannot be successfully attacked on the ground that they were not taken in conformity with the provisions of Act IX of 1847. In this case, the estate was permanently settled in 1848-49. There was a Revenue Survey in 1859-60, which was followed by a Cadastral Survey in 1901-02. Consequently, unlike the case of *Sreenath Roy v. Secretary of State*[13] it is shown here that the proceedings were instituted upon a comparison of two requisite maps in terms of Section 6 before the Revenue Authorities set in motion the machinery at their disposal. Jurisdiction was thus assumed in compliance with the statutory requirements. It has been urged, however, that for the purpose of the assessment proceedings the Revenue Authorities were restricted to a comparison of the Revenue Survey map and the map newly prepared. This is manifestly fallacious. When the proceedings have been commenced in accordance with the statutory requirements, there are no restrictions prescribed as to the evidence to be used for the solution of the problem in controversy. That problem is, whether land has been "added" to a revenue paying estate and has not been assessed with revenue. What is liable to be assessed with revenue if land not previously assessed--not land which has been formed since the Revenue Survey map, In the determination of the question, whether the land Sought to be assessed is added land, we have to determine the land included in the estate at the time of its creation as a permanently settled estate. For this purpose the Revenue Survey map is valuable but not conclusive evidence. This is clear from the decisions of the judicial Committee in *Jagadindra Nath Roy v. Secretary of State* [14]*Haradas Acharjya Chowdhuri v. Secretary of State* [15]*Secretary, of State v. Maharaja of Burdwan*[16] *and Naresh Narayan v. Secretary of State*[17] There is no inflexible rule of law that the state of things depicted on the Revenue Survey map was in existence at the time of the permanent Settlement. In the case first mentioned*, Jagadindra Nath Roy v. Secretary of State*[18] Lord Bindley pointed out that it could not be maintained as a matter of law that the thak and survey maps constituted sufficient proof that what was part of the bed of the river at that time was included in the Permanent Settlement of them and no Court could properly act on the assumption that in 1793 a state of things existed different from what appeared from any evidence before the Court; see also *Prafulla Nath Tagore v. Secretary of State* [19]*Secretary of*

Stale for India v. Upendra Narain Roy[20] Proof of the existence, at a particular time, of a fact of a continuous nature only gives rise to a rebuttable presumption within logical limits that it exists at a subsequent time or has previously existed. The limit's of time within which the inference of continuance possesses sufficient probative force to be relevant, must obviously vary with each case, always strongest in the beginning, the inference steadily diminishes in force with apse of time, at a rate proportionate to the quality of permanence belonging to the fact in question, until it ceases or is perhaps supplanted by a directly opposite inference. In the present case, we have to determine the land included in the Permanent Settlement of the estate in 1848-49. We have, on the one hand, the Daimi Settlement chita prepared in 1846-47; we have on the other hand, the thak and Revenue Survey maps prepared in 1859-60 according to the actual possession at that time. "Clearly the Court is competent to consider land examine the value of ell this evidence, and this is precisely the course adopted by the Subordinate Judge.

9. The robokari of the Deputy Collector Rajnarain Basak dated 29th July 1847 gives a detailed history of the proceedings then taken for the resumption and Settlement of Char Dapdapia. An Amin Golakchandra Sen was appointed to make a survey, and he prepared a map as also a chita. Title map, which is mentioned in the robokari of the Deputy Collector, has apparently disappeared, but the chita dated the 1st, 5th and 20th April 1846 is inexistence and has been produced. It cannot be overlooked that we have this placed at bur disposal the very materials which formed the basis of the Permanent Settlement of the estate in 1848. There was much controversy in the Trial Court whether it was possible to relay things of the chita of 1846. The Civil Court Anil appointed by the lower Court to prepared a map of the locality has reproduced the lines of the thak and the Revenue Survey and the District Settlement maps; but the Amin found himself unable to compare the chita in the locality. On behalf of the Secretary of State, however, f surveyor Pyarimohan Hazra was examined to show that the chita could be and had been relaid. He had worked under the Deputy Collector in charge of the proceedings under Act IX of 1847. In connection therewith the survivor had complied in the locality the chita of the West Char as a so of the East Char end had prepared a map showing the line of the river at the time of the chita. He further placed the Revenue Survey and the thak lines on the District settlement map and finally prepared a consolidated map. A careful examination of ail these materials shows that the river line as it was in 1846 can be ascertained with sufficient precision, although it nay not be practicable to fill up all the details in respect of each plot depicted on the chita; this, however, as pointed out by the Judicial Committee in *Haradas Acharjya Chowdhuri v. Secretary of State*[21] is not always essential. The Subordinate Judge came to the conclusion that tie finding of the river line was a much more feasible task than the placing of fill the dags of the chita, and he found no difficulty in ascertaining the contour of the river in the locality, which was preceding in a peculiarly regular way. The Subordinate Judge further observed that as the river is known to have been receding, the thak map made in 1860, that is, 12 years after the Permanent

Settlement in 1848, could not be assumed to furnish an accurate picture of the estate in its inception. Upon a scrutiny of all the criticisms which have been directed against tie comparative maps prepared in the Diara proceedings, there is little doubt left that they are untenable and that the river line depicted there n may be safely accepted as accurately reproduced for all practical purposes. In this view the conclusion of the Subordinate Judge that the disputed lands do not appertain to estate No. 4823 must be upheld.

IN APPEAL NO. 265 OF 1919.

10. This is an appeal by the defendants other than the Secretary of Slate, against the decree of the Subordinate Judge in so far as it declares that the settlement made with them is ultra vires and invalid. They contend that the circumstance that the predecessors of the plaintiffs accepted Settlement in 1848 does not entitle the plaintiffs to the accretions now in dispute; and they claim settlement of those accretions on the ground that as they are still in receipt of malikana as proprietors of the parent estate, their refusal to accept settlement in 1848 does not debar them from successfully setting up title by accretion. This contention has been overruled by the Subordinate Judge as untenable.

11. Section 1 of the Bengal Alluvial Land Settlement Act (XXXI of 1858) is in the following terms.

1. When land added by alluvial accessor to an estate paying revenue to Government becomes liable to assessment, if to be so agreed on between the Revenue Authorities and the proprietor or proprietors, the revenue assessed upon the alluvial land may be added to the jama of the original estate; and in such case a new engagement shall be executed for the payment of the aggregate amount, and that amount shall be substituted in the Collector's rent-roll for the former jama of the original estate. If the proprietor or proprietors object to such on arrangement, or if the Revenue Authorities are of opinion that asettlement of the alluvial land cannot properly be made for the same term as the existing settlement of the original estate, the alluvial land shall be assessad and settled as a separate estate with a separate jama, and shall thenceforward be regarded and treated as in all respects separate from and independent of the original estate, whether the separate settlement be made with the proprietor or proprietors or the land be let in farm inconsequence of the refusal of the proprietor or proprietors to accept the terms of settlement. The separate settlement may be permanent, it the settlement of the original estate is permanent.

12. Section 3, which has been repealed by the Repealing and Amending Act (I of 1903), provided that "every separate settlement of alluvial land heretofore made shall be as good and effectual for the purposes specified in Section 1 as the same would have been if made subsequently to the passing of Act XXXI of 1858." Section 1 leaves no room for controversy that

when alluvial land has been settled as a separate estate with a separate jama, it shall thenceforward be regarded and treated as in all respects separate from and independent of the original estate. Consequently, when in 1848, a separate estate was created and sited with the predecessors of the plaintiffs, by reason of the refusal of the predecessors of the defendants, the new estate became a separate estate independent of the original estate in all respects. The fact that the proprietors of the or is in a estate had a right to receive malikana does not affect the question. As pointed cut by Peacock, C.J., in *Bhoalee Singh v. Neemoo Behoo* [22] malikana is a right to receive a portion of the profits of the estate for which the Government have made a settlement with another person, the real proprietor having neglected to come in and make a settlement. In the language of Section 44 of Regulation VIII of 1793 it is an allowance in consideration of proprietary rights; see also *Heeranund Sahoo v. Ozeerun*[23] *Gobind Chunder Roy v. Ram* [24]No doubt, malikana has sometimes been described as an "unalienable right of proprietorship" (Fifth Report, Vol. II. p. 152, Vol. III, p. 180; Field on Bengal Regulations, p. 51). But this does not justify the inference that a person in receipt of a malikana allowance tinder Section 5 of Regulation VII of 1822, even though he regarded as the holder of a district proprietary right constituting an interest in lard" can be deemed to be a person to whose land or estate alluvial accretion has teen annexed, within the meaning of Section 4 of Regulation XI of 1822. The malikana holder, it nay be conceded, is entitled to receive periodically a specified amount from the income of lard; this right may have the qualities of a rent charge; but this is not sufficient to show that the land or estate is still held by him as zemindar immediately firm Government, and unless this is established, he cannot maintain his title to the accretion. In this view, the claim put forward by the defendants must be held to have been rightly dismissed.

13. The result is that the appeal by the plaintiffs, No. 237 of 1919 is dismissed with costs in favor of the, Secretary of State, while the appeal by the defendants, No. 265 of 1919 is dismissed with costs in favour of the plaintiffs.

IN APPEAL. No. 237 OF 1019.

14.Rankin, J.

15. This is the plaintiffs' appeal from a decision of the Additional Subordinate Judge of Bakarganj. They complain now of so much only as holds them liable to assessment of additional revenue in respect of that portion of their char lands which was included as belonging to them by the Revenue Survey map of 1860. Proceedings under Act IX of 1847 were instituted in respect of the lands in 1912. By 1915 these had resulted in a finding by the Revenue Authorities that additional revenue was assessable in respect of some 160 acres. As to a portion of this area there is not now any complaint as it has to be conceded that since the Revenue Survey map of 1860 some lands have been added by alluvion. The petitioners object, however, to being assessed to

additional revenue in respect of any lands shown as belonging to their estate by the map of 1860. They say that the whole of such lands were, or must be deemed to be, included in the estate, numbered 4823 permanently settled in 1848 with their predecessors-in-title. The burden of proving this is initially on them, but, if they do prove it, the Civil Court has jurisdiction to give relief and will not omit to do so. If they do not prove it, then the mills of the machinery of the revenue law must continue to grind. Upon the question of fact the Trial Court has found against the plaintiffs; but this is a first appeal and it turns entirely upon the correct inferences to be drawn from I maps and documents. The oral evidence adduced by the plaintiffs fails--not unnaturally--to contribute anything of value as regards the state of the lands before 1860.

16. It may be pointed out that if the petitioners fail to show that portion of the area, assessed as having been added to the petitioners' estate, was really comprised in the estate itself, they cannot hope to succeed in showing otherwise that the revenue proceedings have been ultra vires. The procedure laid down by Act IX of 1847 has been adopted, new maps have been made, inspection does show that some new lands have been added. The enquiry is solely as to amount.

17. The lands in question are really two chars thrown up by the River Barisal. They are, and have long been, known as East Char Dapdapia and West Char Dapdapia. From robokari of 29th July 1847 it appears that they attracted the attention of the Collector of the District in 1818 and proceedings were taken for assessment to revenue under Bengal Regulation II of 1819 and Bengal Regulation III of 1828. In 1832 the Collector decided that they were not within the Decennial Settlement (i.e., Permanent Settlement of 1793) and after contest this was affirmed by the Commissioner in 1845. The lands now in question were found to be alluvial accretions to estates Nos. 1721 and 1722. In 1845 one Golok Chundra Sen was appointed Amin to make a survey and his field books of April 1846 are in evidence. He took and recorded measurements: he classified the lands and prepared a jarip jamabandt, or Rent Roll with particulars of holdings. His work was checked in December 1846 by a further inquiry on the spot; it was supervised by a Deputy Collector; audit was acted on in 1848 when the chats were permanently Settled. Much of the present contest is solely due to the fact that although, as the appellants contend, a nap was almost certainly prepared from the Amine fit Id books at the time, it has not in the present proceedings been produced. Neither side is in a position to complain of this and at this late stage of a long litigation the evidence must be taken as it stands.

18. When in 1848 settlement was effected of the lands found to have accreted the zemindars or proprietors of the estates Nos. 1721 and 1722 refused to take settlement and the petitioner's predecessors-in title who were shikmi talukdars holding under the proprietors and who were found in possession of the accreted land were given settlement and thus became immediate holders under Government by a new tenure of a new estate numbered 4823. The present contest

is entirely between the owners of this new estate No. 4823 and the Secretary of State as to whether the whole of the area appearing twelve years afterwards--i.e., by the Revenue Survey map of 1860--to belong to this estate was in fact comprised in the Settlement of 1848 or whether part thereof was added to that estate by alluvion between 1848 and 1860. The learned Vakil for the appellants takes his primary stand upon the map of 1860 as affording a presumption that the whole of the land was comprised in the settlement. (He points out the from 1860 down through the years until 1912 Government took no steps to claim additional revenue from his clients). He concedes that the effect of this map may be overborne by positive proof that the map was wrong. His complaint is that the Trial Court had no reason adequate in strength and certainty for refusing to accept the map of 1860 as correctly showing the limits of estate No. 4823 settled in 1848. The field books prepared by Golok Chundra Sen in 1846 are lacking in sufficient detail and precision to enable all the dags in these two chars to be drawn upon a map. In these circumstances it is said that the Trial Court had insufficient grounds for placing the new lines of 1848 along points substantially short of the new lines of 1860 i.e., broadly speaking, to the southward of the 1860 lines.

19. Now the argument on behalf of the appellants as to the presumption afforded by the map of 1863 requires to be carefully perused and kept within the decisions. "In every case the question what lands were included in the Permanent Settlement is a question of fact and not of law": Jagadindra's case 30 I.A. 44 : 30 C. 291 : 7 C.W.N. 193 : 5 Bom. L.R. 1 : 8 Sar. P.C.J. 412 (P.C.). A Revenue Survey map is plainly admissible in evidence. Primarily the map of 1860 is evidence of the, state of things in 1860. When the question is as to the state of things in 1848 evidence of the position in 1860 is valuable evidence of facts relevant to that issue. Even in the absence of any other evidenced, e.g., of any more direct evidence a map of 1860 will, in general but not always, afford a ground of inference as to 1848 upon which the Court can act. That is to say, the Court will be prepared in the absence of reason to the contrary not only to accept it as true account of the facts of 1860 but even as showing the position at the date of settlement. In many cases indeed the state of things at the Permanent Settlement of 1793 has been freely inferred from map of 1860. But when the Revenue Survey map is not the sole evidence relevant to the question as to what happened at the date of settlement then it is necessary to be on one's guard against what is prima jade an error and very commonly an invidious error,--the process, namely, of taking one piece of evidence by itself, founding doctrines of onus upon that, and calling upon the other facts in the case to dislodge the presumption. Everything depends upon the right so to start by selecting one fact rather than another. Thus in Jagadindra's case 30 I.A. 44 : 30 C. 291 : 7 C.W.N. 193 : 5 Bom. L.R. 1 : 8 Sar. P.C.J. 412 (P.C.) thak and survey maps of 1851-3 showed what then was the bed of the Brahmaputra river as included in the Permanent Settlement of 1793, The Judicial Committee held: "It is difficult to suppose and it ought not to be assumed that those lands were included in the lands permanently assessed in 1793" and they refused to save the

correctness of the map by assuming that in 1793 the river had flowed over other land. "When the question arises whether lands shown on a particular thak or survey map made since 1793 were or were not included in the lands charged with the assessment permanently fixed in 1793 the inquiry is at once enlarged; and it would not be right in point of law to direct the Judge of first instance that he ought in all cases to act on the last thak or survey map and to treat it as decisive in the absence of evidence to the contrary."

20. The question in the present case is whether the appellants on a fair view of the whole evidence have succeeded in showing that all the land up to the river line of 1860 was included in the Settlement of 12 years earlier. The evidentiary value of the thak and Survey maps is in this case a special problem depending on the circumstances and on the other evidence, some of which is more direct.

21. The evidence as to 1846 may be first considered from the point of view of area. The Amin's field books show that the total quantity of land "resumed, by the Hon'ble Company" was as follows (I leave out minor fractions). (I) West Char 4 drones 7 kanis. (II) East Char 3 drones 10 kanis. The total land resumed was 8 drones 2 kanis. The petitioners predecessors-in-title took settlement of the whole area of the West Char with its 56 dags as measured by the Amin. Of the East Char they took settle-meat of I drone 5 kanis only, the balance being given in settlement to other people as accretions to other subordinate tenures. Taking both chars together tlffe area settled, with the petitioners' predecessors in 1848 was 5 drones 13 kanis (=175.5 acres). Of this over 15 kanis was waste land unfit for cultivation and the revenue was arrived at by classifying the culturable land and assessing each class at an appropriate rate.

22. When we come to 1860 map No. 5 is the thakbust map of the West Char and it can be read easily enough with the thuk-bust statement (p. 56 of paper-book in Appeal No. 255 of 1919). That statement gives the area as 224 acres for this char alone. As regards the East Char it appears in the manner that the area in this char belonging to estate No. 4823 was at this date over 38 acres, the total area as I Understand the statement being 145 acres for this char. There en I think be no doubt on the evidence (1) that the plaintiffs hive not been assessed on any land of which they are not in possession or of which they are in possession by any other right, (ii) that before arriving at the additional assessment deduction has been made for the full fm init of the areas described in the documents of 1846 and 1848 as the area settled with them. The learned Vakil for the appellants has pointed out that under Act IX of 1847 the position is quite different from that which under the Bengal Tenancy Act may give rise to a claim by a landlord for additional rent. Government cannot under Act IX levy an additional revenue from any area within the limits of a settled estate: there must be land added to the estate. It is rot necessary to consider whether the settlement of 1846 was in the case of either char a settlement by description of parcels or a

settlement by area. Where a holding is described or ret erred to it may often occur that a statement of area if in accurate has no effect. In the present case, however, there is no reason requiting any one to suppose that the measurements of 1846 as to area were gravely at fault. It is much more probable that the river which is known to have been charging before 1846 and after 1860 did not cease to change between 1848 and 1860 in like manner. One must, therefore a certain whether what may be broadly called the southern line of 1846-8 can be ascertained. If it cannot the argument as to area has no force. If it can, then the next thing to ascertained is whether the river line of 1846-8 can be relaid on whole or in part so that with reasonable certainty it may be said that the original limits of estate No. 4823 did not at all events go beyond that.

23. Now it is hardly open to a serious contest that the datum line of 1846, the line dividing the accreted lands from the land already fettled, is little likely to have fallen into oblivion or even into obscurity between 1846 and 1860. Prior to 1845 sometime had apparently been spent in litigating over this a the measurement, description, classification and assessment of tie lands has throughout been done with the assistance of the plaintiffs predecessor-in-title. The thakbust statements and thak bust (2014, 2019) give the boundaries of the adjacent mouzas and the Amin's measurements were mace in the presence of the parties found to be in possess on. The thak naps of the adjacent mouzas are also in evidence. It is not known whether the map of 1848, if there was one, was title used or not; but if the appeal is to tie maps of 1860 it seems hardly reasonable to begin by supposing that the new estate No. 4823 was credited therein with land that had for a long time been fettled as part of other estates still less with acres and acres of such land. When one looks to the evidence as to the natural features of the locality such an assumption is seen to be most unreasonable. The khals ans halats mentioned in the field books, the difference of level between the char and the asli lands, the correspondence of certain dags when measured with the figures given m the field books are sufficient in the case of both chars to rebut any lotion that tie proceedings of 1860 to define estate No. 4823 were based on any error as to the lines dividing it from the parent estates. It is quite true that the shikmi taluqdars held lands in the parent estates but this fact does not lead one to suppose that the thak maps are likely to be wrung as lo the boundary of the new estate granted to them.

24. Now the attempt to find front the fited books the river line of 1848 discloses in the close of each char very convincing corroboration of the view adopted in the recent settlement proceeding. The Civil Court Amiti endeavoured to relay all the digs from the details efforded by the field Looks of 1846 and came to the conclusion that this could not be cone. He was troubled, not so much by the task of finding the toward boundary of estate No. 4823, as by the Let that the dags as re-laid on the settlement map were not in a number of in Sanoces consistent in all respects with the details given the field boobs. On certain assumption, however, he indicated the river line of 1848 us regards the East Char for a certain distance, but being unable to relay the digs with

certainty his view was that the riverbank of 1848 could not be relaid for the field books in the case of either char. He does not seem to have attempted such a task before with materials quite so difficult. He gave evidence however at the trial identifying certain dags of the field books with those shown on the settlement map. The witness whose evidence most impressed the learned Subordinate Judge was Peary Mohun Hazra a surveyor under the risk Collectorate, who on the maps I and II drew the yellow lines representing the river bank of 1846. If the thakbust statement (B. 51) and the thak map (No. 4) of the East Char be taken, it will be seen that the estate No. 4823 consisted of 7 strips of land, all save one (Chauk No. 6) being of a simple rectilinear configuration. Now field book, Exhibit 1), gives the measurements of the south to north line for a great many of the dags described and a good many of them are described as lying east of other dags and as bounded on the north by the river. Scrips belonging to other estates than No. 4823 the alongside strips belonging to No. 4823; in the case of this char the Ruporasli line is particularly plain and I do not doubt that the learned Judge was quite rightly convinced by Peary Mohun Hazra that the river line of 1848 could be placed with reasonable certainly from the field books if they are taken together with the other evidence. The Amin in his evidence identified a good many dags in this char. As regards the West Char the Doul of 1848 and the thakbust statement of 1360 suggest that something like 15 acres has grown meanwhile into 224. The question is whether Exhibits contains substantial indication when compared with the locality of the river line 1818. Now the field book shows that dugs Nos. 38 and 46 had the river as the r north boundary; that dugs Nos. 1,2, 3 and 6 had it as their western boundary, that east of dags Nos. 5 and 6 there was khal, that dag. No. 27 was a khal, that was of dig No. 7 there was a khal, that dag No. 8 west of dag No. 7 was a khal. The measurements of the following dags--in mention only a few-only with the existing actual measure-meats, Nos. 9, 10, 11, 28, 44, 45, 46. It seems to me that from these circumstances all interlinked and re-enforcing each other it may be taken as well-established that the line drawn on map (1) as the river line of 1848 is by no means an imaginary line but one which included the whole of the land settled in 1848. The thak and Survey maps of 1860 have not been put aside but have been used together with other and mote direct evidence to establish the facts of 1848. I think that the plaintiff's appeal fads.

IN APPEAL, NO. 265 OF 1919.

25. This appeal is brought by defendants Nos. 3 to 6 who with the non-contesting defendants Nos. 2 and 7 own the zemindari interest in the parent estates Nos. 1721 and 172-J. The land settled with the plaintiffs' predecessors in 1840 was land which bad accreted to these estates. The zemindars having refused to take settlement of the accreted lands settlement was made with the shikimi talukdars (i.e., the plaintiffs' predecessors) but malikana was reserved. The nature of a right to malikuna has been explained by Sir Barnes Peacock in Bhoalee Singh v. Neemoo Behoo 12 W.R. 498 : 4 B.L.R.A.C.J. 29. It is a right to a turn of money and it is charged on the land. It

may be described as a quasi rent-charge. But the reservation by Government of a sum to be paid to Government by the immediate holder under Government, of resumed lands, which sum is to go to the persons who have refused to take settlement from Government, does not, in my opinion, operate to prevent the new estate from being an entirely independent tenure in substitution for and in extenguishment of the zemindar original interest in the newly settled lands. Physically land is added to land. In point of right, the right to the new land is aceretio to the right to the old. A quasi rent-charge is not tenure or dominium. The right to take settlement enures to the tenure-holder (Cf. Section 4 of Bengal Regulation XI of 1825).

26. I am of opinion that the learned Subordinate Judge arrived at a correct conclusion and that this appeal also should be dismissed.

Cases Referred.

117 C. 590 : 17 I.A. 40 : 5 Sar. P.C.J. 391 : 8 Ind. Dec. (N.S.) 933 (P.C.)
214 C. 67 : 7 Ind. Dec. (N.S.) 46
311 C. 784 : 5 Ind. Dec. (N.S.) 1282. Act IX of 1847
459 Ind. Cas. 398 : 5 P.L.J. 681 : 2 P.L.T. 81
511 C. 784 : 5 Ind. Dec. (N.S.) 1282
614 C. 67 : 7 Ind. Dec. (N.S.) 46
717 C. 590 : 17 I.A. 40 : 5 Sar. P.C.J. 391 : 8 Ind. Dec. (N.S.) 933 (P.C.)
814 C. 67 : 7 Ind. Dec. (N.S.) 46
911 C. 784 : 5 Ind. Dec. (N.S.) 1282
1017 C. 590 : 17 I.A. 40 : 5 Sar. P.C.J. 391 : 8 Ind. Dec. (N.S.) 933 (P.C.)
1117 C. 590 : 17 I.A. 40 : 5 Sar. P.C.J. 391 : 8 Ind. Dec. (N.S.) 933 (P.C.)
1261 Ind. Cas. 91 : 32 C.L.J. 402
1370 Ind. Cas. 510 : 36 C.L.J. 345 : (1923) A.I.R. (C.) 233 : 50 C. 376
1430 I.A. 44 : 30 C. 291 : 7 C.W.N. 193 : 5 Bom. L.R. 1 : 8 Sar. P.C.J. 412 (P.C.)
1543 Ind. Cas. 361 : 26 C.L.J. 590 : 22 M.L.T. 438 : (1918) M.W.N. 28 : 20 Bom. L.R. 49 (P.C.)
1667 Ind. Cas. 835 : 48 I.A. 565 : 35 C.L.J. 92 : 42 M.L.J. 61 : 4 U.P.L.R. (P.C.)1 : 26 C.W.N. 619 : (1922) A.I.R. (P.C.) 6 : 49 C. 103 (P.C.)
1777 Ind. Cas. 1048 Infra : (1923) A.I.R. (P.C) 1 : 32 M.L.T. 162 : (1923) M.W.N. 511 : 50 C. 446 : 45 M.L.J. 444 : 28 C.W.N. 453 (P.C.) decided on 23rd January 1923
1830 I.A. 44 : 30 C. 291 : 7 C.W.N. 193 : 5 Bom. L.R. 1 : 8 Sar. P.C.J. 412 (P.C.)
1957 Ind : Cas. 29 : 31 C.L.J. 320 : 24 C.W.W. 639
2071 Ind. Cas. 849 : 336. (1923) A.I.R. (C.)
2143 Ind. Cas. 361 : 26 C.L.J. 590 : 22 M.L.T. 438 : (1918) M.W.N. 28 : 20 Bom. L.R. 49 (P.C)
2212 W.R. 498 : 4 B.L.R.A.C.J. 29
236 W.R. 151 on appeal 9 W.R. 102
24Chunder 19 W.R. 94