

*Privy Council Appeal No. 81 of 1929.*  
*Bengal Appeal No. 8 of 1927.*

Kumar Gopika Raman Roy - - - - - *Appellant*

*v.*

Nagendra Nath Chowdhury and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 19TH FEBRUARY, 1931.

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*Present at the Hearing :*

LORD BLANESBURGH.

LORD ATKIN.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD BLANESBURGH.]

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In this case in the Courts in India very much larger areas of land were involved than the area which before the Board remained in contest between the parties. The appellant's original claim—he was plaintiff in the suit—extended to two separate parcels of land, one particularised in schedule I of his plaint and the other in schedule II. With regard to the lands comprised in schedule II there have in this suit been concurrent findings in the respondents' favour of the Subordinate Judge of Sylhet and of the High Court of Judicature at Fort William in Bengal on appeal from him. It is, of course, outside their Lordships' general practice to disturb any such concurrent findings, and Mr. Jinnah for the appellant recognised that there was no special reason in the present case to justify any departure from the general rule of the Board.

His argument on the appeal was accordingly confined to the lands particularised in schedule I of the plaint, so far as the appellant's claim thereto had not been recognised by the decree of the High Court. In these lands the appellant claimed an 8 anna share. The learned Subordinate Judge by his decree of the 18th August, 1920, upheld that claim as to the whole area.

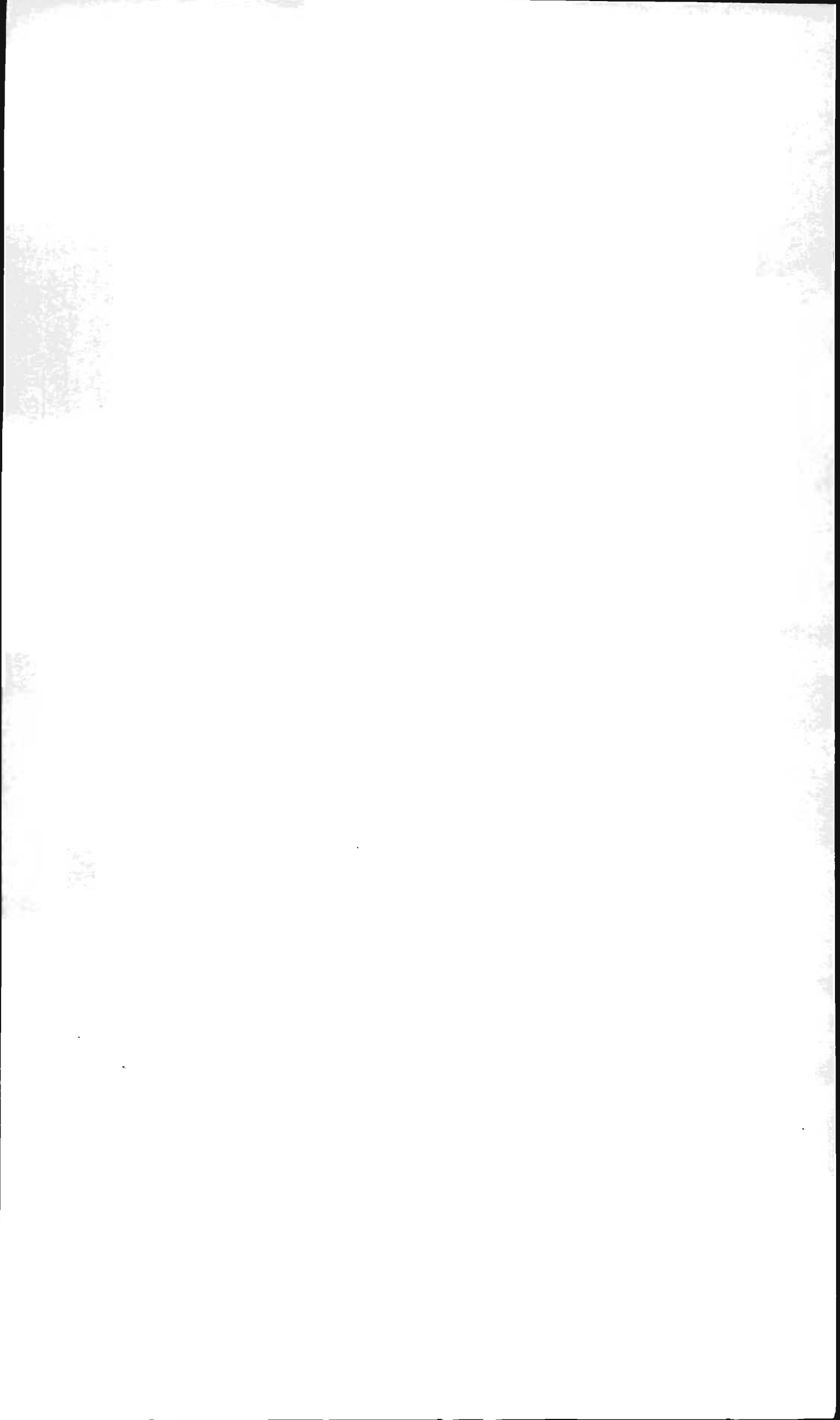
On appeal the High Court rejected it except as to a strip adjoining the appellant's admitted holding, the boundaries of which appearing on a plan attached to a Commissioner's report made in the course of the proceedings, are included within the lines C.1, C.2, C.3 and C.4 shown thereon. That area was adjudged to the appellant by the decree of the High Court of the 29th July, 1926. The rest of the area in schedule I included within the lines marked D.1, D.2, D.3 and D.4 on the same plan, the High Court adjudged by its decree to belong to the respondents. And the argument for the appellant before the Board had not to extend beyond that last-mentioned area, because the decree in his favour with reference to the area C.1, C.2, C.3 and C.4 was left undisturbed by the respondents. There was no cross-appeal.

As opened by Mr. Jinnah, the case for the appellant with reference to this remaining area seemed formidable. The greater part (if not the whole of it) is apparently permanently covered with water, indistinguishable in that regard from the rest of the appellant's *jill*, and is land which under such a description had never, he contended, been included in any lands claimed by the respondents at any time.

But as the case proceeded any difficulty in the respondents' way on that score was resolved by the clearness of Mr. Jinnah's most helpful argument. It became manifest that the question before the Board in no way turned on the nature, quality or character of the land in question, but was confined to the single issue whether that land, whatever its description, had not been adjudged to the respondents' predecessors in title by a decree of the 16th May, 1867, in a suit in which they were plaintiffs, and the predecessor in title of the appellant was defendant. It being admitted that the decree referred to was binding on the appellant, the question whether it was right or wrong was no longer open to him, and when the map on which the decree proceeded was produced, and when that map as plotted on the map in the present suit was examined by their Lordships, it became clear that the only case now open to the appellant was at an end. For while it might have been a question whether some part of the area C.1, C.2, C.3 and C.4 had not by the decree of 1867 also been adjudged to the respondents' predecessors, it was clear to demonstration that the whole of the area D.1, D.2, D.3 and D.4 was thereby so adjudged.

The High Court by the decree appealed from gave effect to that view. In so doing they acted rightly. The title to the area D.1, D.2, D.3 and D.4 is *res judicata* as between the parties, and the land has been adjudged to be the respondents'.

Accordingly, in the opinion of their Lordships, the judgment of the High Court was right, and they must humbly advise His Majesty that this appeal therefrom should be dismissed with costs.



In the Privy Council.

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KUMAR GOPIKA RAMAN ROY

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NAGENDRA NATH CHOWDHURY AND OTHERS.

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DELIVERED BY LORD BLANESBURGH.

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