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(2) Date of repair 2.2.1940

(3) Initials of the Reforencer

MADRAS RECORD OFFICE.

Government of Madras.

DEPARTMENT.

G.O. No. 2222+24 Press / Mis.

Dated 31-10 1877.

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

31st October 1878, No. 2223.

Bills—Legislative.

Read the following papers :—

No. 149. *From D. FITZPATRICK, Esq., Secretary to the Government of India, Legislative Department, to the Acting Chief Secretary to Government, dated Simla, 14th October* 1878, *No.* 1320.

I am directed to forward herewith twenty copies of the papers noted on the margin, and to request that His Excellency the Governor in Council will favor the Government of India in this Department with an expression of his opinion on the provisions of the Bill and with the opinions of the Honorable the Judges of the High Court and of such other selected officers as he may think fit to consult on the subject.

Bill to define and amend the law relating to alluvion, islands, and abandoned river-beds.
Statement of Objects and Reasons of the above-mentioned Bill.

2. I am also to request that the Bill and Statement may be published in the *Fort St George Gazette* in English and in such other languages as His Excellency in Council may deem proper, and that the dates of such publication may be communicated in your reply.

3. The reply to this letter should be sent in, if possible, before the 9th January 1879.

No. 150. ORDER THEREON, 31st October 1878, No. 2223.

Ordered that copy of the amended Bill to define and amend the law relating to alluvion, &c., and the Statement of Objects and Reasons, received with the above letter, be forwarded for the early opinion of the Honorable the Judges of the High Court and of the officers named in the margin.

Mr. H. S. Thomas.	Mr. E. F. Webster.
„ W. S. Foster.	„ W. Wilson.

2. Ordered also that the Bill and Statement be published in the *Fort St. George Gazette* in English and in the several vernaculars.

(True Extract.)

C. G. MASTER,
Acting Chief Secretary.

To H. S. Thomas, Esq.
„ W. S. Foster, Esq.
„ E. F. Webster, Esq.
„ W. Wilson, Esq.
„ the Revenue Department.
„ the Tamil Translator to Government.
„ the Telugu do.
„ the Hindustani do.
„ the Canarese do.
„ the Malayalum do.

} with Bill and Statement of Objects and Reasons.

Exd. J. W. Fischer.

JUDICIAL DEPARTMENT.

Bills—Legislative.

No. 2224.

To

THE HON. L. C. INNES,
Officiating Chief Justice of the High Court, Madras.

HONORABLE SIR,

I am directed by His Grace the Governor in Council to forward, for the consideration of the Honorable the Judges of the High Court, the accompanying copy of a letter from the Government of India, Legislative Department, dated 14th October 1878, No. 1320, and of an amended Bill, with Statement of Objects and Reasons, to define and amend the law relating to alluvion, islands, and abandoned river beds, and to request the favor of an early expression of opinion on the provisions of this Bill, as this Government are requested to forward their reply to the Government of India, if [illegible]le, before the 9th January next.

I have the honor to be,
Sir,
Your most obedient servants,

OOTACAMUND,
31*st October* 1878.

Acting Chief Secretary.

Exd. J. W. Fischer.

Govt. of India, Legislative Department.

JUDICIAL.

THE OFFG. CHIEF JUSTICE
OF THE HIGH COURT,
Madras.

Dated Ootacamund, 31st October 1878.

Received
Read

Forwarded
Read

G.O., 31st October 1878, No. 2224.

COMMUNICATED.

Nos. 149—151.

Price —Letter &c.— Foreworking for copy of opinion, copy of the amended Bill for declaring and defining the law relating to alluvion, &c., with the Secretary of Objects and Reasons.

10.6.
3

No. 1320

FROM

D. FITZPATRICK, ESQUIRE,

Secretary to the Government of India,

LEGISLATIVE DEPARTMENT,

To The Chief Secretary to the Govt. of Madras.

Dated Simla, the 14th October 1878.

SIR,

I AM directed to forward herewith 20 copies of the papers noted on the margin, and to request that His Excellency the Governor in Council will favour the Government of India in this Department with an expression of his opinion on the provisions of the Bill, and ~~that~~ with ~~will also obtain~~ the opinion of the Hon'ble Judges of the High Court and of such other ~~selected~~ officers as he may think fit to consult on the subject.

Bill to define and amend the law relating to Alluvion, islands and abandoned river beds.
Statement of objects and reasons of the above-mentioned Bill.

2. I am also to request that the Bill and Statement may be published in the Fort Saint George Gazette in English and in such other languages as His Excellency in Council may deem proper, and that the dates of such publication may be communicated in your reply.

3. The reply to this letter should be sent in, if possible, ~~by~~ before the 9th January 1879.

I have the honour to be,

SIR,

Your obedient Servant,

D. Fitzpatrick

Secretary to the Government of India.

Govt. C. B. Press, Simla—No. 158 L. D.—23-7-78—100.

A

BILL

TO

Define and amend the law relating to alluvion, islands and abandoned river-beds.

Preamble.

WHEREAS it is expedient to define and amend the law relating to alluvion, islands and abandoned river-beds; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Alluvion Act, 1879."

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

Repeal of enactments.

2. The Acts, Regulation and Rules mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column. References to the Regulation and Rules so repealed, in enactments passed subsequently thereto, shall be read as if made to this Act.

Interpretation-clause.

3. In this Act—

Contra 4 W. R. 41.

"island" includes ~~a sandbar and another accumulation of land; it also includes~~ land arising in a river or lake, submerged in the wet season and visible only in the dry season; but it excludes land in tidal rivers, tidal lakes or the sea, submerged by the ordinary flow of the tide ~~and visible only at low water~~;

17 W. R. C. R. 173.

Angell, 6th ed., p. 16, note 2.

"thread of the stream" means (*a*) the middle line of the main-stream during the dry season, or (*b*) the middle line between what are the shores on each side when the water is at its average height, neither swollen by flood, nor shrunk by drought, or (*c*) the middle line of the particular channel in which the island referred to arises;

"owner" means, in the case of a bank or shore held on raiyatwárí tenure, the Crown: in the case of a bank or shore forming part of land situate in the Presidency of Bombay and wholly or partially exempt from the payment of land-revenue, or held under a grant or lease fixing the Government demand in respect thereof in perpetuity, the holder of such land; and in the case of a bank or shore held by a village community in the Panjáb, such community;

"sea" includes bay, inlet, creek and arm of the sea

3 W. R. 95.
6 Ben. 343.

and a channel is said to be "fordable" when it does not exceed five feet in depth in the dry season and throughout the twenty-four hours.

II.—Alluvion.

4. Where, from natural causes, land forms gradually on the bank of a river or on the shore of the sea, of a lake, or of an island, either by accumulation of material or by recession of the river, sea or lake, the owner of the bank or shore shall be entitled to the land so formed:

Right to alluvial land on bank or shore.

Ben. Reg. XI of 1825, s. 4.

As to lakes, see Angell § 59.

Ben. Act IV of 1868, s. 2.

Provided that, where the land forms on a site of which a private person is proved to be the owner, such person is entitled to the land so formed.

Lopez v. Muddun Thákur, 5 B. L. R. 521.

III.—Islands.

5. Where an island is formed, from natural causes, in a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake, if when the island is first formed, the channel between the bank or shore and such island is not fordable at any point, the Crown is entitled to such island:

Right to islands where channel is not fordable.

Ben. Act IV of 1868, s. 4.

Provided that, where the island is formed on a site of which a private person is proved to be the owner, such person is entitled to the island.

6. If, when an island is first formed as aforesaid in a river, the sea or a lake, the channel between the bank or shore and such island is fordable at any point, the following rules shall take effect (namely):

Right to other islands.

Contra 3 W. R. 401, 12 Moore I. A. 136.

(*a*) Where the island is formed in the sea or a lake, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea or lake opposite the island:

(*b*) Where the island is formed in a river and is wholly on one side of what was the thread of the stream immediately before the formation, the owners of the bank on that side are severally entitled to the island in proportion to the frontage which they respectively have on the river opposite the island:

Angell, *Watercourses*, 6th edition, p. 49, citing Shaw, C. J.

(*c*) Where the island is formed in a river and is partly on one side and partly on the other of what was the thread of the stream immediately before the formation, the island is supposed to be divided by such thread, and the owners of the banks are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the river opposite the island:

Angell, *ubi supra*. Kent. Comm., 11th edition, III., 542.

(*d*) Provided that, where the island is formed on a site of which a private person is proved to be the owner, such person is entitled to the island.

Explanation.—"Frontage" means the right line connecting the corners of each holding where they strike the sea, lake or river, and the frontage is "opposite" the island when a perpendicular erected at any point thereof in the plane of the sea, lake or river, intersects the island.

7. If a river in forming a new arm divides and surrounds land belonging to the owner of the bank, and thereby forms an island, such owner is entitled to the island.

Islands formed by division of rivers.

IV.—Abandoned River-beds.

Sutherland's W. R. 1864, p. 103.

8. If a river, whether navigable or not, suddenly forms a new bed, abandoning its ancient bed, the ancient bed is supposed to be divided by what was the thread of the stream immediately before the abandonment, and the owners of the ancient banks are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the ancient bed:

Right to abandoned river-beds.

Provided that when the ancient bed is proved to have been, immediately before the abandonment, the property of the Crown or of a private person, it shall continue to be the property of the Crown or of such person, as the case may be.

V.—Miscellaneous.

9. The Local Government may, from time to time, declare, with reference to any river, or any part of any river,—

Power to declare "main-stream," "dry season" and "thread of the stream."

(*a*) what shall be deemed to be, for the purposes of this Act, the "main-stream" and the "dry season:" and

(*b*) which of the said definitions of "thread of the stream" shall be deemed to be in force.

Every such declaration shall be published in the official Gazette, and shall thereupon have the force of law.

In the absence of a declaration under clause (*b*) as to any river or part thereof, the first of the said definitions of "thread of the stream" shall be deemed to be in force with reference to such river or part.

10. Nothing herein contained shall—

Savings.

(*a*) affect any law relating to the assessment of land-revenue or to the enhancement or abatement of rent; or

(*b*) confer on any owner of a bank or shore in respect of which he is hereby declared to be entitled to alluvial land, to an island or to an abandoned river-bed any title to such land, island or river-bed better than that which he has to the bank or shore; or

Bombay Revenue Code, s. 104, clause (3).

(*c*) enlarge any holding granted by Government, the area of which has been fixed by any sanad or other document executed under the authority of Government; or

(*d*) authorize any acts of private persons done in order to divert currents or cause accretions; or

Ben. Regn. XI of 1825, s. 5.

(*e*) authorize any encroachments by private persons on the beds or channels of navigable rivers; or

Ben. Regn. XI of 1825, s. 5.

(*f*) prevent any officer of Government duly empowered in this behalf from removing obstacles which appear to him to interfere with the safe and customary navigation of such rivers, or which obstruct the passage of boats by tracking on the banks of such rivers or otherwise; or

(*g*) prevent any officer of Government duly empowered in this behalf from regulating the direction and flow of such rivers and the preservation and distribution of their waters.

And nothing herein contained shall affect any clear, definite and immemorial local usage respecting the right to alluvial land, islands or abandoned river-beds; but (except in the cases provided for by the Panjáb Land-Revenue Act, 1871, section 16) the burden of proving such usage shall lie on the person alleging it.

Local usage.

Burden of proof.

11. All land and islands formed, and all river-beds abandoned, as mentioned respectively in sections four, five and eight, and not vesting under any of the provisions hereinbefore contained, shall vest in the Crown.

Right of Crown to alluvial lands, &c., not hereinbefore provided for.

THE SCHEDULE.

(*a*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IV of 1872...	Panjáb Laws Act ...	So much as relates to Bengal Regulation XI of 1825.
XX of 1875...	Central Provinces Laws Act	Ditto.
XVIII of 1876	Oudh Laws Act ...	Ditto.

(*b*). BENGAL REGULATION.

Number and year.	Subject.	Extent of repeal.
XI of 1825...	Alluvion	The whole.

(*c*). BENGAL ACT.

Number and year.	Subject.	Extent of repeal.
IV of 1868	Amending Act IX of 1847	Sections 2 and 4.

(*d*). RULES.

Date.	Subject.	Extent of repeal.
22nd May 1852.	Alluvion and Diluvion in Sindh.	Paragraphs 1, 2, 3, 4, 5 and 20.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Define and amend the law relating to alluvion, islands and abandoned river-beds.

(*Mr. Stokes.*)

G. C. B. Press, Simla,—No. 266, L. D.—3-10-78—140.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill is intended to form a chapter of the Indian Civil Code, and its object is to state, in a concise, accurate and accessible form, the law relating to the ownership of alluvial lands, islands and abandoned river-beds. In Madras, Bombay and Burma there is no statutory law on the subject: in Sindh there are only some executive rules which are held to have the force of law: in the rest of British India the law is contained partly in legal text-books, partly in the Bengal Regulation XI of 1825, and the Bengal Act IV of 1868, sections 2 and 4, but chiefly in the numerous decisions of the High Courts and the Judicial Committee of the Privy Council with which the former enactment is encrusted.

Regulation XI of 1825 provides rules for land gained from a river or the sea by gradual accession; for avulsion; for islands formed in navigable rivers and the sea; for islands formed in "small and shallow rivers, the beds of which with the jalkar [or] right of fishery may have been heretofore [*i.e.*, before 26th May, 1825] recognised as the property of individuals." But it does not provide for the case when an alluvial deposit takes place on a site of which, though it has been submerged, the ownership is ascertained. It declares that an island formed in a navigable river belongs to the adjoining proprietor or to the Crown, according as the channel between it and the adjacent land is fordable or unfordable. But it does not define "fordable;" nor state the time with reference to which the question of fordability or non-fordability is to be decided, nor show when an island in a tidal river or the sea can be said to be formed. It declares that an island formed in a navigable river shall, where the channel is fordable, be an accession to the land "of the person or persons whose estate or estates may be most contiguous to it." But this does not, apparently, provide for cases where the island is partly on one side and partly on the other of the thread of the stream, nor for cases where there are several riparian owners, and the island cannot be said to be nearer to the property of one than to that of another.

The Bill attempts to supply these defects as follows:—

It declares, in accordance with the decision of the Judicial Committee in *Lopez* v. *Muddun Thákur*, that when land forms on a site of which a private person is proved to be the owner, such person is entitled to the land so formed. It declares that a channel is "fordable" when it does not exceed five feet in depth in the dry season and throughout the twenty-four hours; and when a channel which is not fordable when the island appears becomes fordable afterwards, it fixes the first appearance of the island as the date with reference to which the question of fordability or non-fordability is to be determined. The subsequent junction of the island to the main-land will thus not affect the right of the Crown. Lastly, it includes in the term "island" land arising in a river, submerged in the wet season and visible only in the dry, but excludes from that term land in a tidal river or the sea which is submerged by the ordinary flow of ~~the~~ tide ~~and visible only at low water~~.

As regards the rights of riparian owners to islands, the Bill applies the same rules to an island formed in the sea, a lake or a navigable river, when the channel between it and the adjacent land is fordable at any point, and to an island formed in a river which is not navigable. These rules are as follows:—

"Where the island is formed in the sea or a lake, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea or lake opposite the island.

"Where the island is formed in a river and is wholly on one side of what was the thread of the stream immediately before the formation, the owners of the bank on that side are severally entitled to the island in proportion to the frontage which they respectively have on the river opposite the island.

"Where the island is formed in a river and is partly on one side and partly on the other of what was the thread of the stream immediately before the formation, the island is supposed to be divided by such thread, and the owners of the banks are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the river opposite the island."

And as the same definition of "thread of the stream" will not suit all the rivers in British India, or even all the parts of the same river, three definitions of this expression are given, and the Local Governments are empowered to declare which of them shall in each case be applicable.

The Regulation is also defective in not providing for the case of what Roman lawyers termed *agri limitati*. When land is granted by the State in a plot with a specified area, and such land is enlarged by alluvion, the increment should not become the property of the owner of the plot. The Bill (section 10, clause (*c*)) contains a provision to this effect, which, it is believed, will be especially useful in Bombay.

When a river suddenly forms a new course, abandoning its ancient bed, the Bill declares that the owners of the ancient banks are entitled to the ancient bed in proportion to their respective frontages. This is in accordance with the existing law (Suth. W. R., 1864, p. 103), and it seems less likely to encourage litigation than would be the provision (found in some systems) that the owners of the land newly occupied shall take the ancient bed, each in proportion to the land of which he has been deprived.

Where a bank or shore is held on raiyatwárí tenure, the Crown is, for the purposes of the Bill, to be deemed the riparian owner. The effect will be, in Madras and Burma, to continue the present practice, according to which the Government is, as a rule, entitled to alluvial lands and to islands arising in rivers. In the Bombay Presidency, where a bank or shore is wholly or partially exempt from revenue, or is held under a grant or lease fixing the Government demand in perpetuity, the holder will be deemed the riparian owner.

The Bill advisedly leaves untouched the law relating to the assessment of alluvial lands and lands diminished by diluvion, to the rent payable in respect of such land, and to the rights of mortgagees and lessees to alluvial increments to the lands comprised in their mortgages and leases. These matters, it is thought, are or may be more fitly provided for by special enactments. The Bill is also silent as to avulsion, an event which, though provided for in Bengal Regulation XI of 1825, is said never to occur in any part of British India.

SIMLA;
September 6th, 1878.

WHITLEY STOKES.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

ANNEXURE

TO

Bill to define and amend the law relating to alluvion, islands and abandoned river-beds.

(Statement of Objects and Reasons.)

Govt. C. B. Press, Simla,—No. 263 L. D.—8-10-78—140.

Jud'l Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

READ the following letter;

From the Secretary Govt of India, Legislative Dept, dated 14 Sept 70, No 1320.

Ordered that copy of the amended Bill to define and amend the law relating to alluvion &c &c the Statement of Objects & Reasons, &c. &c. and with the above letter, be forwarded for the consideration of the Hon'ble the Judges of the Sudr Court, & of the Officers named in the margin.

2. Ordered also that the Bill and Statement be published in the Fort St. George Gazette in English & in the usual vernaculars.

Mr. W. S. Thomas.
Mr. W. S. Foster
Mr. E. F. Webster
Mr. W. Wilson.

To
Mr. W. S. Thomas Esq 1
Mr. W. S. Foster " 1
Mr. E. F. Webster " 1
Mr. W. Wilson. " 1
Revenue Dept. 6
Legislative Dept. 3
Judicial " 3
Public " 3
Marine " 3
Gazette

Dated 9-11- No. 2224

To The Hon'ble C. J. Innes,
Offg Chief Justice & the
Hon'ble Court, Madras.

Hon'ble Sir,

I am directed by

His Grace the Govr in Council
directs me to request you to lay before the Judges of the High Court, the accompanying copy of a letter from the Govt of India, Legislative Dept, dated 14 Oct/70, No 1320, & of an amended Bill, with Statement of Objects & Reasons, to define and amend the law relating to alluvion, islands, and abandoned river beds, & to request that the favor of an early opinion of the Judges upon the provisions of this Bill, as the Govt are desirous of being enabled to forward their reply to the Govt of India, if possible, before the 1st January next.

I am &c
W.S.

Commund
31st Oct/70

Letter Book 16

R.
16-72

Govt. of {1878} Madras.

Judicial

To

Dated 31st Oct 187 8. No. 2223 & 2224
Recd. ...

Nos. 147-151

Bills Legislative

Copy of the amended Bill to define and amend the law relating to the alluvion &c with the Statement of Objects & Reasons forwarded for the early opinion of the Hon'ble the Judges of the High Court and of certain officers & the Bill and Statement published in the Gazette in English & the Vernaculars

Sec. 1