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(2) Date of repair 2. 6. 42

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Official DEPARTMENT.

G.O. No. <u>257</u>	Press Mss.
Dated <u>17 February</u> 13 <u>37</u> .	

Not to be folded or roughly handled

it will be equally inapplicable; for the course of this will vary with each successive fresh in the river and from time to time. The same description is true of the channels of the Godavari and of the other deltaic and inland rivers in this Presidency.

6. The following minor point seems also to deserve notice. As Section 4, Clause 1, at present stands, an accretion formed in a single flood will apparently not be within the Bill; for it cannot be said to be formed "gradually," yet sudden accretions are common and valuable, although frequently ephemeral in their duration.

7. The part of the Bill which has given rise to most difficulty is the definition of "owner in the case of a bank or shore held on ryotwari tenure" in Section 3; and I am directed to annex the Minutes of the Honorable W. Hudleston and the Honorable D. F. Carmichael on this most important question.

8. The Government of Madras are therefore of opinion that to suit the circumstances of this Presidency and in view to simplify the law relating to accretions, the Bill should contain a preamble and sections somewhat like those in the accompanying annexure, which I am directed to forward for the consideration of His Excellency the Governor-General in Council.

I have the honor to be,

Sir,

Your most obedient servant,

R. DAVIDSON,
Chief Secretary.

FORT ST. GEORGE,
19th February 1881.

Sketch of Alluvion Bill.

WHEREAS it is expedient in view to the prevention of disputes and of prejudice to the State by the interruption of the flow or the diminution of the supply or water-spread of water in rivers, lakes and tidal waters, to define the ownership of lands newly arising above water in the beds of such rivers, lakes or tidal waters, whether as accretions to existing lands, or as islands or otherwise; It is hereby declared and enacted as follows:—

1. All land arising naturally in any tidal water vests absolutely in the Crown.
2. All land arising naturally in any water other than tidal water vests in the Crown subject to the rights and privileges of use or occupation, if any, pertaining by law or custom to the ryots or villagers of the village within the limits of which such land may arise, and subject also to the rights of any Zemindar or other grantee under the Crown within the limits of whose zemindari, or estate held by Crown grant, such land may arise. Provided that no such ryot or villager, Zemindar or other Crown grantee shall have any right or authority so to use or occupy any such land as to prejudice the supply, flow or water-spread of any such water within which it arises.
3. It shall be lawful for the Government by means of its officers or servants to cause the removal of any land arising as set forth in the preceding section, or to require the removal by any Zemindar, Crown grantee or other person of any obstruction to the free flow of water artificially placed by them or by others within the limits of his zemindari or estate.
4. It shall be lawful for the Government to make rules for regulating the cultivation of such lands and such rules after publication in the Official Gazette shall have the force of law.
5. Any person infringing any of the aforesaid rules shall be liable to be prosecuted summarily before any Magistrate of the first class, and shall on conviction be liable to a fine not exceeding 1,000 rupees, and shall thereupon forfeit to Government all the plants and the produce thereof planted by him on the said land in contravention of the said rules.
6. Nothing in any of the above sections is intended in any way to limit the right of any occupier or owner of such land to do what he may deem needful or expedient to prevent erosion of his land being outside the bed of a stream or above high-water-mark, or of the ground supporting it within the bed of a river or lake or to replace any part of his land which has been carried away, provided that nothing shall be done by him to cause or induce any accretion to his land beyond its original limits or to prejudice the rights of others.

Minute by Hon. DAVID F. CARMICHAEL, dated 7th January 1880.

Draft letter to Government of India on the Alluvion Bill.

This draft is based on notes by His Grace, concurred in by Mr. Hudleston, but I cannot accept it.

Section 2.—Many sorts of public property—seas, shores, navigable rivers, &c.—vest in the Sovereign, as Trustee for the subject, i.e., for public uses; but it is as inexpedient as it is new to claim for the Sovereign the trusteeship of anything which is the pertinent of a private estate, e.g., a Zemindari estate. The declaration will create universal alarm, and is quite uncalled for; because, if the removal of an accretion is deemed necessary for public purposes, the land may be acquired under the proper Act. The proviso to this section is also superfluous: *sic utere tuo ut alienum non laedas*, being a maxim of elementary law; and mischief of the kind described, if dishonestly done, being already punishable under the Penal Code. Further, the words "any custom to the contrary notwithstanding" threaten long-existing rights which no Court of Law could upset, but which this draft would summarily extinguish without indemnification.

I object further to the doctrine laid down in the draft as to the right of the Pattadars in a raiyatwari village to occupy accretions or newly-formed islands. No such right, in my opinion, exists. Sir Thomas Munro, in regard even to *dehans*

villages, held that the waste—which seems to be the analogous case in view—belonged to the State; and generally, after reserving a portion of the unassessed waste for public purposes, our practice is to do what we like with the rest. In cases of applications for *assessed* waste, the villagers by our rules have the best claim to occupation.

DAVID F. CARMICHAEL.

Minute by the Hon. W. HUDLESTON, dated 7th January 1880.

I have always objected and must continue to object to the definition of "owner" in the Bill as being the Government in the case of any land held on ryotwari tenure.

2. I do not understand Mr. Carmichael's objection to "the doctrine laid down in the draft as to the right of Puttahdars in ryotwari villages to occupy accretions."

3. I find no such doctrine in any draft in the packet, but I maintain that the ryot is the owner of his land held on ryotwari tenure, and has as much right to accretions as any other owner, subject of course to the obligation of his tenure that he shall pay the Government revenue demand assessed on his holding. Extension of area by accretion would necessarily involve additional assessment and demand.

4. Mr. Carmichael's reference to the analogy of waste land, I do not understand; for a ryot is admitted to have the preferential claim to occupy waste land adjoining his holding on payment of assessment, but the fact is that no claim is advanced to put existing waste on the main land on the same footing as newly-formed accretions to the banks of rivers. If it were so, a Zemindar could shift his boundary till he reached cultivation beyond his original limit.

W. HUDLESTON.

Memorandum from the Chief Engineer for Irrigation, to the Secretary to Government, Revenue Department, dated Fort St. George, 30th September 1878, No. 166 W.

THE PROPOSED INDIAN ALLUVION ACT.

The following remarks are submitted with reference to paragraph 2 of G.O., Revenue Department, No. 1375, 28th August 1878:—

Apart from the amendments of definition and detail which are shown by the opinions recorded with the above Government Order to be requisite to admit of such an Act being made effectual to secure the intended objects, the undersigned considers that it is very undesirable that property in accretions and new formations in the waterway of rivers should be conferred on private individuals without reference to the requirements of the rivers as regards the safe conveyance of their waters to the sea, or that any rights should be so conferred without, at the same time, either by a River Conservancy Act or otherwise, imposing on those individuals corresponding obligations, in the absence of which the rights would be likely to lead to action extremely prejudicial to the general interests.

2. The first necessity for the well-being of the many interests which are connected with rivers in Southern India, or at any rate with those parts of the rivers which have to a greater or less extent a deltaic character, is that the waterway should be preserved from encroachments, and made or kept capable of disposing of flood-waters, so that prejudicial inundation may be avoided. The community generally living or occupying lands in the neighbourhood of the rivers so circumstanced has a very direct and important interest in this requirement, and the welfare of the many ought not, it is considered, to be subordinated to that of the few who happen to hold lands on the river-margins.

3. It is practicable to define with fair accuracy what the waterway of each river and its boundaries should be, and the property in this area should, it is considered, be vested in the Government, which is the only authority which can guard the general interests. It may happen that parts of the areas within the boundaries so defined may be in the possession of individuals; and, if so, such lands may need to be acquired by purchase in the interests of effective conservancy, or the land so occupied may be an island, the acquisition of which may not be necessary. In either case the undersigned

would carefully restrict private property in land lying within the boundaries of the necessary waterway of rivers which it is requisite to conserve to the land already held in possession, and no private property in accretions or new formations subsequently arising should be allowed.

4. These proposals involve no interference with existing private property without providing for due compensation. For the general good, however, they require the exclusion from recognition of claims which are of doubtful validity in the case of many rivers, and which at most are contingent on accidental circumstances, and are incapable of any valuation whatever. Individual riparian proprietors might or might not acquire under the Indian Alluvion Act rights to valuable accretions and formations. It is impossible to say when or to what extent such accretions would take place, or, when formed, how long they would last; and it would, it is thought, be in the last degree impolitic to create or directly establish any such contingent and uncertain rights, which cannot but be most prejudicial to the general interests.

5. Proprietary rights in accretions, so far as they have been rightly or wrongly claimed, have inevitably led to acts which are essentially injurious to the efficiency of the rivers as drainage ducts. In many of the rivers of Southern India it is easy by simple and inexpensive means to induce accretions on even a very large scale, and the holder of land on a salient point of a river may do a vast amount of injury by planting out on and below the spit, which is in such positions usually to be found. To give him a direct interest by law in so encroaching cannot be desirable, while on the other hand it is clearly desirable to not only give him no interest in encroachments, but to restrain him by law from encroaching. The condition and circumstances of river-beds change annually and sometimes in a very striking manner. A riparian proprietor by acting promptly may secure valuable accretions with great rapidity, and for the sake of the profits on, perhaps, a single crop, may do a great deal of mischief. Conservancy must necessarily be more or less unsuccessful, unless encroachments within the waterway proper of a river be summarily prohibited. It is difficult enough to deal with the action of the river itself without the aggravation of sets and other injurious action by private interference.

6. Apparently Western Law recognizes a difference between navigable and non-navigable rivers as regards the property in their beds. Such difference is, it is supposed, based upon the value of the navigation and the need of preserving the means of communication. In Southern India navigation where it exists is comparatively a small interest, and the main interest is the safe discharge of floods which are of frequent occurrence and often of great severity. There is consequently, it is thought, no ground of propriety or public interest in making here a distinction between rivers which are navigated or are not used for navigation, and the undersigned would recommend that any law relating to rivers which may be introduced should be made applicable to the parts of all rivers which require to be conserved, whether they are or are not navigated. As a rule, rivers above the parts which need conservancy operations are not liable to encroachments, the accretions being for the most part of sand or other material not of value for cultivation.

7. Conservancy involves reclamations where erosions beyond the proper limits of the waterway have taken place, and such reclamations have on a scale of considerable importance been carried out in the rivers of the Cauvery Delta at the public expense. It is essential that these reclamations should belong to Government, because, otherwise, there would be nothing to prevent their being cleared and cultivated before they had reached a safe level, and in many cases as a consequence they would be destroyed, and all the money spent upon them would be thrown away, while the proper training of the river would be rendered impracticable.

8. These remarks will show that, in the opinion of the undersigned, the Indian Alluvion Bill, as submitted to the rivers of Southern India, and has for its object the establishment of rights which would in some cases be new, or which are not at present fully admitted. It is recognized, while for the general good it is desirable that all private rights, so far as they may at present exist or be supposed to exist within the waterway proper of those rivers which have a deltaic character, should be extinguished by purchase or otherwise, and that similar rights should in the future be permitted to

acruce. The Bill would confer property of very uncertain and transitory value, and would, by affording a great temptation to litigation, probably involve on those for whose benefit it has been drawn up losses much exceeding the possible gain. It would at the same time be a very serious hindrance to effective conservancy, and would add to the already too considerable inducements to encroachment which are now present, which encroachments are an evil of no small magnitude, and need to be peremptorily forbidden.

(Signed) J. MULLINS, Lieut.-Col., R.E.,
Chief Engineer for Irrigation.

From W. S. FOSTER, Esq., to the Acting Chief Secretary to Government, dated Cocanada, 4th December 1878.

I have the honor to acknowledge the receipt of the G.O., No. 2223, dated 31st October 1878, forwarding a copy of the amended Bill to define and amend the law relating to Alluvion, &c.

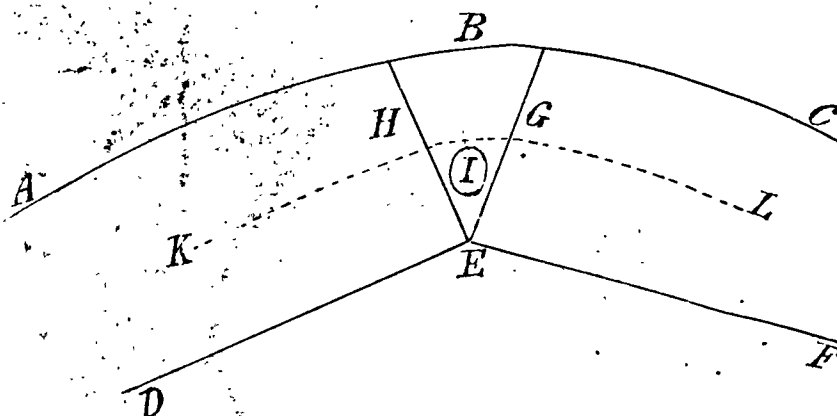
2. There is so little amendment in the Bill which seems intended only to state the law, which is now supposed to exist, that I would omit the words "and amend" from the preamble.

3. I think it would be well in interpreting the word "sea" to show where a river, falling into the sea or an inlet or creek, ends and the sea begins; because instances might occur where the "thread of the stream" had not been defined to be the middle line between the shores; and then a question might arise whether an island that had formed, had formed in the sea or river, and different rules would have to be used to dispose of the island, according as it was in the sea or the river.

4. I would extend Section 10 (e) to all rivers, as I do not suppose the Act is intended to authorize any encroachments on any rivers: but, if thought necessary, the words "which would not otherwise be lawful," might be added in a parenthesis after "encroachments," if the word "navigable" were left out.

5. In defining frontage, the Bill seems to contemplate that the boundary of the shore will be a series of straight lines, of which any two consecutive straight lines will include an appreciable angle; this boundary line will really, in nature, always be curved. Now, by taking the explanation of frontage given in the Bill, we could very possibly have an island formed in a river with no "frontage" on the nearest shore opposite to it.

Let ABC, DEF be two banks of the river, EG perpendicular to EF, and EH perpendicular to ED. KL is the thread of the stream, to whom would the island I within the triangle HEG belong? There is no "frontage" opposite to it on the shore to which it would belong, and there is no provision for Government taking what cannot be claimed by individuals under the Bill. But if we take the frontage to be the actual curved line drawn through all the points where the land and water meet (say, at low water), and make the frontage at any point to be opposite an island, when a normal to the curve at that point passes through the island, it would be almost impossible to have an island without any frontage on one shore opposite to it.



6. But even if the explanation of "frontage" given in the Bill is retained, it will be well to add the words "at low water" to show where the frontage of the sea coast has its corners, and to add the words "to the frontage" after the word "perpendicular," for the line to which the perpendicular is drawn is not given in the Bill.

Again, with the definition given in the Bill, it would be possible to have an island opposite to two frontages.

7. I cannot help thinking that the idea which has guided all the decisions is that any part of an island belongs to the owner of the nearest point of that shore which is on the same side of the thread of the stream as the part of the island under consideration, and that the difficulty of making measurements from every point of the island to the coast, and the desire to exclude from laws anything that partook of mathe-

matical expressions and considerations, was the cause of the introduction of the idea of the frontage straight lines. And as the Bill is now worded, the method of dividing the island between the two parties is not given: we only know the extent of land which each party is to have, but not its position.

8. I would then substitute for those given in the Bill the following clauses:—

- 6 (a) Where the island is formed in the sea or a lake, each point of the island belongs to the owner of the nearest point of the shore.
- 6 (b) & (c). Where the island is formed in a river, any point of the island belongs to the owner of the nearest point of that shore which is on the same side of the thread of the stream as the point of the island under consideration.

9. If a plan were made of the island and the adjacent shores, there need be no difficulty in making out the exact position of the holdings of the respective owners. Generally the rule would be that the owner of any part of the shore would be entitled to so much of the island as lies between the normals at the extremities of his holding; and if this would give the same piece of ground to two different owners, this piece would have to be divided into two parts by the line which is the locus of the intersection of equal normals to the two frontages; practically this would generally be the straight line bisecting the angle between two of the equal normals. These need not be put in the Bill, as they would follow of necessity from the rule I have proposed.

From H. S. THOMAS, Esq., Acting Second Member of the Board of Revenue, to the Acting Chief Secretary to Government, dated Madras, 17th December 1878.

I have the honor to submit the opinion required in G.O., 31st October 1878, No. 2223.

2. Looking at the definition of "owner" in Section 2 of the Bill, I find that it yields at a stroke much that is very open to question. "Owner" means "in the case of a bank or shore held on ryotwari tenure the Crown." It follows that in the case of bank or shore held on any other tenure the "owner" is by this Bill declared to be not the Crown but the holder. Is an Inamdar an "owner"? It is open to question whether he is not simply a ryot minus the liability to pay land assessment on a fixed area. Under Section 10 (a) he is prevented from enlarging his inam land by accretion on the bank; but he is not prevented, as I read the wording Section (b), from acquiring an island on the same tax-free terms as his inam. Surely this is both an anomaly and an unintentional giving away of rights. Inams in this Presidency are so numerous that the question becomes an important one, and it seems that Madras

is not quite so much secured as the last paragraph but one of the "Objects and Reasons" would lead one to suppose.

3. Again, the word "ryotwari" is not defined. Does it include Zemindar's ryots? If it does, it confers the ownership on the Crown, not the Zemindar.

4. There are no penalties attached to the breach of provisions, Section 10 (d) (e), nor is authority given for Section 10 (f) (g), so that persons obstructing officers acting under them cannot be punished. In short, the Bill is all for giving away, and loses sight of the necessity for simultaneous limiting of the alienation process and securing that which it is desirable to retain.

5. It is true the Bill proposes to deal only with the objects set forth in the preamble, but, as it is declaratory of ownership of banks and shores, it creates riparian rights which may become very troublesome if ever the fisheries of India are taken up as they should be. Without enlarging on that point, I will simply urge that the definition of ownership should be guardedly limited so as to preclude the growing up of now non-existing rights in the water and the fishery. For this purpose I would commence the interpretation clause thus:—In this Act, and only for the purposes contained in this Act.

6. As regards the rights of the question, I have written the following remarks on a somewhat similar Bill under preparation in this Presidency, and append them as not without bearing on the present Bill and my objection to what I consider the somewhat loose way in which Crown rights are disposed of:—

"It has been held by previous Boards that accretions belong of right to the riparian proprietors. This view has elsewhere been held to be the law on the subject. I do not contest it, on the contrary I fully accept and rely on this basis.

"What I object to is the conclusion drawn therefrom that the accretions fall of right to the Puttahdar. What I contend is that the riparian proprietor is the Government and that the accretions must consequently fall of right to Government. Thus I object in brief not to the view taken of the law, but to its wrong application.

"To judge rightly of this question it is necessary to define between what is given of good policy and what is claimable of legal right.

"While I most fully admit the good policy of giving to the Puttahdar occupant security of tenure, I contend that all that he has in this direction is purely the gift of Government and in no way a right of his own. It were easy but lengthy to sketch the gradual growth of the liberal policy which turned the tenant at will into a tenant with a fixed liability, and the position could be supported by surroundings admitting of no other interpretation. It may suffice, however, to point out that the Madras High Court has thus interpreted the position, so I will content myself with relying on the full Bench decision of the Madras High Court in Fakir Muhammad and others *versus* Tirumala Charriar and others (I.L.R., Volume I, page 205).

"I wish not to be considered desirous of curtailing the security of tenure given to the Puttahdar. I only contend that what he has is not of right but of gift, and that we are under no necessity to enlarge the free gift further by the cession of additional matter riparian rights.

"As there is no necessity of law to cede riparian rights, so is there no show of expediency that they should be given away out of good policy.

"It will not add to the security of tenure, to the investment of capital on existing holdings, that riparian rights should be added thereto.

"The very Bill itself and the Bill on Avulsion, Erosion, and Accretion admit a number of potent practical objections to such rights, and it is a grotesque procedure to build up rights simultaneously with elaborate machinery for knocking them down.

"As there are numerous obvious daily recurring irrigational ~~objections~~ to such rights, so also will it appear hereafter when the subject is taken up that there are numerous important fishery objections to the unnecessary cession of riparian rights.

"It is argued in the draft Board's Proceedings, against which I enter this protest, that the Madras High Court has more than once decreed in favor of riparian rights. I quote the decisions in the margin; and I contend that there is no single decision between Government and Puttahdars. They are between Government and Inamdars or Zemindars, and between Zemindars and their tenants; and in that the decision between Zemindars and their tenants was in favor of the Zemindar as being the proprietor, it is *quantum volent* in the direction of being in favor of Government as against its Puttahdars."

Sree Rajah Oopalapalapaty Jagu Jagannadaraue, v. Sub-Collector of Rajahmundry. S. Court decisions for 1858, page 188. Madras High Court decisions in R. A. 58 of 1864. Subbaya and others v. Yarlagaadda Anikinilla. Madras High Court Report, Vol. I, page 235.

Ed. T. O'Connor.

1831.
JUDICIAL DEPARTMENT.

From
The Chief Secretary to the Govt. of
Fort St. George,
To
The Secy. to the Govt. of India,
Legislative Department.

Dated 19th February 1831.

Issued

Recd.

No. 389.

Enclosure.

Bills—Legislative.—Forwarding certain papers containing the views of the Office consulted by this Government relative to the provisions of the Alluvion Bill, together with the opinion of this Government.

N^o 166. W.

Memorandum

The proposed Indian Alluvion Act

The following remarks are submitted with reference to para 2 of G.O. R.D. N^o 1375 - 28th August 1878.

Apart from the amendments of definition and detail which are shown by the opinions recorded with the above G.O. to be requisite to admit of such an Act being made effectual to secure the intended objects, the undersigned considers that it is very undesirable that property in accretions and new formations in the waterway of rivers should

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be preserved from encroachments, and made or kept capable of disposing of flood waters, so that prejudicial inundation may be avoided. The community generally living or occupying lands in the neighbourhood of the rivers so circumstanced has a very direct and important interest in this requirement, and the welfare of the many ought not it is considered to be subordinated to that of the few who happen to hold lands on the river margins

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Fort St. George
30 Sept 1898

St. Col. R. G.

Chief Engineer for Prison

To
The Secretary to Govt.
Revenue Dept.

Orissa

R. G.

Revenue 1878 Department

No 4347.

From

The Chief Engineer for Irrigation,

To

The Secretary, to wit:

Revenue Dept.

Ottawa

No. 1664.

Dated 30 Sept.

Despd. 2 Oct.

Received 3

1878

ENCLOSURES.

Subject.

India alluvium Act - 1878 -

Revenue, submitting remarks as to

the proposed —

See

1878

19 Cocanada 7/11

13

Large amount of papers.

Revenue, submitting remarks as to the proposed —

India alluvium Act - 1878 -

RC 300/1878 R 3/11
RC 18/1878 R 3/11
C 2/1878 R 3/11
C 12/1878 R 3/11

Revenue 1878 Bep

Revenue 1878 Bep
N^o 4347.

From Mr. Engineer for
Irrigation.

Dated 30 Sept 1878.
Recd 3 October
N^o 1664.

Memo
Submitting remarks
as to the proposed Indian
Alluvion Act 1878.

RC 30/10/78 R 1/11/78
RC 14/11/78 R 1/12/78
C 2/12/78 R 1/12/78
C 12/12/78 R 3/1/79

14
Cocanada
4th December 1878

To,
The Acting Chief Secretary
to Government.

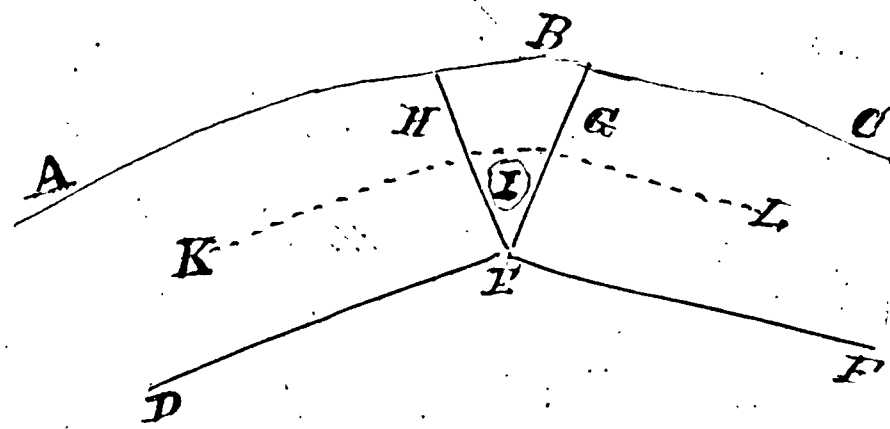
Sir,
I have the honor to acknowledge the receipt
of the Government Order N^o 2223, dated October
31st 1878, forwarding a copy of the amended bill
to define and amend the law relating to
alluvion &c.

2. There is so little amendment in the bill which
seems intended only to state the law, which is now
supposed to exist, that I would omit the words
"and amend" from the preamble.

3. I think it would be well in interpreting the
word "sea" to show where a river, falling into the
sea or an inlet or creek, ends and the sea begins,
because instances might occur where the "thread
of the stream" had not been defined to be the
middle line between the shores; and ^{then} a question
might arise whether an island that had
formed, had formed in the sea or river and
different rules would have to be used to dispose
of the island according as it was in the sea or river.

4 I would extend section 10c to all rivers, as I do not suppose the act is intended to authorize any encroachments on any rivers: but if thought necessary, ^{the words} "which would not otherwise be lawful," might be added in a parenthesis after "encroachments," if the word "navigable" were left out.

5 In defining frontage, the bill seems to contemplate that the boundary of the shore will be a series of straight lines, of which any two consecutive straight lines will include an appreciable angle: this boundary line will really, in nature, always be curved. Now by taking the explanation of frontage given in the bill, we could very possibly have an island formed in a river with no "frontage" on the nearest shore opposite to it.



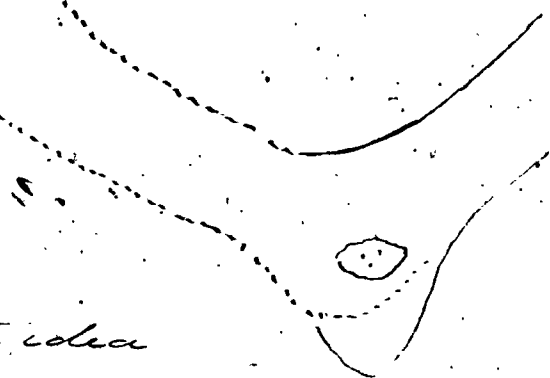
Let A-B-C & D-E-F be two banks of the river,

K-I perpendicular to E-F, and H-I perpendicular

to E-F. K-I is the thread of the stream, to whom would the island ~~2~~ belong. There is no "frontage" opposite to it, on the shore to which it would belong, and there is no provision for Government taking what cannot be claimed by individuals under the bill. But if we take the frontage to be the actual curved line drawn through all the points where the land and water meet (say at low water) and make the frontage at any point to be opposite an island, when a normal to the curve at that point passes through the island, it would be almost impossible to have an island without any frontage on one shore, opposite to it. But even if the explanation of "frontage" given in the bill is retained it will be well to add the words "at low water" to show where the frontage of the sea coast has its corner, and to add the words "to the frontage" after the word "perpendicular," for the line to which the perpendicular is drawn is not given in the bill.

Again

Again with the definition
given in the bill, it would
be possible to have an island
opposite to two fortages.



7 I cannot help thinking that the idea
which has guided all the decisions, is
that any part of an island belongs to the
owner of the nearest point of that shore
which is on the same side of the thread of
the stream as the part of the island under
consideration, and that the difficulty of
making measurements from every point
of the island to the coast, and the desire to
exclude from laws anything that partook
of mathematical expressions and consi-
derations, was the cause of the introduction
of the idea of the fortage straight lines.
And as the bill is now worded, the method
of dividing the island between the two
parties is not given: we only know the extent
of land which each party is to have, but
not its position.

8 I would then substitute for those given

in the bill the following clauses: 16 9

b(a) Where the island is formed in the sea or
a lake, each point of the island belongs to
the owner of the nearest point of the shore.

b(b) & (c). Where the island is formed in a river,
any point of the island belongs to the owner
of the nearest point of that shore which is on the
same side of the ~~thread~~ of the stream as the
point of the island under consideration.

9 If a plan were made of the island and
the adjacent shores, there need be no difficulty
in making out the exact position of the hold-
ings of the respective owners: generally the rule
would be that the owner of any part of the shore
would be entitled to as much of the island
as lies between the normals at the extremities
of his holding: and if this would give the
same piece of ground to two different owners,
this piece would have to be divided into two
parts by the line which is the locus of the
intersection of equal normals to the two for-
tages: practically this would generally be the

straight

straight line bisecting the angle between
two of the equal normals. These need not
be put in the bill, as they would follow
of necessity from the rule I have proposed.

I have the honor to be

Sir

Your most obedient Servant

W S Foster

Revenue Board Office
Madras
17 December 1878.

From,

H. S. Thomas Esq.

Ag 2nd Member of the
Board of Revenue

To

The Chief Secretary to
Government, Madras.

Sir,

I have the honor to submit
the opinion required in G.O. 31st October,
1878, No. 2223.

2 Looking at the definition of
"owner" in section 2 of the Bill, I find
that it yields at a stroke much that
is very open to question. "Owner" means
"in the case of a bank or shore held
on parganawari tenure the proprietor." It
follows that in the case of bank
shore held in any other tenure the "owner"
is by this Bill declared to be not the
proprietor but the holder. Is an owner

Received 18th Dec 1878
from Mr. H. S. Thomas Esq.
Chief Secretary to Government

To
The Chief Secretary
to Government

For Mr. S. S. S. S.

Received 4th December 1878

Given his opinion
on the amended bill
to define & amend
the Law relating to
Alienation &c

an "Owner"? It is open to question whether he is not simply a payee minus the liability to pay land assessment on a fixed area. Under Section 10 (c) he is prevented from enlarging his swamp land by accretion on the bank; but he is not prevented, as I read the wording, Section (b) from acquiring an Island on the same tax-free terms as his swamp. Surely this is both an anomaly and an unintentional giving away of rights. Swamps in the Presidency are so numerous that the question becomes an important one, and it seems that Madras is not quite so much sited as the last para but one of the objects and reasons would lead me to suppose.

Again the word "pangalwar" is not defined. Does it include Samindars riyats? If it does it confers the

ownership

ownership on the Crown, not the Samindar.

There are no penalties attached to the breach of provisions, Section 10, (d) (e). nor is authority given for Section 10, (f), (g), so that persons obstructing officers acting under them, cannot be punished. In short the Bill is all for giving away, and does sight of the necessity for simultaneous limiting of the alienation process and securing that which it is desirable to retain.

It is true the Bill proposes to deal only with the objects set forth in the preamble, but as it is declaratory of ownership of banks and shores it creates riparian rights which may become very troublesome if ever the fisheries of India are taken up as they should be. Without enlarging on that point I will simply urge that the definition of ownership should be guarded.

guardedly limited so as to preclude the growing up of new unresisting rights in the water and the fishery. For this purpose I would commence the interpretative clause thus: In this act, and only for the purposes contained in this act.

6. As regards the rights of the question I have written the following remarks on a somewhat similar bill under preparation in the Presidency, and append them as not without bearing on the present Bill and my objection to what I consider the somewhat loose way in which Crown rights are disposed of.

"It has been held by previous Courts that accretions belong of right to the riparian proprietors. This view has elsewhere been said to be the law on the subject. I do not contend it; on the

the contrary I fully accept and rely on this basis.

8. What I object to is the conclusion drawn therefrom that the accretions fall of right to the puttabdar. What I contend is that the riparian proprietor is the Government and that the accretions must consequently fall of right to Government. Thus I object in brief not to the view taken of the law, but to its wrong application.

9. To judge rightly of this question it is necessary to define between what is given of good policy and what is claimable of legal right.

10. While I must fully admit the good policy of giving to the puttabdar occupant a security of tenure I contend that all that he has in this direction is purely the gift of Government and in no way a right of his own. It were

but lengthy to sketch the gradual growth
of the liberal policy which turned the
tenant at will into a tenant with
a fixed liability, and the position
could be supported by surrounding
admitting of no other interpretation.
It may suffice however to point out
that the Madras High Court has
thus interpreted the position, and
will content myself with relying on
the full bench decision of the Madras
High Court in *Tahir Muhammad*
and others versus *Simamala Channiar*
and others. (M.L.R. Vol. 11, page 200.)

11. I wish not to be considered
desirous of curbing the security
tenure given to the proprietor.
I only contend that what he has
is not at right but of gift, and that
we are under no necessity to enlarge
the free gift further by the addition of
additional

additional matter riparian rights.

12. As there is no necessity of law
to cede riparian rights so is there no
show of expediency that they should
be given away out of good policy.

13. It will not add to the security
at tenure, to the investment of capital
in existing holdings, that riparian
rights should be added thereto.

14. The very Bill itself and the
Bill on amendment, erosion and accretion
admit a number of potent practical
objections to such rights, and it is
a grotesque procedure to build up
rights simultaneously with elaborate
machinery for knocking them down.

15. As there are numerous obvious
daily recurring irrigational objections
to such rights, so also will it appear
hereafter when the subject is taken up
that there are numerous important
fishery

Fishing objections to the unnecessary
cession of riparian rights.

16 It is argued in the draft
Board Proceedings against which I
enter this protest that the Madras
High Court has more than once de-
cided in favor of riparian rights.

I quote the ^{decisions} in the margin, and I
contend that there is no single decision

between Govt and pottahdars. They are

between Govt and Zamindars or Zemindars

and between Zemindars and their
tenants; and in that the decision between

Zemindars and their tenants was in favor

of the Zemindar as being the proprietor
it is quantum valent in the direction of
being in favor of Govt as against its

pottahdars."

I have the honor to be,
Sir,
your most obedient servant

W. M. M. M.

Ag 2nd member of the
Board of Revenue.

See Rajah Aspalapala
-pali Jagu Jaganna
-darang v Sub-fell
of Rajahmundry
S. Court decisions for
1858, page 188.

Madras. H. Ct decision
in R. A. 58 of 1864.

Subbaya & others
v
Yarlagadda Anni-
Kinella.

M. H. Ct R. Vol I
p. 253.

No. 28148
140

Revenue Settlement Office

Madras, 14 December 1878

To,
From, W. Wilson Esquire,
Ag. Director of Rev. Sett.
To, C. G. Mackay Esquire,
Ag. Chief Secretary to
Government.

Sir,
I have the honor to inform
you that I have no remarks to
make on the revised 'Bill to
'define and amend the Law
'relating to Alluvion, Devolution,
'islands and abandoned
'River-beds' forwarded for my
opinion with Government
Order No. 2223 dated

3/85

Received (1878) 10th

from

M. S. Thomas Esq.

Ag. Secy to
Board of Revenue

The Chief Secretary to
Government
Madras.

Dated 17 December 1878.
Recd 1878

13329
Submitting his opinion
with reference to the amend-

ed Bill to define and
amend the Law relating
to Alluvion, islands and
abandoned river-beds.

31st October 1878.

I have the honor to be,
Sir,
Your most obed^t servant.

Y^{rs} truly

Ag. Director of Rev. Settlement

No
E21110

+ + +

Mr. ¹¹⁰ 170

Admission Bill.

Min. to 1/2 hr. 15. 24a

7 Aug 1958

I have always felt with
 much confidence in
 Govt & the definition
 of "Owner" in the
 Bill as being the Govt
 in the case of any land
 held by the State.

Edw. Saunders says.
Mr. Garrison's objections
to the doctrine laid
down in the draft as
to the rights of heathens
in heathen villages
to occupy accretions
I find no such doctrine
in any draft in the

by acceptance of
massacre
in 1861 at
assault of the

42. 2505. In cases of applications for disfranchisement, the Villagers

holding a prof. ^{p. 25}
 assess. but the
 fact is that no claim
 is advanced & put
 & is my basis on the
 main land on the
 same footing as
 duly formed
 accretions & the
 lands of rivers -
 It is true - a junction
 must shift the boundary
 till it reaches culture &
 beyond its orig. limit
 J. C. S. V.

to
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 219
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Minute

See table page

176

Minute by Mr. D. F. Carmichael
 Sept 7th 1857
 Draft letter to Govt. India on the Alluvion Bill

This draft is based on notes by this office, concurred in by Mr. Hullestone, but I cannot accept it.

Sect 2. Many sorts of public property - seas, shores, navigable Rivers &c - vest in the Sovereign, as trustee for the subject, i.e. for public uses; but it is as inexpedient as it is new to claim for the Sovereign the trusteeship of any thing which is the pertinent of a private Estate, e.g. a Tamin-dari. The declaration will create universal alarm, and is quite uncalled for; because, if the removal of accretion is deemed necessary for public purposes, the land may be acquired under the proper Act. The proviso to this Section is also superfluous: sic utere tuo ut alienum non laedas being a maxim of elementary law, and mischief of the kind described, if dishonestly done, being already punishable under the Penal Code. Further, the words "any customs to be contrary not notwithstanding" threaten long existing rights which no Court of law could upset, but which this Draft would summarily extinguish without indemnification.

I object further to the doctrine laid down in the draft as to the right of the pattadairs in a Raigabvare village to occupy accretion or newly formed islands. No such right, in my opinion, exists. Sir Thomas Munro, in regard even to Mera's villages, held that the waste - which seems to be the analogous case in view, belonged to the State; and generally, after reserving a portion of the unoccupied waste for public purposes, our practice is to do what we like with the rest. In cases of applications for a reserved waste, the villagers by our rules have the best claim to occupy it.

Sd/- D. F. Carmichael

I doubt whether there is any need

[Faint handwritten notes at the bottom of the page]

April 21/22.
 Fully admitted
 to form a new
 government
 and $\frac{2}{4}$.

Herb. D. & Co. (Am. & Ind.)
100 N. 1st St. N.Y.C.
N.Y.

Aspace Minute the
20th April 79

Nov-7/8:

in der Linie.

In packing up my
papers for Madras - I was
startled to come across this
bundle on the "Aluminium Ball".

I can't think why or wherefore
it should be sent to me - I hope no
reply is due to India; but what I
am called for be bound to
see what has passed on the
subject.
Pray tell me what is the result.

No. 4367

From

Chief Engineer for Migration

Dated 30 Sept

1878.

FOR ORDERS.

Giving full views as
to the Indian Alluvion
Bill

Legal points.

The points it is proposed
to settle in this alluvion
Act are in regard to points
as follows.

- I The ownership of land
newly formed in the
bed of
(a) a navigable
(b) a non-navigable
river
- II The ownership of
accretions to river
banks
- III The ownership of
accretions to islands
- IV. The ownership of
a

been inadvertent by
looking to road

a part of bank carried
away bodily in a
distinguishable manner
V. The ownership of
abandoned river beds.

2. ^{Occur} ~~No. II and V~~ ^{appear}
to be practically unknown
in this Presidency but
there does not appear to
be any objection to a
law to settle them should
they arise, though the P. W. D.
will take care that
No. V remains ^{now} existent
in the case of those rivers
of which the waters are
in use for irrigation
purposes.

3. Of the other points
only No. III has ever been
distinctly ⁱⁿ ~~in~~ ⁱⁿ

Made Judgment
printed in 1801st
Col/2 No: 2525.

in a Court in this
Presidency and it was
then settled that as
accretion was to an
island the property
of a Zamindar it also
formed a portion of his
Zamindari.

4. But when this point
was settled we are unable
to trace what became
of that accretion as be-
tween the Zamindar
and the cultivator of the
land on the shore or
bank to which the ac-
cretion was added.

Regular appeals 1838 of 1861
High Court Reports Vol II
page 255. 257.

5. It has however
been ruled by the High
Court that "when an
island was formed in
a

a river, the lands adjacent
"to the banks of which
"were part of a Zemindari
"held, that the island
"was not the waste land
"of any village, or a portion
"of the holding of any
"ryots in the Zemindari,
"but that the Zemindar
"possessed in it all the
"incidents of ownership,
"including the power of
"making leases." The
river in question was
the Krishna but there
is nothing to show
whether the whole island
of which the lands
in dispute formed part
or those lands alone
were of recent formation.

a

FOR ORDERS.

In para 21 the learned
J. C. J. wrote that
"in suits Nos 58 of 64 &
30 of 63 the High Court
decided that accretions
formed in the Krishna
River are the property
of the ruling power."
"Accretions" should probably
be "islands". The suits
referred to cannot be
traced in the High Court
Reports. See

6. A common point
was raised in the District
in 1866 but its settlement
does not appear to have
been reported. Certain
ryots said land which
appeared on or near the
spot where they had
held land the whole
of which had been
washed away. At the
time they laid their
claim they did not
hold any portion of
the land to which
the new accretion was
attached.

7. The Alluvion Act
also dealt with land
formed on the shore
of

of the sea. One such case not only has been found on record and in this, which occurred in the Godavari, the Board directed the collector to accure the land for Govt.

8. The right of riparian proprietors are therefore unsettled in this Presy and where it has been attempted to define them reference has been had to decisions of the Privy Council which related to cases in Bengal which had an enactment.

9. Practically it has been customary, where an

an island appended with
bed of a stream to claim
it for Govt. and where
accretions were found
to have them to the
holder of the adjacent
land.

10. This however is
an inconvenient prac-
tice for it induces
holders of land to take
steps to have accretions
formed and prevents the
P.W.D. removing such
accretions. The former
might be prevented by
a River Conservancy
Act and in the case
of a natural accretion
it might be taken up
under the Act for
the

the acquisition of
land for Public purposes.
This would be a more
economical Proceeding
than that of taking up
a margin along the
entire bank of a river.
Similarly when the
P.W.D. want to form
an accretion they can
take up the adjacent
land.

Yours
J.W.

Memorandum
Alluvion Act

with
Report of the Collector

One

Precis of past decisions respecting alluvion

Godavery district

G.O. 9th May 1855 ho 560
" 22 March 1858 ho 341
" 14 June 1859 ho 802

1. These papers relate to a suit filed by the Proprietor of Gopalpuram against the Collector of Rajahmundry for certain island ^{land} in the bed of the Godaverri. The claim was rejected by the Civil Court, as the plaintiff could not prove that the formation was within the boundary of his village. On appeal, the
Sadr

Sadr reversed the
decision of the Lower
Court, on the ground
that the plaintiff
is entitled to what-
ever land has been
formed in the bed
of the river, opposite
to his own shore. No
Appeal was made to
the Privy Council, chiefly
because the general
question concerning the
right of Government
claimed newly formed
in the bed of rivers
could not be argued
in the Privy Council
as it was not raised
in

G.O. 16 Jan'y 1860 No 44
" 25 Feb'y. " 296
" 19 March 1861 " 634

in the Civil Court.
2. Relates to another
suit instituted against
the Collector of the Godavari
District by the proprietor
of the village of Kappa-
leswararam, who claimed
an island formed by
accretion in the Godavari
near that village. The
plaintiff, however, offered
to submit his claims to
arbitration; but on
the advice of the
Government Pleader the
Govt. sanctioned the
defence of the suit, the
view chiefly to the
question of increment
arising

arising in the bed
of navigable rivers
when forming an
addition to any
pre-existing land,
being settled by an
authoritative de-
claration. The suit
was dismissed by
the Civil Court of
Tanjavur as
barred under the
statute of Limitations.

3. This relates to a
suit filed against the
Collector of the Godavari
District by the Zamindar
of Vizianagaram. The
Plaintiff alleges that

Recd. B. G. P. 23rd Oct. 1866
No 7608

a piece of ground which
was his property and
which was in his
possession and enjoy-
ment, had been included
by the Collector in the
Government village of
Tyanavilli.
4. The Collector stated
that the ground in
question was a lake
accrion to a lake
in the bed of a navi-
gable river, a branch
of the Godavari called
Gontani, within the
influence of the tides
of the sea and that the
accrion
-tion to a lake a
of

of the proprietor of
Viravallipalem,

and did not touch.

The Plaintiff's property
at all.

5 The Board's order
was as follows.

It seems clear that
the Vizianagaram
Zemindar's claim is
not sustainable at
law, but the Board
are not satisfied
that the land belongs
to Government. The
rule of law for testing
these cases is very
simple, and is as
follows.

The property in
the

the bed of the stream
in tidal and navigable
waters vests in the Crown
therefore islands newly
formed in midstream
and which attach to
its bed, and to no
bank, are the property
of the State. But newly
formed accretions to
any already existing
shore are the property
of the person owning
that shore, and in the
present case, so far as
the Board can judge,
the new accretion attaches
to land which is the
property of the proprietor
of Viravallipalem, and
is

is not now, nor has
any stage of its
formation been an
island in midstream.

If this be so, the
property in the new in-
formation must vest in
the Viravallipalem
proprietor, and not in Govt.

"The Collector
will report whether the
above statement of the
law ruling these cases
alters view of the Govt
claim, and if so
what course he
proposes to adopt."

In 1861 a further
suit (No 3 of 1861) was
instituted by the
Zamindar of Vizianap-
ur against the Govt
of Godavery District
for

Note - The reply to this
has not as yet been
received by the District
Office

G.O. 15 March 1862 No 584
" 1st May " " 939
" 7 Feb. 1865 " 345
" 1st Oct. " " 2526

for the recovery of an
island formed in the
Godavery river in
1850 near the Govt
village of Kota and
the Zamindari village
of Kottipalli

The Zamindar
claimed the land
as an accretion to an
island called Beta-
rutimpa which be-
longs to his village. The
Collector denied this, and
maintained that the
land was formed in
the bed of the Godavery
a tidal and navigable
river, within the boundary
of Kota

In his judgment
the Civil Judge
remarked as follows

"If an island be
newly formed in the
bed

bed of a river, without
being an accretion to
the mainland or to any
existing island, the right
of the Govt to it, would, under
recent decisions, be un-
questionable; but if a
newly formed island is
an accretion to the main-
land or to another island,
even though the river
in which it is formed
should be a tidal
and navigable river,
the land thus formed
by accretion would
belong to the owner of
the soil to which it may
have accrued. In the case
of John Doe on the demise
of Rajah See O Kristo versus
The East India Company
reported in the 6th vol.
of Moore's Indian Appeals,
page

See also regular appeal
No 38 of 1861, Page 255
vol. I, Reports High Court
Madras.

page 264. The Lords of
the Privy Council decided
that the Indian Govt have
a freehold in the bed of
navigable rivers in India;
but that land formed
by gradual accretion,
belongs to the owner of
the adjacent soil. Other
cases are mentioned in
Moore's Analytical
Digest vol. I page 560 and
in vol. I new series, page
356. The principle that
alluvial lands gradually
gained from a river
belong by way of
accretion, to the adjoining
proprietor, seems thus
to be fully established.
The single point for
determination, therefore
is whether the island was
an accretion to Betam-
lunka, which was
already in the plaintiff's
possession, or whether as
the defendant asserts,
it was not an accretion
to

to that island, because
it was separated from
it, at the time of its
formation, by a
channel which has
since been filled up.

9. The Civil Judge
was of opinion that
the disputed Island
was an accretion to
the Zemindari State,
and gave judgment
in his favor.

10. The Government
did not deem it
desirable to appeal
from the Civil Judge's
decree.

11. In 1866, the Collector
of the Co-Davery district
learned that the
proprietor

Rev. Bd. Pres. 11 May 1866 No 3296
— " — 23rd Aug. — " — 6024
— " — 5 Oct. 1868 — " — 7063
— " — 12 Feb. 1869 — " — 946

proprietor of the Boringa estate
had appropriated certain land
stated to have been recover-
ed by the recession of the sea
or upheaving of ground.
The Govt. Pleader was called
upon for a legal opinion on
the subject. His opinion was
to the effect that lands
becoming derelict by the
sudden desertion of the sea,
are crown property. The Board
in Chgo. 23rd August 1866
Mr. Cozy inferred that the
land, which was the subject
of the Collector's reference, was
derelict caused by some sen-
sible retiring of the sea, and
that as such it belonged to
the Govt. They however assen-
ed to the lands in question
being made over to the Ze-
mindar on the same terms
as the rest of his Zemindari,
in his paying a proportionate
increase.

Govt. had an exclusive right to them. But there was evidence that the sites in dispute were occupied by lankas partly belonging to Sakapudi and Karumilly and partly to Kapileswarapuram and its hamlets and that the boundaries between the parts occupied by the several villages were a subject of dispute and arbitration and the Govt. Officer was of opinion that the proprietors of a lanka ^{still} entitled to the site on which it stood after it had been washed away and could claim any new accretion which comes to the surface on the same site. Under these circumstances the Board considered that the question whether the new land belongs to Govt. or the proprietors of Kapileswarapuram raised no question of law, it is involved in the assertion or surrender of the right of Govt. to the bed of the Godavari and all lankas appearing therein, whether within the boundaries of Govt. villages or not, and that it became in fact a mere boundary dispute and they authorized the Collector to settle the matter as such.

Kistna district

Rev. B. Progo. 30 July 1866 No 5234

16 October ... 7469.

17 These papers relate to a suit filed against the

Collector of the Kistna district by D. Harammaya and D. Lenderrainadu claiming 10 Kintars of land, an accretion which was found near the bank of the Kistna river in Fasli 1273, 1274 and 1275.

18 The Plaintiffs alleged that 20 Kintars of their land was washed away by the river 20 years ago, that about 10 Kintars were reformed on the same site in Fasli 1274 which they cultivated that year; and that although they had applied for the land, the Collector ordered double apportionment to be collected

collected thereon for Tasli
1274, and the land itself
to be sold by public auction

19. The Collector stated
that there was no documen-
tary evidence that the
land in question was the
land of the Plaintiffs and
submerged. He also reman-
ked that "if the new banks
reformed itself in the place
where the Plaintiffs land
formerly existed, the Plain-
tiffs have no claim what-
ever to property in the bed
of the Tista, which is a
tidal and navigable river
and that their claim to the
old land itself ceased to
exist entirely from Tasli
1265, in which the entire
land and of payment was
taken out from the account

On

Musamat Inam Bunde and
Wajid Ali Khan (Appellants) and
Hurgovind Choe (Respondent), repor-
ted at page 103, Vol. IV of Moore's
Indian Appeals.

Ore dem Teekheists and an-
ther, versus the East India Company
page 267, Vol. VI idem.

On this the Board of
Revenue remarked as follows:

"The law regarding for-
mations in rivers and accre-
tions to river banks is clearly
laid down in the decisions
cited in the margin."

"In navigable streams
any accretions to the bank are
the property of the owners of that
portion of the bank to which
the accretion attaches, while
formations in mid stream
(islands) are the property of
the State, as owners of the
bed of the stream."

"In non navigable
streams, the property in
the bed is shared equally
between the owners of the
land on either bank, and
accretions or islands newly
formed belong to the owner
of the bed of that portion of
the

the stream in which, or of
the banks to which, the new
land forms or attaches."

The Board cannot
decide, from the papers before
them, how far the claim of
the Plaintiffs in this suit
is valid; but in any case
it would seem that the
act of the local officers in
dealing with the accretion
as Government property and
selling it by auction is
not sustainable, and as
at present informed, the
Board cannot sanction
the defence of the suit.

The papers will be
referred back to the Col-
lector, who has resumed
charges with these
remarks."

21 The Collector
replied

43
replied that portions of the Plaintiffs
land were gradually cut
off by the stream year by
year; that the apportionment
on the portion so lost was
each year remitted to them
that the land actually
washed away each year
was, point of fact, relin-
quished by the holder, and
struck out of the accounts.
The holder thereby sacrific-
ing all claim to it, that
had the holders continued
to pay the apportionment in
the hope of the land reappear-
ing on the old site, then
their claim would be
valid, but that the fact
of relinquishment was
decisive against their
claim. The Collector
further remarked that
the

the land was claimed
as an accretion to land
actually in possession of the
Plaintiffs, but as a reform
a line of land which was
formerly held by them but
which had entirely disappeared
ten years ago; that the land
in dispute was an accretion
partly to the old bank of the
river held by D. Nagaya and
partly to a recent formation
held by certain others, and
purchased by them at a
Government sale held under
precisely the same circumstan-
ces. Supposing even that the
right to the accretion rests
with the holder of the adjoin-
ing fields and notwithstanding the
Government's donors of the
soil, the Collector thought the
Plaintiffs had no grounds
for their claim.

22 The Board's order was
as

as follows in place to be
"Under the circumstances
stated, and at the instance
of the Collector, the Board
discretion the defense of the
suit at the first instance at
the public cost on the usual
terms, and authorize the
Collector to file the draft
answer with the addition
of a statement to the effect
that the land sued for is not
an accretion to any land
held by the Plaintiffs."

The Board do not
see the force of much that
is urged by the Collector.
The fact of similar land
having been formerly sold
by auction is no proof that
the Collector then or now
was legally justified in his
proceedings, and he must
clearly understand and
for all that accretions to

land

land already in occupation
are the property of the owner
of the land to which the
accretion takes place. This
point of law has been unafail-
ably established by the
highest Court, and cannot
be questioned. The right of
Government to its share in
the land is a perfectly
distinct question.

The Board do not
understand the distinction
drawn by the collector
between the holders of the
adjoining fields and
the Government as owners
of the soil.

The Government are
not the owners of the soil
in the case of occupied
land, nor of accretions
thereto.

Refer to the fact
of the land being
recovered from the sea.

Revenue Board's decisions
Section 5 of this Bill

Propo 30 July 1876 No 5234

In navigable rivers, any
accretions to the bank are
the property of the owners of
that portion of the bank to
which the accretion attaches.

Propo 16 Feb 1866 No 7469

Accretions to land already
in occupation are the property
of the owner of the land to
which the accretion takes
place. This point of law has
been unassailably estab-
lished by the highest Court
and cannot be questioned.
The right of Government to its
share in the land is a perfectly
distinct question.

The Government are not the
owners of the soil in the case
of occupied land, nor of accretions
thereto.

Propo 20 Feb 1876 No 5234
Accretions to any property
existing shore or sea, belong
to the person owning that
property.

A
BILL
TO
Define and amend the law relating to alluvion, avul-
sion, islands and abandoned riverbeds.
WHEREAS it is expedient to define and amend
the law relating to alluvion,
Preamble. avulsion, islands, and aban-
doned riverbeds; It is hereby enacted as fol-
lows:—

I.—Preliminary.

1. This Act may be called "The Indian Alluvion
Act, 1878."
Short title. It extends to the whole of
Local extent. British India;
Commencement. And it shall come into
force at once.
2. The Acts, Regulation and Rules mentioned
in the schedule hereto an-
Repeal of enactments. nexed shall be repealed to
the extent specified in the third column. References
to the Regulation and Rules so repealed, in Acts
and Regulations passed subsequently thereto, shall
be read as if made to this Act.
3. Nothing herein contained shall affect any
clear, definite and immemo-
Local usage saved. rial local usage respecting
the right of riparian owners to alluvial land; but
the burden of proving such
Burden of proof. usage shall lie on the person
alleging it. And nothing herein contained shall
affect any local law relating to the assessment of
land-revenue or to the enhancement or abatement
of rent, or shall confer on any owner of a bank or
shore in respect of which he is hereby declared to be
entitled to alluvial land, an island or an abandoned
riverbed any title to such land, island or riverbed
higher or more free from encumbrance than that
which he has to the bank or shore.

13 Moo. I. A. L.

4 W. R. 41.

17 W. R. C. R. 173.

3 W. R. 95.
6 Ben. 843.

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

Ben. Act IV of 1868,
s. 2.

II.—Alluvion.

5. When, from natural causes, land forms by
imperceptible degrees on the
Right to alluvial land bank of a river or on the
on bank or shore. shore of the sea or an island,
either by accumulation of material or by reces-
sion of the river or sea, the owner of the bank or
shore shall be entitled to the land so formed:

Provided that, when 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.

III.—Avulsion.

6. If a river carries away by sudden violence a considerable and distinguishable part of a bank and bears it to the opposite bank, or to another part of the same bank, the owner of the part so carried away remains entitled thereto, unless and until his right is extinguished under the Indian Limitation Act, 1877, section 28.

IV.—Islands.

7. An island formed, from natural causes, in a navigable river or in the sea, either by accumulation of material or by recession of the river or sea, belongs to the Crown:

provided that, when the island is first formed, the channel between the bank or shore and such island is not fordable:

provided also that, when 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.

8. If when an island is first formed as aforesaid in a navigable river or in the sea, the channel between the bank or shore and such island is fordable;

or if an island is formed as aforesaid in a river which is not navigable,

the following rules shall take effect (namely):

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

When 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 the side on which the island is situate are severally entitled to the island in proportion to the frontage which they respectively have on the river opposite the island.

When 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.

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

V.—Abandoned Riverbeds.

10. If a river, whether navigable or not, forms a new bed, abandoning its ancient bed, the ancient bed is supposed to be divided by what was the thread

Handwritten note: The proprietor of a land is entitled to the land in which the stream after it had been made away and carried away now is a stream which comes to the surface in the same place.

Handwritten note: Section 7 of the Bengal Act IV of 1863, s. 1. The island is formed in the sea, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea opposite the island.

Handwritten note: Section 8 of the Bengal Act IV of 1863, s. 1. When 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 the side on which the island is situate are severally entitled to the island in proportion to the frontage which they respectively have on the river opposite the island.

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

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:

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.

THE SCHEDULE.

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

Number and year.	Subject.	Extent of repeal.
IV of 1872...	Panjab 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.

47

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

A
BILL
TO
Define and amend the law relating to
alluvion, avulsion, islands and abandoned
riverbeds.

(Mr. Stokes).

3/
 Piece
 of land determined
 by the Alluvion

Submit the paper
 812, 813 to Govt
 Sept 6

the land determined by the Alluvion is the land of the
 Crown & the land of the Crown is the land of the Crown
 of the Crown & the land of the Crown is the land of the Crown
 of the Crown & the land of the Crown is the land of the Crown

Alluvion Bill

The Original Draft of
 an Alluvion Bill came to the
 Govt with a letter from the Govt
 of India (March 178, Dept of War,
 Agri, & Commerce (Sanct Revenue
 Settlements). This letter was followed
 by another, 3 April 178, no to the pro-
 per definition of "thread of the stream".

Rev: C.O. 16 April 178,
 No 602.

Jud: C.O. 26 July 178, No 1553
 Rev: C.O. 28 Aug 178, No 1875

Pro: Bd: of Rev: 4 July 178
 in Rev C.O. 28 Aug 178, No 1875

After obtaining opinions, a report
 was made to the Govt of India
 against the Bill as unsuitable
 to this Presidency at all events.
 The Board made the following observation
 that the centre of the stream in ordinary
 floods will be a better & fairer guide for de-
 termining the rights of landowners to
 islands forming in a river, and that a
 permanent demarcation of the line
 will not suit the circumstances of
 the river in this Presidency, as their
 course varies considerably from year to
 year.

As to the landowner's remarks
 on the Govt being dissatisfied as the
 owner in Ryotwari tenure -
 surely nobody is owner, when
 he renders rent or service -
 when a man does either, he has not
 the absolute at discretion
unpermanence - he allotment -

The Ryot is a very handsome
 estate, an estate in fee simple,
 if you like; but as there is a
 redendum to be paid by him to
 the Govt, the Ryot is technically the
 owner; & the Ryot a tenant in capite.

Just to raise the objection.
 P.S.
 2-12/8

that the draft contained no provision
 reserving the rights of Govt officers to
 regulate the flow & direction of rivers.
 that while greatly extending the rights
 of private persons over riverbeds, it pre-
 scribed no corresponding duties on them.
 that it would be absolutely necessary
 to introduce a River Conservancy Act
 simultaneously. or rather, the Madras
 draft for the Conservancy of Rivers,

as being more comprehensive & better suited to local conditions, should be adopted in preference to the proposed Alluvium Act.

2. In reporting against the Original Alluvium draft, the Govt intimated that they would obtain the remarks of the Consulting Eng^r for Irrigation, & would then give a decided opinion. The Consulting Engineers remarks are now before Govt, but meantime, an amended Bill has been drawn by the Govt of India & introduced into the Viceregal Legislature. And this Bill, as introduced, has also been forwarded to this Govt for opinion; reports have been again called for from the High Com^r from our Officers.

3. Before noting the changes that have been in the Bill as introduced, as compared with the original draft, it might well to gather in brief the objections stated by Colonel Mullins to the proposed law. They are:-

(a). It is undesirable to confer property in accretions & new formations in the water way of rivers, on private indi-

viduals, without reference to the requirements of the rivers as regards the safe conveyance of their waters to the sea.

(b). The property in the area, which it is quite practicable to define, of what the water way of each river & its boundaries should be, ought to be vested in the Govt as the only authority that can guard the general interests.

(c). Proprietary rights in accretions have inevitably led to acts which are essentially injurious to the efficiency of rivers as drainage ducts; and it is easy, by simple & inexpensive means, to induce accretions on a very large scale in many of the rivers of Southern India; so that the holder of land on a distant point of a river may do a vast amount of injury by planting in & below the spit.

(d). River Nangadem, where it exists in Southern India, is comparatively a small interest, and the main interest is the safe discharge of floods which are of frequent occurrence & often of great severity; so that any law relating to rivers should be more applicable to all parts of rivers the conserved, whether navigable, or not.

(e). Conservancy involves reclamation.

them where erosions have taken place. Such reclamations have been carried ^{out} on a scale of considerable importance in the rivers of the Cauveri Delta at the public expense. It is essential that these reclamations should belong to Govt. otherwise, there would be nothing to prevent them being cleared & cultivated, or destroyed; so that all the money spent on them would be thrown away, while the proper training of the river would be rendered impracticable.

4. The chief changes in the Amended Bill are:-

Changes

(a) The omission of Avulsion in the title & preamble.

(b) The omission altogether of section 3 of the draft, making provision for saving of local usage, throwing the burden of proof on the person alleging such usage, and protecting local laws as to assessments, or enhancement or abatement of rent.

(c) The introduction of lake after river in the definition of islands; but whereas the term island in the draft excluded land in a river submerged in the wet season & visible only in the dry, it includes such land in the amended Bill, & only includes such land in tidal streams.

(d) The omission of the definition of Navigable river.

(e) The introduction of a clause defining the thread of the stream, which is explained to be

1, the middle line of the main stream during the dry season; or

2, the middle line between what

are the shores in each side when the water is at its average height; or

3, the middle line of the particular channel in which the island referred to arises.

(f) The introduction of a clause defining owner to be the owner in registered tenure, the holder of tenure land in the Bombay Presidency, & the community in the Punjab.

(g) The introduction of the words bay, inlet, creek in the definition of sea.

(h) The omission altogether of section 6 of the draft (providing for continuance of ownership in an avulsion).

(i) The omission of the word navigable before river in section 5 of the amended Bill & elsewhere.

(j) The addition of an Explanation to section 6 of the meaning of franchise.

(k) The addition of a new section (9) giving the local Govt. power to declare from time to time what shall be

main stream,
dry season, &
thread of the stream:

(K). the addition of a new section (10) saving any law affecting

- 1, assessment or rent;
- 2, providing against conferring any better title in alluvial land ^{or riparian} in ~~the~~ owner than that he possesses in the bank itself; or
- 3, ~~providing~~ against enlarging any holding fixed by Survey or other public document; or
- 4, against authorizing acts of persons for diverting currents or causing accretions; or
- 5, against authorizing encroachments by private persons on beds or channels of navigable rivers;
- 6, ~~not~~ interfering with the power of authorized Govt officers to remove obstacles in navigation, or
- 7, regulating the direction & flow of rivers;
- 8, ~~the~~ saving local usage as to rights to alluvial lands, islands, or abandoned river beds; &
- 9, throwing the burden of proof on the persons alleging such usage.

(7). the addition of a section (11)
reserving to the Crown the right
to all other land not provided
for in the Act.

5. A copy of the Bill is put up, ^{in red pencil} showing the changes made, the effect of the proposed change, that the structure would be the original draft, and likewise the original to be sent. The principle of the new Bill seems to be that it does not interfere with artificial - accidents, and that it preserves the rights of the Officers. I feel to confirm the wisdom of the measure.

6 The following are reports
cases which may bear in the Park

Sham Chaudhary & K. P. Prasad. Surma alias Kupa Balas,
14 Moore, 595

Helix Lopez + Muddien Mohun Thakore, Brig. M. Thakore, & B. M. Thakore,
18, New 467

Free to know the living fathers & hear about dead fathers?
- 12:00pm 136.

Subbayya & others v. Yarlagaatha Ankamedu

22

22.11.70

1000

022/11

in cases of *Agrostis tenuis*.

52

D. FITZPATRICK, Esq.,

Secretary to the Government of India,

Legislative Department.

The Chief Secretary to the Government of
Madras.

Dated *Leith*, the *16th* January 1879.

I AM directed to invite your attention to my letter No. 1320.

Bill to define and amend the
law relating to alienation,
islands and abandoned terri-
-tories.

dated the 14th October 1898 last, and to request that the opinion therein called for, on the provisions of the Bill marginally noted, may be communicated to the Government of India in this Department without delay.

I have the honour to be,

SIR,

Your obedient Servant,

John Paul

Secretary to the Government of India.

In order 53
R.D.N. 430.

In f.o. of Aug. 20th / 20
No. 1375 the fort
repaired from giving
a decided opinion on
the merits of the Bill
to define & amend the
law relating to alluvion
& until the views
of the Chief Engineer
for Drigation have
been taken.

Then on Oct. 4
Sent in Circulation
on the 12th Nov / 20
for order.

The Board remarks
on the revised Bill
are now circulated

But meanwhile an
amended Bill has been
red. & I think Mr. Jackson
has been taken on it.
I am almost sure
have been taken on it.
Don't agree altogether

1898-2022-23-24

President (1899 / 1900)
Will sign before

Frank H. Thompson

Wm. H. Thompson

Wm. H. Thompson

1892-1902

Regarding the
early report is the re-
-ference regarding
the Bill to define &
amend the law
relating to alluvion
islands and abraded
river beds.

1892-1902

24/1/29

with the ad. agent
proprietors. I think
a light putter holding
is his property - we
know that a Junius
that for Junius.
It is not correct to him
all the rights of property
including those of Accrual
etc. They do not bear
the obligation to pay
Govt. account on the
ad. area. I think
I have all this in the
Union Bill &

Yes, that is really; but as
mean must be called
tenant, who pays rent -
then there must be
Rent, must call to
the right of tenants
in fact.
It is stated, all have the
same paper on this point,
but if not returned to
office, must have the
right of possession.
L27/11

54.
 As I understand it
 further up the
 canyon we go
 to the river. This is
 right & correct
 apparently. I shall
 be in the canyon
 then & I shall
 be in the canyon
 then & I shall
 be in the canyon

5
Alluvion Bill

The statement of
objects and reasons sets
forth that the bill is "to
"state in a concise accu-
"rate and acceptable form
"the law relating to the
"ownership of alluvial
"lands islands and aban-
"doned river beds"

In the Preamble of
the bill it is stated to be
"to define ^{the} law relating
"to alluvion ^{islands} and
"abandoned river beds.

This, altho' narrower -
than that is objects
and reasons, seems too
wide a term; for it would
include much of the
extensive deltaic forma-

tion

R. 4 Feb/79
C 26 Jan/79 R 28 1-79 R. C. 1 Feb/79

formation of Southern
India where ownership
is known and well as-
certained; nor does there
appear to be any reason
for varying the law rel-
ative to ownership of
islands more than any
other land. What I ap-
prehend was intended
was the law as to accre-
tions ⁺ newly formed is-
lands and abandoned
river beds -

Assuming however
it to be desirable to legis-
late on this point, it
seems to me that a sim-
pler course may be tak-
en than that proposed.
Omitting for the moment
reference to formations
in tidal waters,

56
I will just consider the
question of fresh water
rivers or lakes.

All land, whether waste,
cultivated, or covered with
^{not being tidal water,}
water, is within the lim-
its of some village.

A river or lake is
merely land covered at
the time more or less
deeply with water -

All land within a
village, not having
been granted out or pos-
sessed in actual occupa-
tion by buildings or other-
wise, is waste, over which
the villagers have cer-
tain communal rights
and also very generally

rights,

rights of priority of claim
to appropriate for cultiva-
tion, or other occupation,
according to village or
district Custom.

This waste is vested
in the Crown; in effect
as a trustee for the bene-
fit of the village, as re-
gards the rights of the
community or villagers;
and for the State, in res-
pect of State rights and
privileges.

Whether land, now
covered with water, be-
come dry by upheaval,
by the drying up of the
waters, or by natural de-
posit and accumulation
of soil on the surface,

it

Having been ~~vested~~ into
it, not ~~being~~ in the pos-
session, or within the
definition of the putta
or other grant; if ^{equally}
of any ryot, becomes
~~naturally~~ waste land
of the village, vested in
the Crown as above;
whether it be an island,
or an accretion to either
bank or shore.

It is suggested that
the puttadar under ryot
-wari tenure has an
absolute right to an ac-
cretion adjoining his
land; but adopting the
most extreme view of
the ^{right of} ryots perpetual ten-
ure, yet that tenure is
essentially the tenure of

a

a limited area defined
by known metes and bounds,
either the result of prof-
ession, or defined in a
putta: the ryot thus has
not the right to add to
his possession the acce-
red area; but he has the
same right as any other
villager to its use in com-
mon with other waste
land of the village, and
in some cases at least,
if not in all, a right of
preference in the event
of applications being
made for its grant for
possession occupation.

I agree therefore with
the definition in the

The 5
2d clause of proposed
Bill, which defines the
Crown as the owner in
"the case of a bank or
"shore held on ryotwari
"tenure"; but I go further
and say that the Crown
is and should be the
owner of all land in
river beds or lakes, and
consequently of all islands
or accretions therein, sub-
ject to the rights of the
community and villagers

as above described, or
that of any person to
I do not think there

Some land has been granted
to zemindary land as
of the same

is any difficulty in car-

rying this doctrine of
justice ^{can give any real difficulty or}
Crown ownership. Even

in the case of zeminda-
ries, the Crown is still

the owner, but has part-
ed with the beneficial
occupation and usufruct
of the land to the Zemin-
dar, together with that
of all the lands within
the Zemin-dari, on con-
dition of a certain annu-
al payment.

The Zemin-dar, ^{not having any greater right than} would ^{the Crown from shore} ~~the~~ ^{the land is held} ~~the~~
this, as representative
of the Crown, have the
use of lands arising
from the ~~water~~, ^{land under}
^{as the Crown is upland} ~~the~~ ^{is},
subject to all the Commu-
nal and Villagers rights.

The Crown is, I take it,
also the owner in a
similar way of all
land accruing or
forming in tidal waters,
and perhaps should be
so declared. Any other

course seems to me
fraught with difficulty
and dispute.

I would therefore
recommend a simple
declaratory enactment,
declaring that all accre-
tions or formations of land
within any river bed, lake,
or tidal water, pertain to
the Crown, subject, as
regards land in other
than tidal waters, to such
Communal and custo-
mary rights as ^{may} ~~exist~~
^{prevail} in
to the district within
which it shall form;
and as regards land in
tidal waters, absolutely.

I think this would effect
all the objects and somewhat

more than the proposed
^{is likely to effect,}
Bill, and he free from
the endless contests which
would inevitably arise
in proving ownership
under the suggested con-
ditions and definitions,
all of which are depen-
dant on the proof of facts,
more than ordinarily
open to contest and to
unreliable evidence, or
the application of rules,
in themselves frequently
inapplicable to the cir-
cumstances. Applying
the definition proposed
of the "thread of the stream"
to the Canvey at Trichin-
opoly, a large and im-
portant river,
the first definition (a) the
main

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"main stream during the
dry season" is not appli-
cable, because it is now
a waste of sand; (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"; it is hardly
possible to define because
it is now regulated by
artificial banks, and
its natural shores are
now really the banks
of minor streams or sub-
sidiary channels; while
the river cannot be said
to have any "average height"
being always either in
flood

fresh, i.e. swollen by
flood, or shrunk by
drought. But if it be
attempted to apply the
condition (a) by taking
as "the thread" the trace
of the main stream left
when the stream splits
away, ^{it} it will be equally
inapplicable, because
the ~~course~~ of this will
vary with each varying
fresh in the river; and
this, which I have de-
scribed in the case of
the Cannery, will apply
equally to the Channels
of the Godavery above
and below Anicut, and
to the other important
deltatic rivers, and it
is, it must be remembered,

as well as to large rivers further in land. in (perhaps)
in instance:

in

62
in such rivers, and in
and near the deltatic por-
tions, that the accretions
or formations occur and
are most valuable. X

Why an island should
include land submerg-
ed, ^{for} many feet deep, months
at a time in rivers, and
should exclude land
submerged a few inches
for an hour at a time by
the tide, is not apparent;
Nor why the ordinary
presumption that the
land between ^{high and low water} High & Low
Water ^{mark} i.e. the foreshore be-
longs to the Crown should,
as it apparently is by this
bill, be negatived &
also not clear. X

Answer to
the Crown
or

There

There are also some other points which should not be overlooked in the proposed draft, if it be adopted as a basis of legislation.

Cl. II, Section 4, Cl. 1.

Apparently an accretion formed in a single flood will not be within the Bill; for it cannot be said to be formed "gradually". Yet these sudden accretions are common and valuable for the time altho' frequently ephemeral in their duration.

Cl. III, Section 5-

What is to happen when the whole river is fordable, as is the case

So with

63.
with many of our rivers?
Cl. III, Section 7-

The reason for this clause is not apparent. The remaining land belonged to the owner, and must remain his: the clause would appear to raise a doubt which should not be raised.

How can the removal by nature of a part of a man's field, affect the validity of his legal title and right, to what is untouched?

Cl. IV, Section 8-

Does not appear in any way needed: The land of the bed remaining within the confines of the several villages, etc.

be

be subject to their com-
munal or individual
rights and privileges
and to the Crown ow-
nership

Cl V, Sec 9.

I have already point-
ed out how these defi-
nitions are not appli-
cable. In fact the draft
appears to me to have
been prepared with
reference to circumstan-
ces materially different
from those ^{with which we have to deal} ~~existing~~ in
Madras.

I annex hereto a
draft prepared from
notes which I made
when visiting the God-
avary and some other
rivers on the question

of

of obstruction by ^{by} cultiva-
tion &c, but which ~~has~~
~~was~~ laid aside during
famine pressure; and
to which I have prefix-
ed declaratory clauses,
which appear to me to
provide
for all that is necessary
in respect of ownership
and protection, ~~without~~
travailing any acknowledged
right - B.M. 20/2

8th Nov 1854
Minute by His
Grace the Governor

in
the Atlantic Bank

Draft prepared
as suggestion - after
visiting Godavary
the river - which
within I have added
clauses which to my
mind would provide
all necessary protection
+ declaration of ownership
B.C.

66
Whereas it is expedient,
for the purpose of pre-
venting disputes or pre-
judice to the State, by
interrupting or dimin-
ishing the water spread,
to define the ownership
of lands newly arising
above water in beds of
rivers, lakes, or in tidal
waters, either as accretion
to existing lands, as
detached islands or
otherwise; It is hereby
declared and enacted
as follows:-
That All such land [here
forward] arising in
tidal water is absolutely
vested in the Crown, and

That

That all such lands arising elsewhere are vested in the Crown, subject to the rights and privileges, if any, pertaining by law or custom to the villagers of the villages within which such lands may arise, as to the occupation or use of them, and to the rights of Zemindars or other grantees, when the lands arise within the limits of any Zemindary or within the limits of any written grant to any grantee.

Provided that no Zemindar or other person whatsoever shall have any right or author-

ity

And all
of them shall
be taken from the Crown
XX

57
authority to so use or occupy any such land as to prejudice or diminish the water spread of any river, lake, or tidal water, or divert the flow or current in any such river, lake, or tidal water, any custom to the contrary notwithstanding.

2. It shall be lawful for the Government by its officers and servants to remove or cause the removal of any land so arising, and to require the removal by any Zemindar or other person of any obstruction to the free flow of water, artificially placed by them or by others within the limits

of

of any Zemindari.

3. It shall be lawful for the Government from time to time to ~~from~~ make rules regulating the plants with which, and the limits ~~it~~ within which, any such lands may be cultivated in all or any specified rivers.

4. Such rules shall be published in the Fort St George's Gazette, and in the official Gazette of the district in which they will apply, ~~and the~~ published in English and ~~the~~ Vernacular, and shall thereupon have the force of law.

5. Any person cultivating any such lands with

plants

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plants other than those prescribed, or beyond the limits prescribed, in the rules applicable thereto, shall be liable to pay to Government a sum not exceeding Rs. —, and ^{also} to forfeit to Government the plants, the seeds, flowers, leaves or other produce of plants which shall have been planted in contravention of rules.

6. Nothing in this Act shall interfere with the right of any occupier or holder of land to do any thing he deems needful or expedient to prevent erosion of ~~the~~ his land

land

[illegible]

69.

Byot w^t not gain much by it;
for after receiving a certain portion
of the unimproved waste for certain
public purposes, we claim power
to sell the rest under the Waste Land
Rules. A refusal was made, when applied
for by an outsider, is offered to the
Villagers - Accretions of alluvion
& islands are certainly unimproved
when they first appear; and I w^t
claim for the State the fullest
right to dispose of them on the most
advantageous terms.

14/3/9.

State to Alluvion
Bill now in
the House

1. Power about tidal waters.

2. I concur ^{let} with this frame that
the Byot, paying for a certain
plot described as measuring
so much, does not become the
owner of accretions - But the
Zamindar has by statute, the
"proprietary right in the soil"
throughout his Estate. This bars
Gov^t from claiming accretions
in a Zamindari, though, as
explained by a subsequent Statute,
the grant made in the words quo-
ted was not intended to interfere
with the "established rights" of
others, viz. the tenants.

3. However, as in England, in
navigable rivers (even where they
are private property) the Crown
has "an interest in the juris-
-diction" - i.e. the care &
superintendence of all that affects the
public safety & convenience -
so here, where water is so precious
for irrigation - let the Crown
be given a similar jurisdiction over
the distributive use of the water as well
as for concerning the navigation, where it
exists - compensation being paid when
private rights suffer.

4. In regard to the analogy between
accretions (or islands) & waste, the

I am willing to accept of the
view on the question of
proprietary right in accretions
& Ryotwari land. linked
as it is to the further
elucidation of that right
in Zamindaris delegated
to the Zamindar.

At that I stickle
for is I guard the Ryot
rights from being subordinated
to those of Zamindars.
The objection taken by the Mr. H. Carver.

Not. 20

The accompanying
note & draft by this
frame the Gov^t on the
Alluvion Bill are
forwarded for the
final remarks of
the Hon^{ble} Secy of Gov^t
Council. with a
request that the papers
may be returned soon.

13/3/9 J. J.

any former remarks & apply equally it appears
I am & the case of
Jumindao should be
constantly designated
as proprietors. A.P. proposal
to declare them the duly
representatives of the Crown
rights & the area must
for the community. Even
any objection -

As regards the rest
of A.P. work I think it
deals with the orig. Draft
not with the Bill as
introduced -

A.P. sketch Bill
I am disposed to accept as
far as it goes. I have
suggested one add. bit
but I am not sure

e.g. as a term
in the Bill is intended by
the Commission - the
provision beyond the
margin + the
limits of the

that it is significant
appt. injury & thereby
protective books. & the
delimitation of the right
in accretions I think goes
beyond that the C. have
delimited & the legal rights
of private parties
E.g. the C. just (or) have
I think declared that an
owner can follow his
land & in erosion at one
point is simultaneous
with accretion at another
in ascert. guaranteeing the claim
to the land as simply transferred
A.P. provision to this title states
that I think is not in the Bill
right. In numerous instances
in law - A.P. saving of rights
of private parties in respect of

a preamble and sections somewhat in accordance with the subjoined sketch:

Desirable. Whereas it is expedient in view to the prevention of disputes and prejudice to the State by the interruption of the flow or the diminution of the supply of water spread of water in rivers, lakes and tidal waters, to define the ownership of lands arising above water in the beds of such rivers, lakes or tidal waters, whether as accretions to existing lands, or as islands, or otherwise, it is hereby declared and enacted as follows:-

Sec I All land [hereforward] arising naturally in any tidal water shall

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intended to guard the person of the State from the tide but the intention of the Bill is to give the legal title to many rights in detail. In this I incline to agree with the Bill but the point will be put to rest. I think the Bill as represented by Mr Whitley's Notes. It is a most valuable thing in any state of affairs of legislation. It is acceptable.

I am however quite willing to send the Bill to the House finally settled. I think it is in directing the direction of the legislation to the subject of the Bill. I am not sure that it is not a good thing. I think it is a good thing. I think it is a good thing. I think it is a good thing.

0.2.189. R 15/3/99

private rights differ. It is in regard to the analogy of accretions (on islands) & water

[shall] vest absolutely
with the Crown.

Sec: 2 All land [hereafter] Sec: 2

forward arising
naturally in any
water other than tidal
water [shall] vest
in the Crown sub-
-ject to the rights
and privileges
of use or occupa-
-tion, if any, per-
-taining by law
or custom to the
~~ryots or~~ villagers

of the village ^{or} ~~the limits of which~~ such land may arise,
and Subject also
to the rights of any
Zemindar or other
grantee under the
Crown within the
limits of whose
Zemindari or
Estate

I grant it to
deducting
it is now all
granted to
+ will have
a right of
grantee
do not such
with the
the village
the limits of which
such land may arise

See regulation
the limits of which
such land may arise

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estate held by Crown-grantee,
such land may arise. Provided
that no such ryot or villager,
Zemindar or other Crown-
grantee shall have any
right or authority so to use
or occupy any such land
as to prejudice the supply,
flow or waterspread of
any ~~such~~ water within
which it arises, [any ^{instance} ~~instance~~]
to the contrary, notwithstanding.

Sec: 3. It shall be lawful
for the Government by means of
its officers or servants to
cause the removal of any
such land ~~so~~ arising as
set forth in the preceding
section, or to require (its)
removal ^{or} by (the) Zemindar
(or other) Crown-grantee ^{within}
the

and other person of any
restriction to the free flow of water artificially
caused there or by others within the limits of any Zemindari or estate