Archives I 10,006—16-8 77.

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(3) Initials of the Referencer _____

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue DEPARTMENT

G.O. No. 602, Revenue Press.
B.P. No. Mis.

Dated 16th Dasmi 1878. 197 .

Not to be folded or roughly handled

16
602/1

GOVERNME S.

REVENUE I ENT.

16th April .

No. 202. Proceedings of Governmen April 1878, No. 602.

Miscellaneous.

Letter from Government of India, Revenue, &c., Department, dated 6th March 1878, No. 1.

Letter from Government of India, Revenue, &c., Department, dated 3rd April 1878, No. 2.

a few selected Judges—in delta districts

(True

p that the letters from the of India marginally noted e Draft Bill "to define and law relating to alluvion, ands and abandoned river- ferred to the Judicial Depart- der that the opinions of the udges of the High Court and may be taken on this Bill.

1) C. G. MASTER,
Secretary to Government.

To he Judicial Department, with copies of tw and annexure.

— Board of Revenue — de —

Exd. W. J. Lewis.

Govt. of [illegible] Madras
REVENUE.
To
THE JUDICIAL DEPARTMENT,
&c., &c., &c.
Dated April 1878.
G.O. [illegible]
APRIL.
No. 202.

[illegible]

No. 1

FROM

G. H. M. BATTEN, Esq.,

Officiating Secretary to the Government of India,

To

C. G. MASTER, Esq.,

Secretary to Government of Madras.

Dept. of Revenue,
Agriculture and Commerce.
Land Revenue and Settlements.

CALCUTTA, *the 6th March* 1878.

SIR,

I AM directed to forward herewith copy of a draft Bill to define and amend the law relating to alluvion, avulsion islands formed in streams, and abandoned river-beds, together with the Statement of Objects and Reasons, and to request an early expression of His Grace the Governor in Council's opinion on the provisions of the Bill.

2. A reply should be sent so as to reach this office not later than at the end of four months from this date.

I have the honor to be,

SIR,

Your most obedient Servant,

G. H. M. BATTEN,

Officiating Secretary to the Government of India.

15 2/60/m

No. 2.

FROM

G. H. M. BATTEN, ESQ.,

Officiating Secretary to the Government of India,

To

C. G. MASTER, ESQ.,

Secretary to the Government of Madras.

Dept. of Revenue,
Agriculture and Commerce.
Land Revenue and Settlement.

SIMLA, *the 3rd April* 1878.

SIR,

In continuation of the Circular from this Department, No. 1, dated the 6th ultimo, I am directed to invite the special attention of His Grace the Governor in Council to the mode in which the expression "thread of the stream" should be defined in the draft Bill to define and amend the law relating to alluvion, avulsion, islands formed in streams, and abandoned river-beds.

2. It appears to the Government of India that, where the banks of rivers are not liable to change by erosion or otherwise, the "thread of the stream" should be, as it is in Europe and the United States, the middle line between what are the shores on each side when the water is at its average height, neither swollen by floods nor shrunk by drought. But where the banks are ill-defined and liable to change by erosion or otherwise, it would seem that the "thread of the stream" should be the middle line of what is the main stream during the dry season.

3. I am to inquire whether in the opinion of His Grace the Governor in Council it is desirable that Local Governments and Administrations should be empowered to declare which of the two definitions above suggested should be applicable to the rivers in the territories under their administration; and also to cause surveys to be made of river-beds to mark out, by pillars, bearings or otherwise, what should be deemed to be thread of the stream for the purposes of the proposed enactment.

I have the honor to be,

SIR,

Your most obedient Servant,

G. H. M. BATTEN,

Officiating Secretary to the Government of India.

602/18

A

BILL

TO

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

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

Preamble.

I.—Preliminary.

1. This Act may be called "The Indian Alluvion Act, 1878:"

Short title.

It extends to the whole of British India;

Local extent.

And it shall come into force at once.

Commencement.

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

Repeal of enactments.

3. Nothing herein contained shall affect any clear, definite and immemorial local usage respecting the right of riparian owners to alluvial land; but the burden of proving such 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 river-bed any title to such land, island or river-bed higher or more free from encumbrance than that which he has to the bank or shore.

Local usage saved.

13 Moo. 1. A. 1.

Burden of proof.

4. In this Act—

Interpretation-clause.

4 W. R. 41.

"island" includes a sandbar and any other accumulation of land; but it excludes (*a*) land in a river, submerged in the wet season and visible only in the dry season, and (*b*) land in a tidal river or the sea, submerged by the ordinary flow of the tide and visible only at low water:

"navigable river" means a river in which navigation by boats can be carried on at all seasons of the year:

17 W. R. C. R. 173.

"sea" includes arm of the sea:

and a channel is said to be "fordable" when it can be crossed on foot by a man of average height at some one season of the year.

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

II.—Alluvion.

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

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

Right to alluvial land on bank or shore.

Ben. Act IV of 1868, s. 2.

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.

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

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.

Right to part of bank suddenly removed.

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:

Right to islands in navigable rivers or the sea where channel is fordable.

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

Bengal Act IV of 1868, s. 4.

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 river or in the sea, the channel between the bank or shore and such island is fordable;

Right to other islands.

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.

Islands formed by division of rivers.

V.—Abandoned River-beds.

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

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 of the stream immediately before the abandonment, and the owners of the ancient banks are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the ancient bed:

Right to abandoned river-beds.

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

THE SCHEDULE.

(*a*). Acts of the Governor-General in Council.

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

(*b*). Bengal Regulation.

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

(*c*). Bengal Act.

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

(*d*). Rules.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

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

6 602/6

STATEMENT OF OBJECT AND REASONS.

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

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

The Bill attempts to supply these defects as follows:—

It declares, in accordance with Roman law and the decision of the Judicial Committee in *Lopez* v. *Muddun Thakur*, that when land forms on a site of which a private person is proved to be the owner, such person is entitled to the land so formed. It defines "navigable" as meaning navigable at all seasons of the year. It declares that a channel is "fordable" when it can be crossed on foot at some one season of the year by a man of average height; and when a channel which is not fordable when the island appears becomes fordable afterwards, it fixes the first appearance of the island as the date with reference to which the question of fordability or non-fordability is to be determined. The subsequent junction of the island to the mainland will thus not affect the right of the Crown. Lastly, it excludes from the term "island" land submerged in the wet season and visible only in the dry, and land in a tidal river or the sea which is submerged by the ordinary flow of the tide and visible only at low water.

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

"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 bank are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the river opposite the island."

Lastly, the Bill declares that when any river forms a new course, abandoning its ancient bed, the owners of the ancient banks are entitled to the ancient bed in proportion to their respective frontages. It is believed that this is in accordance with the existing law (Suth. W. R. 1864, [illegible] 6), and it seems less likely to encourage litigation than to provide (as is done by some systems) that the owners of the land newly occupied shall take the ancient bed, each in proportion to the land of which he has been deprived.

The Bill advisedly leaves untouched the law relating to the assessment of alluvial lands and lands diminished by diluvion and to the rent payable in respect of such lands.

Calcutta, January 29th, 1878.

WHITLEY STOKES.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

ANNEXURE

TO

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

(Statement of Objects and Reasons.)

No. 2.

FROM

G. H. M. BATTEN, ESQ.,

Offg. Secretary to the Government of India,

To

Department of Revenue, Agriculture and Commerce.
Land Revenue and Settlement.

SIMLA, *the 3rd April* 1878.

SIR,

In continuation of the Circular from this Department, No. 1, dated the 6th ultimo, I am directed to invite special attention to the mode in which the expression "thread of the stream" should be defined in the draft Bill to define and amend the law relating to alluvion, avulsion, islands formed in streams, and abandoned river-beds.

2. It appears to the Government of India that, where the banks of rivers are not liable to change by erosion or otherwise, the "thread of the stream" should be, as it is in Europe and the United States, the middle line between what are the shores on each side when the water is at its average height, neither swollen by floods nor shrunk by drought. But where river banks are ill-defined and liable to change by erosion or otherwise, it would seem that the "thread of the stream" should be the middle line of what is the main stream during the dry season.

3. I am to enquire whether in opinion it is desirable that Local Governments and Administrations should be empowered to declare which of the two definitions above suggested should be applicable to the rivers in the territories under their administration; and also to cause surveys to be made of river-beds and to mark out, by pillars, bearings or otherwise, what should be deemed to be the thread of the stream for the purposes of the proposed enactment.

I have the honour to be,

SIR,

Your most obedient Servant,

G. H. M. BATTEN,

Offg. Secretary to the Government of India.

1878

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE, AGRICULTURE AND COMMERCE.

LAND REVENUE AND SETTLEMENT.

To

Punjab Separately

No. 2.

Dated Simla, the 3rd April 1878.

SUBJECT.

Draws special attention to the mode in which the expression "thread of the stream" used in the draft Alluvion Bill should be defined, &c.

Govt. Central Branch Press, Simla.—No. 2 R., A. & C.—2-5-78—180.

No. 2.

FROM

G. H. M. BATTEN, ESQ.,

Offg. Secretary to the Government of India,

To The Secretary to the Government of Madras

Department of Revenue, Agriculture and Commerce.
Land Revenue and Settlement.

SIMLA, *the 3rd April* 1878.

SIR,

In continuation of the Circular from this Department, No. 1, dated the 6th ultimo, I am directed to invite the special attention of His Grace the Governor in Council to the mode in which the expression "thread of the stream" should be defined in the draft Bill to define and amend the law relating to alluvion, avulsion, islands formed in streams, and abandoned river-beds.

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I have the honour to be,

SIR,

Your most obedient Servant,

G. H. M. Batten

Offg. Secretary to the Government of India.

114

7 Copies

Revenue Department

No 1622.

1878

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE, AGRICULTURE AND COMMERCE.

LAND REVENUE AND SETTLEMENT.

Vide cor. 3130/78

To

No. 2.

Dated Simla, the 3rd April 1878.

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

SUBJECT.

Draws special attention to the mode in which the expression "thread of the stream" used in the draft Alluvion Bill should be defined, &c.

Govt. Central Branch Press, Simla,—No. 2 R., A. & C.—2-4-78—180.

Referred to the Board of Revenue for report & consideration of Enclosures
dated 23rd March 1878.
Fort William Castle
12 April 1878.

Referred.

c. 13/4/78 R 16/4/78

STATEMENT OF OBJECTS AND REASONS.

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

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

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Lastly, the Bill declares that when any river forms a new course, abandoning its ancient bed, the owners of the ancient banks are entitled to the ancient bed in proportion to their respective frontages. It is believed that this is in accordance with the existing law (Suth. W. R. 1864, p. 106), and it seems less likely to encourage litigation than to provide (as is done by some systems) that the owners of the land newly occupied shall take the ancient bed, each in proportion to the land of which he has been deprived.

The Bill advisedly leaves untouched the law relating to the assessment of alluvial lands and lands diminished by diluvion and to the rent payable in respect of such lands.

Calcutta, January 29th, 1878.

WHITLEY STOKES.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

ANNEXURE

TO

Bill to define and amend the law relating to alluvion, avulsion, islands and abandoned riverbeds.

(*Statement of Objects and Reasons.*)

Govt. Central Press.—No. 766 L. D.—19-2-78.—60.

10 602/10

No. 1.

FROM

G. H. M. BATTEN, Esq.,

Officiating Secretary to the Government of India,

To

Dept. of Revenue, Agriculture and Commerce.

Land Revenue and Settlements.

Calcutta, the 6th March 1878.

SIR,

I AM directed to forward herewith copy of a draft Bill to define and amend the law relating to alluvion, avulsion, islands formed in streams, and abandoned river-beds, together with the Statement of Objects and Reasons, and to request an early expression of

opinion on the provisions of the Bill.

2. A reply should be sent so as to reach this office not later than at the end of four months from this date.

I have the honour to be,

SIR,

Your most obedient Servant,

Officiating Secretary to the Government of India.

1878.

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE, AGRICULTURE, AND COMMERCE.

LAND REVENUE and SETTLEMENTS.

To

Print separately

No. 1.

Dated Calcutta, the 6th March 1878.

SUBJECT.

FORWARDS for opinion a draft Bill to define and amend the law relating to alluvion, avulsion, islands and abandoned river-beds.

No. 1.

FROM

G. H. M. BATTEN, ESQ.,

Officiating Secretary to the Government of India,

To

The Secretary to the Government of Madras.

Dept. of Revenue, Agriculture and Commerce.

Land Revenue and Settlements.

Calcutta, the 6th March 1878.

SIR,

I AM directed to forward herewith copy of a draft Bill to define and amend the law relating to alluvion avulsion, islands formed in streams, and abandoned river-beds, together with the Statement of Objects and Reasons, and to request an early expression of His Grace the Governor in Council's opinion on the provisions of the Bill.

2. A reply should be sent so as to reach this office not later than at the end of four months from this date.

I have the honour to be,

SIR,

Your most obedient Servant,

G. H. M. Batten

Officiating Secretary to the Government of India.

Revenue Dept

№ 1168.

1878.

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE,
AGRICULTURE, AND COMMERCE.

LAND REVENUE and SETTLEMENTS.

12

Vide ens. 3130/78.

To

Ens: 2
Secret. Off
of Bn

No. 1.

Dated Calcutta the 6th March 1878.

Rec'd 15 — do

153

Via P 2-570 of 701

Subject.

Forwards for opinion a draft Bill to define and amend the law relating to alluvion, avulsion, islands and abandoned river-beds.

Referred to the Board of Revenue

Copy sent 28 March 1878

Referred to the Board of Revenue

Ens

13/4/78 Rd 14/4/78

№ 602

13 72 P.2.

60/12

Proceedings of the Madras Government

Under date the 16th April 1878.

Read the following letters from the Govt of India marginally noted

Letter from Govt of India Rev. & Agr. dated 6th March 1878 No 1
do — do — Govt of India Rev. & Agr. dated 3 April 1878 No 2.

Resolved that the letters from the Govt of India marginally noted relative to the Draft Bill "to define and amend the law relating to alluvion, Avulsion, islands and abandoned river beds" be referred to the Judicial Depart. in order that the opinions of

of the Honorable Judges
of the High Court and
a few selected Judges
- in Delta Districts -
especially - may be taken
on this Bill.

To

The Judicial Department with
Copies of Bill & annexure.
Dy 25/4.

1 — Boards Revenue with do do —
Dy 6 June 78 —

3
50

REVENUE DEPARTMENT.

No 1165 & 1622

From Government of India

Dated 6 March 31st 1875

FOR ORDERS.

The Board

Sd also to have been asked
the Judges Kish Ch for their remarks
and a few Selections of these. Send.
Judges - Sawyer, Mackay & Pontifex & Bushby of Karachi
Bland & Melvin of Hyderabad
W. Serious of Shikarpur
Godfrey Lumsden Land
Dupont do
Asst. Sessions Judge
- Lieth & Thompson

The papers are circulated
for perusal

Ans

2/9/3

2

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2/9/3

FOR ORDERS.