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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

- W^e, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to alluvion, islands, and abandoned river-beds was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.
2. The Bill as introduced proposed that the division of the whole area of an island formed opposite several holdings should be made rateably among the owners in proportion to their respective frontages, and was framed so as merely to indicate those holders. If, for example, there were three such owners, A, B, and C, whose respective frontages were 100 yards, 200 yards, and 300 yards, it was intended that A should take one-sixth of the whole area of the island, B one-third, and C one-half, and this division was to have been effected either by private arrangement or in default thereof by a suit for partition. It has, however, been strongly urged that, to preclude litigation and
- From the Hon'ble H. S. Cunningham, dated 1st October 1878 (Paper No. 1).
 „ B. H. Baden-Powell, Esq., to Hon'ble T. H. Thornton, dated 26th October 1878, (Paper No. 2).
 „ Secretary to Government, North-Western Provinces and Oudh, No. 3193 A, dated 23rd October 1878, and enclosures (Papers No. 3).
 „ Officiating Collector, Dháká, No. 835, dated 12th October 1878 (Paper No. 4).
 „ Chief Commissioner, Ajmér and Merwára, No. 795, dated 20th November 1878 (Paper No. 6).
 „ Secretary to Chief Commissioner, Mysore, No. 6653J-12, dated 18th November 1878, (Paper No. 6).
 „ Secretary to Government, North-Western Provinces and Oudh, No. 3475A, dated 29th November 1878, and enclosures (Papers No. 7).
 „ Secretary for Birár to Resident, Haidarábád, No. 11 B, dated 13th December 1878, (Paper No. 8).
 „ Assistant Secretary, British Indian Association, dated 19th December 1878, and enclosure (Papers No. 9).
 „ Assistant Secretary to Chief Commissioner, British Burma, No. 2582-245, dated 21st December 1878, and enclosure (Papers No. 10).
 „ J. G. W. Sykes, Esq., Advocate, High Court, North-Western Provinces, dated 22nd October 1878, (Paper No. 11).
 „ Secretary to Government, Bengal, No. 55, dated 7th January 1879, and enclosures (Papers No. 12).
 „ Secretary to Government, Panjáb, No. 320, dated 20th January 1879, and enclosures (Papers No. 13).
 „ Assistant Secretary to Chief Commissioner, Central Provinces, No. 399-15, dated 23rd January 1879, and enclosure (Papers No. 14).
 „ Secretary to Chief Commissioner, Assam, No. 104T, dated 27th January 1879, and enclosure (Papers No. 15).
 „ Rájá Harbalab Náráyana Singh, dated 10th January 1879 (Papers No. 16).
 „ Secretary to Government, North-Western Provinces and Oudh, No. 267, dated 4th February 1879, and enclosures (Papers No. 17).
 „ Secretary to Government, Panjáb, No. 469, dated 3rd February 1879, and enclosures (Papers No. 18).
 „ Ditto ditto, No. 633, dated 18th February 1879, and enclosure (Papers No. 19).
 Despatch from Secretary of State for India, No. 3, dated 6th February 1879, and enclosure (Papers No. 20).
 From Registrar, High Court, Calcutta, No. 400, dated 10th March 1879 (Paper No. 21).

discrepancy of practice, the Bill should, at least in the case of land forming in rivers, contain rules not

only for giving the areas, but for defining the plots, to which the several riparian owners are entitled. For this purpose rules have been suggested both by the Board of Revenue of the Lower Provinces and the High Court at Fort William, the former proposing that the alluvion should be divided by right lines perpendicular to the extremities of the frontages, the latter proposing a division by right lines bisecting the angles made by perpendiculars drawn from the extremities of adjacent frontages. But it will be seen on examination that, under either of these plans, alluvial lands formed in the bend of a river would sometimes fall to more than one estate, and further provision would then be required for a rateable division of those lands between the owners of the estates concerned. The subject is one of no small difficulty; but it seems to us that the following rule, which is said by a distinguished Settlement-officer (Mr. Ibbetson) to be practically the rule now in force in the Panjab, and which is recommended for adoption by the Government of that Province, solves the problem satisfactorily and completely :—

“Where from natural causes an island or other land is formed in or on the bank of a river, either by accumulation of material or by recession of the river, each owner having a frontage on the river is entitled to so much of the land as is included by his frontage, the thread of the stream and lines drawn riverwards from the ends of such frontage to meet the thread of the stream in a direction normal to such thread.

[The term “normal,” we may observe, is here used instead of “perpendicular,” as the thread of the stream may be a curve. It is obvious that in such case several normals may possibly be drawn from the same point, and that these normals may be either of different or of the same length. The rule, therefore, proceeds as follows :—]

“Where more than one such normal can be drawn from one and the same end of any frontage and each of such normals is of different length, the shortest of such normals shall be deemed to be the including line; and where more than one such normal can be so drawn, and each of such normals is of the same length, the line bisecting the angle between the two extreme positions of the shortest normal shall be deemed to be the including line.”

It will be seen that the above rule applies not only to alluvion deposited on the banks of two contiguous holdings, but also to islands. Incidentally, this will have the effect of rendering immaterial the often difficult question whether a new deposit is an island or not.

3. The above is the chief substantial alteration which we have made in the Bill. We now proceed to specify the minor changes which we deem desirable.

4. In the tidal portion of rivers like the Hugli are many islands which are flooded by ordinary tides in the rainy season, but only by extraordinary springs, or not at all, in the dry season. These chars are cultivable in the dry season and should be included in the definition of “island.” We have therefore added to that definition the words “throughout the year.”

5. To fix with more precision the time at which, for the purposes of the Bill, an alluvial island is first formed, we have provided that it must be capable of being employed for cultivation, pasture or other useful purpose, such, for example, as the supply of reeds or brush-wood. The question of fordability will thus be decided after an island newly formed becomes, as the Privy Council puts it, “valuable and usable.”

6. Where any formation takes place on a site of which the Government is proved to be the owner, we have declared that the Government is entitled to such formation.

7. In the case of land formed on the shore of the sea or of a lake and in that of an island formed in the sea or a lake, we have provided that the distribution in proportion to the frontage of the riparian owners shall be effected by such officer as the Local Government may appoint and in accordance with such rules (consistent with the proposed Act) as the Local Government may from time to time prescribe.

8. We think that, to entitle the Crown to alluvial islands, the channel between the island and each bank or shore should not be fordable during the dry season next after the formation.

9. In determining the right to abandoned river-beds, we think we should have regard to the thread of the stream in the preceding dry season, and not to what it was immediately before the abandonment—a matter which cannot be always ascertained. In other respects, the rule for the division of such beds among the riparian owners will be the same as that which we have provided in the case of alluvial lands.

10. We have empowered the Local Government to declare, with reference to any tidal river, where, for the purposes of the proposed Act, the river shall be deemed to end and the sea to begin; and we have provided that no declaration under the Act shall be cancelled or altered, save with the previous sanction of the Governor General in Council.

11. In the Panjáb the ownership of lands subject to the action of rivers is mainly regulated by local usage. We have accordingly retained the section of the Bill as introduced, which provided that such usages should be respected and, in certain cases, presumed to be in force. But such provisions do not appear to be required in Madras, Bombay, Oudh or the North-Western Provinces, and though local usage is saved in the Lower Provinces and Assam by the Bengal Regulation XI. of 1825, there seems to be only one instance in which there has been any attempt to establish it. We have, therefore, confined to the Panjáb the section saving usage. But there is ground for the belief that even in that Province some of the local usages referred to,—including the usage known as “the deep-stream rule”—besides being objectionable on economic grounds and adverse to imperial interests are more or

less unsuited to the time and distasteful to the communities affected by them. In these circumstances we have deemed it right, on the recommendation of experienced officers, to provide a procedure whereby such usages may, if thought expedient, be discontinued, and fixed boundaries substituted for varying boundaries in riparian estates.

12. As the rights of mortgagees and tenants to alluvial lands are saved by the Transfer of Property Bill, No. III., sections 37 and 65, clause (e), we have not thought it necessary to provide for such rights.

13. The Bill in its present form is not to be taken as expressing our final views as to all the difficult and important subjects with which it deals. But we think that the changes which it has undergone are such as to render republication desirable, for the purpose of eliciting criticism from the public and from the judicial and executive officers by whom its provisions will be carried into effect. We also think that its further consideration should be stayed until the new Law Commission has reported thereon. We therefore recommend that the Bill, as now amended be republished with this Report in the *Gazette of India*, and sent to the Local Governments for opinion and for publication in the local Gazettes.

14. The Bill and Statement of Objects and Reasons have been published in English in the local Gazettes for Madras, Bengal, the North-Western Provinces and Oudh, the Panjáb, the Central Provinces and British Burma. Publication in English has not been reported from Bombay and Assam. Publication in the vernacular has been reported only from Madras, Bengal, the North-Western Provinces and Oudh, the Panjáb and the Central Provinces.

WHITLEY STOKES.
RIVERS THOMPSON.
T. H. THORNTON.
G. H. P. EVANS.
F. R. COCKERELL.

CALCUTTA ; }
The 19th March 1879. }

No. II.

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

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

I.—Preliminary.

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

Local extent. It extends to the whole of British India;

Commencement. And it shall come into force at once.

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

Interpretation-clause.

3. In this Act—"island" means land surrounded by water and capable of being employed for cultivation, pasture or other useful purpose. It includes such land arising in a river or lake, submerged in the wet season and visible only in the dry season; but it excludes land arising in tidal rivers, tidal lakes or the sea submerged by the flow of ordinary tides throughout the year;

"owner" means, in the case of a bank or shore held on raiyatwari tenure, the Government: in the case of a bank or shore forming part of land situate in the Presidency of Bombay and wholly or partially exempt from the payment of land revenue, or held under a grant or lease fixing the Government demand in respect thereof in perpetuity, the holder

of such land; and in the case of a bank or shore held by a village-community, or by one or more members of it, such community:

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

"frontage" means the right line connecting the corners of each holding where they strike the sea, lake or river;

"Thread of the stream" means (a) the middle line of the main-stream during the dry season, or, where there are two streams of equal depth and width, the line equidistant during such season from the outermost shores of the two streams; (b) the middle line of the river between what are the shores on each side when the water is at its average height, neither swollen by flood, nor shrunk by drought; or (c) the middle line of the particular channel in which the formation or ancient river-bed referred to occurs or is situate;

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

II.—Alluvial Land and Islands.

4. Where, from natural causes, land forms

Right to land formed on the sea or of a lake, either by accumulation of material or by recession of the sea or lake, the owners of the shore are severally entitled to the land so formed in proportion to the frontage which they respectively had on the sea or lake immediately before the formation; and the partition of the land so formed shall be made by such officer as the Local Government appoints in this behalf, and in accordance with such rules, consistent with this Act, as the Local Government may from time to time prescribe:

Provided that, where the land or any portion thereof forms on a site which is proved to belong

17 W. R. C.
R. 173.
Angell, 6th
ed., p. 16,
note 2.

6 W. R. 95:
6 Ben. 343.

to the Government or a private owner, the Government or such owner, as the case may be, is entitled to the land or portion so formed.

5. Where an island is formed, from natural

Right to islands where channel is not fordable.

causes, in a river, the sea or a lake, either by accumulation of material or

by recession of the river, sea or lake, if the island is separated from each bank or shore by a channel not fordable at any point, the Government is entitled to such island:

Provided that, where the island or any portion thereof is formed on a site which is proved to belong to a private owner, such owner is entitled to the island or portion so formed.

6. If, where an island is formed as afore-

Right to other islands in sea or lake.

said in the sea or a lake, the channels between it and either shore are ford-

able at any point, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea or lake; and the partition of the island so formed shall be made by such officer as the Local Government appoints in this behalf and in accordance with such rules, consistent with this Act, as the Local Government may from time to time prescribe.

7. Where, from natural causes, an island or other

Right to land formed in, or on bank of, river.

land is formed in, or on the bank of, a river, either by accumulation of material or by recession of the river, and the Govern-

ment is not entitled thereto under section five, each owner having a frontage on the river is entitled to so much of the land as is included by his frontage, the thread of the stream during the dry season next after the formation and lines drawn riverwards from the ends of such frontage to meet the thread of the stream in a direction normal to such thread:

Where more than one such normal can be drawn from one and the same end of any frontage and each of such normals is of different length, the shortest of such normals shall be deemed to be the including line, and where more than one such normal can be so drawn and each of such normals is of the same length, the line bisecting the angle between the two extreme positions of the shortest normal shall be deemed to be the including line.

Provided that, where the land or any portion thereof is formed on a site which is proved to belong to the Government or a private owner, the Government or such owner, as the case may be, is entitled to the land or portion so formed.

8. If a river freshly divides and surrounds, or by

Islands formed by division of rivers.

changing its course, cuts off lands belonging to the owner of the bank, such

owner is entitled to the lands so surrounded or cut off.

III.—Abandoned River-beds.

9. Where a river suddenly abandons the bed

Right to abandoned river-beds.

which it occupies during the season of flood, each owner having a frontage

on such bed is entitled to so much of the bed as is included by his frontage, the thread of the stream during the dry season next before the

abandonment and lines drawn towards the bed from the ends of such frontage to meet such thread in a direction normal thereto.

Where more than one such normal can be drawn from one and the same end of any frontage, the rules contained in the second paragraph of section seven shall apply:

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

IV.—Miscellaneous.

10. The Local Government may, from time to

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

time, declare, with reference to any river, or any part of any river,—

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

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

The Local Government may also declare, with reference to any tidal river, where, for the purposes of this Act, the river shall be deemed to end and the sea to begin;

Every declaration made under this section, and all rules made under section four or section six, shall be published in the official Gazette, and shall thereupon have the force of law. And no such declaration shall be cancelled or altered save with the previous sanction of the Governor General in Council.

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

11. Nothing herein contained shall—

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

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

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

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

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

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

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

Ben. Act
IV of 1868
s. 4.

Contra 9 W.
P. 401:12
Moo. I.A.
139.

Bombay Re-
venue
Code, s. 104
clause (2).

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

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

Souther-
land's W.
R., 1864,
p. 103.

THE SCHEDULE.

12 Moo. I. A.
1:
Central Oudh
Talagáras
No. 3.

12. In the territories administered by the Lieutenant-Governor of the Panjáb, nothing here-
Local usage in Panjáb.
in contained shall affect any definite and well-established local usage respecting the right to alluvial land, islands or abandoned river-beds; but (except in the cases provided for by the Panjáb Land-Revenue Act, 1871, section 16) the burden of proving such usage shall lie on the person alleging it:

Provided that the Local Government may from time to time (a) cause the bed of any river or part of a river, together with the islands and alluvial lands situate therein or adjacent thereto, to be surveyed and mapped, (b) appoint an officer to enquire into, determine and record the rights of private persons and the Government, in, to or over the said bed, islands and lands, and (c) declare that rights so recorded shall not be affected by any local usage. And the provisions of the Panjáb Land-Revenue Act, 1871, chapter II, shall apply, so far as may be, to proceedings under this section, and the determination of the said rights shall be made after consideration of the gain and loss (if any) caused by changes in the course of the river for a period of twelve years next before the date of the survey notification.

e. g., islands
not formed
from natural
causes.

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

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

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

(b). BENGAL REGULATION.

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

(c). BENGAL ACT.

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

(d). RULES.

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

D. FITZPATRICK,
Secy. to the Govt. of India.