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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Code of Civil Procedure was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th March 1879:—

REPORT.

WE, the undersigned Members of the Select Committee to which the Bill to amend the Code of Civil Procedure was referred, have the honour to report that we have considered the Bill and the papers specified in the annexed list.

2. In the interpretation-clause, we have expressly declared that an order finally disposing of an application for execution falls within the definition of 'decree.' This will remove a doubt which we understand has been felt in two of the High Courts. We have also provided that 'signed' shall include stamped. The use of a seal capable of producing an impression of the name and title of the person using it is common among Natives of rank.

3. To section 13 we have added an explanation declaring in effect, that a decision in a suit for arrears of rent under any local law relating to landlord and tenant, shall not be deemed to be *res judicata* in case of suits relating to the title to the property in respect of which the rent is claimed.

4. In section 44, we have provided for joining, with claims by and against a legal representative as such, claims which he was personally entitled to, or liable for, jointly with the deceased person whom he represents, *e.g.*, on a promissory note jointly executed by the deceased and the person who becomes his executor.

5. We have altered the last paragraph of section 52, so as to require the examination of the witness to the verification of the plaint only when the Court entertains doubt as to the fact of the signature.

6. We have extended section 108 to all cases in which decrees have been set-aside *ex parte*, and provided for cases in which the summons was not duly served, as well as for those in which the defendant was prevented from appearing.

7. Section 131 does not as Act VIII. of 1859, section 107, did, empower parties to give notice to produce documents generally. We have therefore made section 131 apply to the production of all documents in the possession or power of a party, whether they are or are not referred to in the plaint, written statement or affidavit of the latter.

8. We have struck out from section 230 the words as to granting subsequent applications for execution, when the Court is satisfied that on the preceding application due diligence had been used to

procure complete satisfaction. The effect of these words appears to us to discourage leniency and to invite litigation. We have altered the same section, so as to provide (in accordance with the new Limitation Act, Schedule II., Art. 179, paragraph 6) for a decree awarding maintenance, which has been held not to be a decree directing "the payment of money or the delivery of property by instalments."

9. We have amended section 245, so as to provide for non-compliance with the requirements not only of sections 235 and 236, but also of sections 236 and 237.

10. We have altered the first explanation to section 246, so as to bring within its scope decrees made over to a Court for execution.

11. We have amended sections 259 and 260, so as to make it clear that, when an attachment under either section has remained in force for the specified time, if the judgment-debtor has not obeyed the decree and the decree-holder has, within that time, applied for a sale, the property may be sold; but that, if the judgment-debtor has obeyed, and the decree-holder has not made such application, the attachment shall cease.

12. We have provided, in section 268, that, where a moiety of the salary of a public officer or railway-servant is attached, the attachment shall be made by an order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct until the amount of the portions so withheld is equal to the amount of the decree; and we have authorized him to pay into Court every portion so withheld, and declared that such payment shall discharge the Government or the Railway Company. We have struck out the last paragraph of the same section.

13. We have altered section 291, so as to empower the Court directing an execution-sale, as well as the officer conducting one, to adjourn it.

14. Where the holder of a decree, in execution of which property is sold, purchases the property without the Court's permission, we have provided in section 294, that the Court may, if it thinks fit set-aside the sale, and that any deficiency of price which may happen on a re-sale shall be paid by the decree-holder.

15. We think that mortgages, leases and sales made under section 305 by the judgment-debtor should not become absolute until they are confirmed by the Court; and we have added a provision to this effect.

16. We think that, besides the decree-holder and the owner of land sold in execution, any other person interested in the sale should have power to apply to set it aside on the ground of material irregularity; and we have amended section 311 of the Code accordingly.

17. Much doubt exists as to where the title to land sold at an execution-sale vests in the purchaser. We think it should vest from the date of the certificate, which is granted as soon as the sale becomes absolute; and we have added to section 316 a sentence to this effect.

18. We have recast sections 322 and 323 of the Code, so as to make them express clearly what we believe to have been the intention of their author, namely, that, where a money-decree in satisfaction of which the Court has ordered a sale of land has been transferred to the Collector, he should ascertain the amount of *all* existing decrees against the judgment-debtor and raise the amount necessary to discharge all his judgment-debts with interest, by dealing with such land, and such land only, in any of the modes prescribed by section 322.

19. We have altered section 331, paragraph two, so as to express the provisions of the corresponding section (229) of Act VIII. of 1859, and we have redrawn the latter half of section 332, so as to avoid the reference to the Specific Relief Act, section 9, whilst maintaining the procedure required by that enactment and the effect of an order passed thereunder.

20. We think that the first payment of a judgment debtor's monthly subsistence-money should be made to the proper officer of the Court, and that the subsequent payments should be made to the officer in charge of the jail; and we have altered section 339 accordingly.

21. When an applicant for the benefit of the insolvency-chapter (XX.) furnishes sufficient security that he will appear when called upon, we have empowered the Court to release him. The Recorder of Rangoon exercises under the Burma Courts Act insolvency-jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein. We do not think it expedient that any other Courts should exercise such jurisdiction concurrently with him. We have therefore expressly excluded all Courts situate in such towns from the operation of chapter XX.

22. Where a pauper's suit is dismissed for non-appearance of either party, we have empowered the Court to order him to pay the fees which would have been paid by him if he had not been permitted to sue as a pauper.

23. We have amended section 456 of the Code so as to provide for obtaining an order for the appointment of a guardian *ad litem* upon application by the plaintiff; and where there is no other person fit and willing to act as such guardian, we have authorized the Court to appoint any of its officers.

24. We have substituted for section 555 a section providing that in all cases the appellant shall begin.

25. We have made section 560 of the Code provide for the cases when notice is not served on the respondent, as well as for those in which he was prevented from appearing.

26. We have amended section 582 of the Code, so as to preclude the doubt whether the Appellate Court is bound (so far as may be) to perform the duties, as well as authorized to exercise the powers of the Court of first instance.

27. In section 584, clause (*a*), we have omitted the words "some specified," which have been held by some to limit the 'law' there mentioned to a statutory enactment, and by others to require the appellant to express in formal terms the rule which he alleges to have been contravened.

28. We think that appeals should lie from orders under section 57, clause (*a*), returning a plaint on the ground that the suit has been instituted in the wrong Court; and from orders under section 313 refusing an application to set-aside a sale of immoveable property; and we have amended section 588 accordingly. We have also amended the last clause of the same section, so as to give a second appeal from all orders under section 244, as to mesne profits or relating to the execution, discharge or satisfaction of a decree.

29. We have extended section 642, so as to exempt from arrest under the Code the parties to any matter pending before a tribunal having, or believing *bonâ fide* that it has, jurisdiction, their pleaders, mukhtárs, revenue-agents and witnesses while going to, attending or returning from, such tribunal. This will include not only Civil Courts, but Criminal Courts, Courts-martial and arbitrators, and accords with the existing law of England.

30. Sections 223—229 seem to provide sufficiently for the execution of decrees. We have therefore limited section 643 to arrests and attachments made otherwise than in execution, and provided for the release of any person arrested under that section who furnishes security for his appearance before the Court that issued the warrant.

31. We have added to section 649 a paragraph providing for the execution of the decrees of Courts which have ceased to exist, as for example, where a Court of Small Causes is abolished by the Local Government under Act XI of 1865, section 3, or where a Munsif invested with Small Cause jurisdiction, having passed a considerable number of decrees, is transferred to another Munsifí, and his successor at the particular Munsifí at which this jurisdiction was exercised has not been invested with similar jurisdiction.

32. We have inserted after section 650, a section providing for the service of foreign summonses when issued either by Courts established by the Governor General in Council, or by Courts to which the Governor General in Council has applied this provision.

33. We have amended the second schedule, so as to extend to the Small Cause Courts in the Mufassal

sections 223—229, as to execution of decrees;

section 360, enabling the Local Government to invest any Court with insolvency-jurisdiction;

chapter XXXVI, as to Receivers; and

sections 523, 524, as to filing in Court agreements to refer to arbitration, and sections 525, 526, as to filing awards made on reference without the intervention of a Court.

34. We have made several corrections of clerical and typographical errors which need not be specified.

35. Lastly, we have amended the Registration Act, by inserting a clause providing that a copy of every certificate of sale of land granted under sections 316 of the Code shall be sent to the local registering officer, who will file it in his Book No. 1. We have also taken the opportunity to amend three trifling errors in this Act, one of which is a misprint. And we have amended the Limitation Act, by inserting in its second schedule articles providing respectively for applications under sections 368 and 371 of the Code.

36. We recommend that the Bill thus amended be passed. The Bill and Statement of Objects and Reasons have been published in English in all the local Gazettes except those for Assam and Ajmer. They have been published in the vernacular in all the Gazettes except those for the Central Provinces, British Burma, Assam and Ajmer. We do not think that the Bill has been so altered as to require republication.

WHITLEY STOKES.
A. J. ARBUTHNOT.
T. H. THORNTON.
G. H. P. EVANS.
G. C. PAUL.
F. R. COCKERELL.

The 5th March 1879.

LIST OF PAPERS.

From Secretary to Government, North-Western Provinces and Oudh, No. 527A, dated 19th July 1878, and enclosures.
„ Secretary, Calcutta Trades Association, dated 29th July 1878.
„ Secretary to Government, North-Western Provinces and Oudh, No. 577A, dated 1st August 1878.
„ Secretary, Rajsháhái Association, dated 28th July 1878, and enclosure.
„ Acting Under Secretary to Government, Bombay, No. 4426, dated 31st July 1878, and enclosures.
„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 3211-152, dated 8th August 1878, and enclosure.
„ Secretary to Chief Commissioner, Mysore, No. 3477-6J, dated 7th August 1878.
„ Secretary for Birár to Resident, Haidarábád, No. 6B, dated 12th August 1878.
Notes by the Munsif of Khair.
Extract from Report on Administration of Civil Justice in Lower Provinces of Bengal and in Assam in 1877.
Note by C. D. Field, Esq., District and Sessions Judge, Burdwan, dated 13th August 1878.
From Judicial Commissioner, Mysore, to Honourable Whitley Stokes, dated 19th August 1878.
Office Memorandum from Home Department, No. 1144, dated 28th August 1878, and enclosures.
From Under Secretary to Government, Bombay, No. 7812, dated 29th December 1877, and enclosures.
„ Officiating Chief Commissioner, Ajmer and Merwára, No. 589, dated 30th August 1878, and enclosures.
„ Acting Under Secretary to Government, Bombay, No. 5040, dated 30th August 1878, and enclosure.
„ Officiating Secretary to Government, Panjáb, No. 685C, dated 9th September 1878, and enclosures.
„ Ditto ditto No. 691C, dated 10th September 1878, and enclosure.
„ Secretary to Government of Bengal, No. 128R T, dated 2nd September 1878, and enclosures.
„ Secretary to Government, North-Western Provinces and Oudh, No. 675A, dated 9th September 1878, and enclosures.
„ Bábu R. C. Banarjí, Noakhálí, dated 10th September 1878.
Office Memorandum from Home Department, No. 1260, dated 17th September 1878, and enclosures.
From Secretary to Chief Commissioner, Assam, No. 1582, dated 13th September 1878, and enclosures.
Notes by Pandit Bishambar Náth, Pleader, High Court, North-Western Provinces.
From K. Krishna Ráo, dated 23rd September 1878.
„ District Judge, South Kánara, to Hon'ble Whitley Stokes, No. 62, dated 27th September 1878, and enclosure.
„ Officiating Registrar, High Court, Calcutta, No. 1425, dated 8th June 1878, and enclosures.
„ Junior Secretary to Chief Commissioner, British Burma, No. 1439-371, dated 28th September 1878, and enclosures.
„ Vinayekráo Haríchand, Attorney, High Court, Bombay, to Hon'ble Whitley Stokes, dated 5th October 1878.
„ Srí Báládisha Dámodára Ráo, Mangalore, to Hon'ble Whitley Stokes, dated 5th October 1878.
„ Hon'ble L. C. Innes, Judge, High Court, Madras, to Hon'ble Whitley Stokes, dated 9th October 1878.
„ Pandit Suraj Bháu, Lahore, dated 1st October 1878.
„ Officiating Secretary to Government, Panjáb, No. 964C, dated 17th October 1878, and enclosures.
„ Officiating Secretary to Government, Panjáb, No. 1053C, dated 30th October 1878, and enclosure.
„ S. Aiyyasami Aiyyar, Pleader, High Court, Madras, dated 21st October 1878.
„ J. G. W. Sykes, Esq., Advocate, High Court, North-Western Provinces, dated 25th October 1878.
„ Hon'ble M. Melvill, Judge, High Court, Bombay, dated 5th November 1878.
„ Acting Chief Secretary to Government, Madras, No. 2229, dated 31st October 1878, and enclosures.
„ C. Rámchandra Ráo Sahib, Vakíl, High Court, Madras, dated 5th November 1878.
Memorandum by Pandit Rádha Kishn, Lucknow, dated 16th December 1878.
„ in Legislative Department.
From Acting Chief Secretary to Government, Madras, No. 2491, dated 10th December 1878, and enclosure.
Note by Hon'ble Mr. Justice Turner, dated 1st February 1879.
From Honorary Secretary, British Indian Association, dated 20th February 1879, and enclosure.

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

The following supplementary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March 1879 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Code of Civil Procedure was referred, have the honour to submit the following supplementary Report.

2. Since our report of the 5th March was presented, our colleague Mr. Stokes has received from Mr. Justice Ainslie a note on the Bill which has led us to make certain further changes therein.

3. It seems to us that the definition of "decree," even when made to include orders finally disposing of applications for execution, is not wide enough. It does not, for instance, comprise an order made on settlement of issues overruling pleas of law (such as that the suit is barred by the Limitation Act), and directing a trial of complicated questions of fact or the investigation of complicated accounts; for this does not "decide the suit," as the defendant may have a defence on the facts. Again, it does not include a decretal order for an account, for this does not "decide the suit;" inasmuch as, on taking the account, it may turn out that nothing is due, in which case the plaintiff's suit would in the end be dismissed. Yet a defendant ought not, if he has a good defence, to be put to the possibly enormous expense and inconvenience of an account for (say) twenty years. He should clearly have a right of appeal. The fact is that there may be more than one decree in a suit and that the various points arising may be decided at different hearings and the results embodied in different "formal orders." We have therefore widened the first sentence of the definition of "decree" as follows: "decree means the formal expression of a final adjudication upon any right claimed, or defence set up, in a Court of Justice."

4. We have not overlooked the fact that some of the orders under sections 244 of the Code, from which we purpose to give two appeals by section 588 as now amended, may be held to be decrees within the meaning of this first sentence of the definition; but we deem it safer, in order to prevent all mistake, to give the appeals from these orders in express terms by section 588, and formerly to exclude them from the definition of decree. We have also defined "order" as meaning the formal expression of any decision of a Court of justice which is not a decree, and we have defined "judgment" as the statement given by the Judge of the grounds of a decree or order.

5. There is much evidence to shew that the examination of a witness as to the fact of signature of the verification of the plaint by the person whose name it purports to bear is a useless form. We have therefore, instead of amending section 52 of the Code as proposed by the Bill as last settled, repealed the part of that section requiring such examination.

6. We think that the Court should fix a period within which the sum required to defray the costs of service of a process must be paid into Court by the party concerned. In the absence of such a provision (which was contained in Act XXIII of 1861, section 2), there is no rule by which the Court is to be guided in determining when a party is in default. We have therefore amended section 93 of the Code so as to require a period to be fixed for the payment of the Court-fee, and we have made a similar amendment in section 95, as to payment of postage.

7. It is strongly urged by Mr. Justice Ainslie that our proposed change in section 168 of the word "may" to "shall" would assist litigants to obstruct justice by obtaining unnecessary adjournments. We have accordingly omitted the section of the Bill by which it was proposed to make that change.

8. We have provided in section 289 for fixing up in the Court-house a copy of the proclamation of sale, and we have made a corresponding amendment in sectian 290.

9. The question is constantly arising whether a fresh proclamation is required when a sale is adjourned. We have provided in section 291 that, in case of such adjournment for a longer period than seven days, a fresh proclamation shall be made, unless the judgment-debtor consents to waive it.

10. In section 220 we have provided for the execution of orders as to costs.

11. In our report of the 5th of March we proposed to alter section 311 of the code so as admit of other persons in an execution-sale besides the decree-holder and the owner applying to set aside the sale. We have, at the suggestion of the High Court at Fort William, struck out this amendment of section 311 of the Code. The High Court urges that it would be of little practical benefit, and that it might sometimes be misused to delay the completion of proceedings in execution by persons put forward by the judgment-debtor to dispute the regularty of the sale.

12. We have repealed the last nineteen words of section 13 of Act XI of 1865. They are, in the opinion of the same High Court, unnecessary and occasionally mischievous.

13. The importance of the change now made in the definitions of "decree" and "judgment," make it desirable in our opinion that the Bill should be republished, so as to afford an opportunity for the correction of any oversight into which we may have fallen; but the substance of the amendment has now been so fully discussed that we think that, unless some serious objection is brought to light, there can be no objection to the Bill being passed as it stands; and, looking to the urgency of some of its provisions, we think its passing should not be delayed more than two months.

WHITLEY STOKES.
A. J. ARBUTHNOT.
T. H. THORNTON.
G. H. P. EVANS.
F. R. COCKERELL.

No. III.

A Bill to amend the Code of Civil Procedure, the Registration Act, 1877, and the Limitation Act, 1877.

Preamble.

WHEREAS it is expedient to amend the Code of Civil Procedure; It is hereby enacted as follows:—

Repeal of certain portions of Act X. of 1877.

1. The following portions of the said Code shall be repealed (namely):—

In section 4, the words and figures "The Panjáb Courts Act, 1865," and "The Panjáb Appeals Act, 1873:"

In section 5, the third sentence:

In section 51, the words "with the permission of the Court:"

In section 52, from and including the words "and when he makes it out of Court" to the end:

In section 61, the words "bill of exchange or other:"

In section 64, the words "or as soon thereafter as may be practicable:"

In section 80, the words "or to receive the copy of the summons:"

In section 131, the words "in whose plaint, written statement or affidavits reference is made to any document:"

In section 199, the words from and including "and in" to the end:

In section 224, the word "therewith:"

In section 230, paragraphs three and four, the words "unless the Court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction of the decree; and the order of the Court granting any such subsequent application shall be conclusive evidence that due diligence was used to procure such satisfaction. And no such subsequent application shall be granted:"

In section 246, clause (*e*) and the letters (*f*) and (*g*):

In section 259, the words "and keeping the same under attachment until the further order of the Court:

In section 339, paragraph three, the words "to the proper officer of the Court:"

In section 341, the word "third:"

In section 353, the words "within three months from its publication," and "within three months from the publication of the schedule:"

In sections 407 and 408, the words "upon such examination:"

In section 584, clause (*a*), the words "some specified:"

In section 588, clause (*j*), the words "of the same nature with appealable orders made in the course of a suit:" in the same section, clause (*r*), the figures "481:"

In section 638, the figures "261:"

In the second schedule, the words and figures "section 648 (so far as relates to arrest)."

Amendment of section 2.

2. In section 2, for the definitions of "judgment" and "decree," the following shall be substituted (namely):

"decree" means the formal expression of a final adjudication upon any right claimed, or defence set up, in a Court of justice. An order rejecting a plaint under section 53, clause (*d*), or under section 54, clause (*c*), is within this definition. An order on appeal remanding a suit for retrial is not within this definition, nor is any order specified in section 588:

"order" means the formal expression of any decision of a Court of justice, which is not a decree:

"judgment" means the statement given by the Judge of the grounds of a decree or order.

In the same section, to the definition of "signed," the following words shall be added (namely) "it also includes stamped with the name of the person referred to."

Amendment of section 13.

3. In section 13, Explanation I, for the word "confessed," the word "admitted" shall be substituted; and to the same section, the following shall be added (namely):—"*Explanation VII.*—A Court trying a suit under any law for the time being in force regulating the procedure in suits between land-holders and their tenants or agents, shall not be deemed, as regards the title to the immoveable property in respect of which the suit is brought, a Court of competent jurisdiction within the meaning of the first paragraph of this section."

Amendment of section 43.

4. In section 43, paragraph one, for the words "arising out of," the words "which the plaintiff is entitled to make in respect of" shall be substituted: in the same section, paragraph two, for the word "for" (in each of the places where it occurs) the words "in respect of" shall be substituted; and in the same section, paragraph three, for the word "claim," the words "cause of action" shall be substituted.

Amendment of section 44.

5. To section 44, the following words shall be added (namely), "or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents."

Amendment of section 45.

6. In section 45, for paragraph one, the following shall be substituted (namely), "Subject to the rules contained in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly, and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit:"

in the same section, paragraph two, after the word "defendant," the words "or at any subsequent stage of the suit, if the parties agree" shall be inserted.

Amendment of section 50.

7. In section 50, for the word "abode" in each of the places where it occurs, the word "residence" shall be substituted.

Amendment of section 51.

8. To section 51 the following proviso shall be added (namely) :—

"Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed on his behalf by his duly authorized agent."

Amendment of sundry sections.

9. In section 51, 53, 115, 346, 393, and 403, for the word "subscribed" (wherever it occurs), the word "signed" shall be substituted : in sections 115 and 346, for the word "subscribing" the word "signing" shall be substituted ; and in section 403, for the word "subscription" the word "signing" shall be substituted.

Amendment of section 58.

10. In section 58, for the word "filed," the word "produced" shall be substituted.

Amendment of sections 93 and 95.

11. In section 93, after the word "levied," and in section 95, after the word "paid," the words "within a time to be fixed by the Court" shall be inserted.

Amendment of section 108.

12. In section 108, paragraph one, the words and figures "under section 100" shall be omitted ; and in the same section, paragraph two, for the words "it be proved to the satisfaction of the Court that the defendant," the words "he satisfies the Court that the summons was not duly served, or that he" shall be substituted.

Amendment of section 131.

13. In section 131, paragraph one, for the words "such document," the words "any specified document" shall be substituted.

Amendment of section 136.

14. In section 136, after the word "discovery" (in each of the places in which it occurs), the word "production" shall be inserted.

Amendment of section 139.

15. In section 139, for the words "the production of which has been called for under section 138 and which has not been produced," the words "which should have been, but has not been, produced in accordance with the requirements of section 138" shall be substituted.

Amendment of section 207.

16. In section 207, for the word "suit" the word "decree" shall be substituted ; and for the words "or numbers" to the end, the following words shall be substituted (namely), "or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers."

Amendment of sections 211 and 212.

17. In section 211, for the words "land or other," the words "the recovery of possession of immoveable" shall be substituted ; and in section 212, before the word "immoveable," the words "the recovery of possession of" shall be inserted.

Amendment of section 220.

18. To section 220 the following words shall be added (namely) : "Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money."

Amendment of section 229.

19. In section 229, for the words "Native Prince or State in India," the words "Foreign Prince or State" shall be substituted.

Amendment of section 230.

20. In section 230, clause (*b*,) for the words "the payment of money or the delivery of property by instalments—the date of the default in paying or delivering the instalment," the following words shall be substituted (namely), "any payment of money, or the delivery of any property, to be made at a specified date—the date of the default in making the payment or delivering the property."

Amendment of sections 235.

21. In section 235, for the words "in manner hereinbefore provided for the verification of plaints," the following words shall be substituted (namely), "by the applicant or, with the permission of the Court, by some other person proved to the satisfaction of the Court, to be acquainted with the facts of the case."

Amendment of sections 236 and 237.

22. In section 236 and 237, for the words "If the application be," the words "Whenever an application is made" shall be substituted.

Amendment of section 244.

23. In section 244, clause (*c*), after the word "execution," the words "discharge or satisfaction" shall be inserted.

Amendment of section 245.

24. In section 245, for the first sentence, the following shall be substituted (namely), "The Court on receiving an application for the execution of a decree shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with, and if they have not been complied with, the Court shall reject the application, or return it for such compliance, or allow it to be amended then and there."

Amendment of section 246.

25. In section 246, for Explanation I, the following shall be substituted (namely) :—

"*Explanation I.*—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court."

In Explanation II, after the words "assignor as," the words "in respect of judgment-debts due" shall be inserted.

Amendment of section 259.

26. For the second paragraph of section 259, the following shall be substituted :—

"When any attachment under this section has remained in force for six months, if the judgment

debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree, and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

Amendment of section 260.

27. In section 260 in the first paragraph, after the words "the performance of," the words "or abstention from" shall be inserted; and for the second paragraph the following paragraph shall be substituted (namely):—

"When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold, and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

Amendment of section 264.

28. In section 264, after the words "the same" the words "and not bound by the decree to relinquish such occupancy" shall be inserted.

Amendment of section 265.

29. To section 265 the following words shall be added (namely), "and according to the rules for the time being in force for the partition, or the separate possession of shares, of such estates."

Amendment of section 268.

30. For the last paragraph of section 268, the following shall be substituted (namely):—

"In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the amount of the portions so withheld is equal to the amount remaining due under the decree.

"A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

"Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor."

Amendment of section 289.

31. To section 289, paragraph one, the following words shall be added, namely: "and a copy thereof shall be fixed up in the Court-house;" and in section 290, for the words "notification has been affixed" the words "copy of the proclamation has been fixed up" shall be substituted.

Amendment of section 291.

32. In section 291, for the first eight words, the following shall be substituted (namely): "The Court may in its discretion adjourn any sale under this chapter, and the officer conducting any such sale;" and in the same section, after the proviso, the following sentence shall be inserted namely: "whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it.

Amendment of section 294.

33. To section 294 the following paragraph shall be added (namely):—

"When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set-aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder."

Amendment of section 295.

34. In section 295, first proviso, after the words "shall not," the words "as such" shall be inserted.

Amendment of section 305.

35. In section 305, paragraph two, after the word "therein," the words and figures "and notwithstanding anything contained in section 276," shall be inserted; and for the last paragraph, the following shall be substituted (namely):—

"Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court."

Amendment of section 314.

36. In section 314, after the word "property" the words "in execution of a decree" shall be inserted.

Amendment of section 316.

37. To section 316 the following sentence shall be added (namely): "and the title to the property sold shall be deemed to west in him from the date of such certificate."

Substitution of sections for sections 322 and 323.

38. For sections 322 and 323 the following sections shall be substituted (namely):—

Procedure of Collector when execution of decree so transferred.

"322. Whenever the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector may either proceed as the Court would

proceed under section 305, or, if he has reason to believe that all the judgment-debts of the judgment-debtor can be discharged without a sale of the whole of such property, he may publish a notice in the language of the district, calling upon all persons holding decrees against the judgment-debtor to notify in writing to the Collector, within sixty days from the date of such publication, the existence of such decrees, the respective dates thereof and the sums remaining due thereon, respectively.

"Such notice shall be published by being posted in the court-house of the Court which made the order under section 304, and at such other places (if any) as the Collector thinks fit.

"323. The Collector shall ascertain the sums remaining due on such decrees respectively, and may then (notwithstanding any order under section 304, but subject to such rules as may from time to time be made in this behalf by the Chief Controlling Revenue Authority) raise the amount necessary to discharge each of such sums, with interest thereon according to the decree under which it is due, or, if the decree makes no provision as to interest, then with interest (if any) at such rate as he thinks fit—

Powers of Collector in such cases.

"(*a*) by letting in perpetuity, or for a term, on payment of a premium equivalent to such amount, the whole or any part of the property of which the sale has been ordered : or

"(*b*) by mortgaging the whole or any part of such property : or

"(*c*) by selling part of such property : or

"(*d*) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale : or

"(*e*) partly by one of the modes mentioned in clauses (*b*), (*c*) and (*d*), and partly by another or others of such modes.

"For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

"So long as any letting or management under clause (*d*) or clause (*e*) continues, the judgment-debtor and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property let or managed or any part thereof."

39. In section 331, paragraph two, for the words and figures "the Specific Relief Act, 1877, section 9," the word and figure "Chapter V" shall be substituted; and to the same section the following paragraph shall be added (namely), "Every such order shall have the same force as a decree and shall be subject to the same conditions as to appeal or otherwise."

Amendment of section 331.

40. In section 332, first paragraph, for the word "defendant," the word "judgment-debtor" shall be substituted; and for the other paragraphs, the following shall be substituted (namely), "If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute, and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

Amendment of section 332.

"In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

"The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but subject to the result of such suit, if any, the order shall be final."

41. For section 333 the following shall be substituted (namely) "Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made."

Amendment of section 333.

42. In section 335, for the first paragraph, the following shall be substituted (namely) :—

Amendment of section 335.

"If the purchaser of any such property is resisted or obstructed by any person, other than the judgment-debtor, claiming in good faith a right to the present possession thereof, or, if in delivering possession thereof any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall enquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit;"

and in the second paragraph of the same section, for the word "conclusive," the word "final" shall be substituted.

43. In section 339, paragraph four, after the word "made," the words "to the proper officer of the Court" shall be inserted; and to the same paragraph, the following words shall be added (namely), "and the subsequent payments (if any) shall be made to the officer in charge of the jail."

Amendment of section 339.

44. To section 349 the following words shall be added (namely), "or release him on his furnishing sufficient security that he will appear when called upon."

Amendment of section 349.

45. In section 357, line one, for the figures "355," the figures and word "351 or 355" shall be substituted.

Amendment of section 357.

46. To section 360 the following paragraph shall be added (namely) "Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein."

Amendment of section 360.

47. In sections 361, 362, 363, 365 and 368, for the words "cause of action" wherever they occur, the words "right to sue" shall be substituted.

Amendment of section 361, 362, 363, 365 and 368.

48. In section 364, paragraph one, and section 366, paragraph one, after the word "If," the words "within the time limited by law" shall be inserted; and in the latter section, paragraph one, for the words "Court may," the words "Court shall, on the application of the defendant," shall be substituted.

Amendment of sections 364 and 366.

49. In section 373, paragraph one, for the words "for the part," the words "in respect of the part" shall be substituted; and to paragraph two, the words "or in respect of the same part" shall be added.

Amendment of section 373.

50. In section 377, for the first seven words, the following shall be substituted (namely), "Notice in writing of the deposit shall be given through the Court."

Amendment of section 377.

51. In sections 384, 477 and 483, after the word "affidavit," the words "or otherwise" shall be inserted.

Amendment of sections 384, 477 and 483.

52. In section 406, for the word "shall," the words "may if he thinks fit" shall be substiuted.

Amendment of section 406.

53. In section 412, after the word "dispaupered," the words and figures "or if the suit is dismissed under section 97 or 98" shall be inserted.

Amendment of section 412.

54. In section 413, for the word "Refusal," the words and figures "An order of refusal made under section 409" shall be substituted.

Amendment of section 413.

55. In section 424, after the words "against a public officer," the words "in respect of an act purporting to be done by him in his official capacity" shall be inserted; and in sections 428 and 429, after the words "public officer," the words "in respect of such act as aforesaid" shall be inserted.

Amendment of sections 424, 428 and 429.

56. In section 437, for the first sentence, the following shall be substituted (namely), "In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit."

Amendment of section 437.

57. In section 456, for the words "in the name of the minor," the words "in the name and on behalf of the minor or by the plaintiff" shall be substituted; and to the same section the following paragraph shall be added (namely): "Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, provided that he has no interest adverse to that of the minor."

Amendment of section 456.

58. In section 481, after the word "decree," the following words shall be inserted (namely), "or if, pending the suit, he becomes able to give security for his appearance as aforesaid, until he gives such security."

Amendment of section 481.

59. In section 483, after the words "portion of his property," the words "within the jurisdiction" shall be inserted.

Amendment of section 483.

60. In section 484, after the word "suit," the words "or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him" shall be inserted.

Amendment of section 484.

61. In section 497, Clause one, for the words "the injunction," the words "an injunction which it has granted" shall be substituted.

Amendment of section 497.

62. In section 523, paragraph three, for the words "any of," the the word "all" shall be substituted.

Amendment of section 523.

63. In section 544, for the words "decree and," the words "decree, and thereupon" shall be substituted.

Amendment of section 544.

64. For section 555 the following shall be substituted (namely):—

Amendment of section 555.

"555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply."

Right to begin.

65. In section 560, for the words "it be proved that the respondent," the words "he satisfies the Court that the notice was not duly served, or that he" shall be substituted.

Amendment of section 560.

66. In section 561, after the word "notice," the words "in writing" shall be inserted.

Amendment of section 561.

67. In section 566, paragraph two, for the word "issue," the word "issues" shall be substituted.

Amendment of section 566.

68. For the first paragraph of section 582, the following shall be substituted (namely): "The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under chapter V."

Amendment of section 582.

69. In section 584, clause (c), after the word "may," the word "possibly" shall be inserted.

Amendment of section 584.

Amendment of section 588.

70. In section 588, for clause (*e*), the following shall be substituted (namely): "(*e*) orders returning plaints under section 53, clause (*d*), or section 54, clause (*b*), or section 57:"

after clause (*f*), the following clause shall be inserted (namely) :—

"(*ff*) orders rejecting applications under section 108 for an order to set-aside a decree *ex parte*;"

to clause (*h*) the following words shall be added (namely), "and orders under section 170 for the sale of attached property:"

in clause (*j*) for the word and figures "section 244," the following words and figures shall be substituted (namely), "sections 230, 231, 232, 234 and 244:"

to clause (*m*) the following words shall be added (namely), "and orders under section 313 refusing an application to set-aside a sale of immoveable property:"

And to section 588 the following words shall be added (namely) :—

"except in the case of appeals against orders under sections 230, 231, 232, 234 and 244, in which case a second appeal shall lie, and shall, in the case of appeals now pending, be deemed to have lain, on any of the grounds mentioned in section 584 and on no other grounds.

"The provisions contained in chapter XLI shall apply, so far as may be, to all second appeals under this section, and to the execution of orders passed therein. But save as aforesaid, no order mentioned in this section shall be deemed to be a decree within the meaning of that chapter."

Amendment of section 638.

71. In section 638, for the figures and word "16 and 17," the figures and word "16, 17 and 19" shall be substituted: and in the last paragraph after the word "any," the words "Judge of a" shall be inserted; and the word "its" shall be omitted.

Amendment of section 642.

72. In section 642, for the second paragraph, the following shall be substituted (namely) :— "And except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtárs, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under this Code while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal."

Amendment of section 648.

73. In section 648, for the first forty-two words, the following shall be substituted (namely), "Where any Court desires that any person shall be arrested, or any property shall be attached, under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and:"

and to the same section, the following words shall be added (namely), "unless the person arrested furnish sufficient security for his appearance before that Court, or (where the case is one under chapter XXXIV.) for satisfying any decree that may be passed against him by such Court in either of which cases the Court making the arrest shall release him."

Amendment of section 649.

74. To section 649 the following paragraph shall be added (namely) :—

"In the same chapter, the expression 'Court which passed a decree' or words to that effect, shall, unless there be something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit."

Service of foreign summonses.

75. After section 650 the following shall be inserted (namely) :— "650A. Summonses issued by any Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts; provided that the Courts issuing such summonses have been established by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts."

Amendment of section 652.

76. In section 652, after the words "connected with," the words "its own procedure or" shall be inserted.

Amendment of schedule I.

77. In the first schedule, column third, opposite "XI of 1865," for the figures and word "11, paragraph 2," the figures and words "11, the last nineteen words of section 13, sections 19," shall be substituted; and opposite "V. of 1866," after the word "inclusive," the words "and the schedule" shall be inserted.

Amendment of schedule II.

78. In the second schedule—

for the figures "230," the figures "223" shall be substituted:

before the words and figures "Chapter XXI.," the words and figures "Chapter XX, section 360 —Power to invest certain Courts with insolvency-jurisdiction" shall be inserted:

after the words and figures "Chapter XXXIV— Of arrest and attachment before judgment," the words and figures "except as regards immoveable property, Chapter XXXVI—Appointment of receivers" shall be inserted:

for the figures "522," the figures "526" shall be substituted.

Amendment of schedule IV.

79. In the fourth schedule, in form No. 172, for the word "seven" in each of the places where it occurs, the word "ten" shall be substituted.

Interpretation-clause.

80. In the preceding sections of this Act, the words "section" and "schedule" respectively mean section of, and schedule annexed to the said Code.

And whereas it is also expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

Amendment of Act III. of 1877, section 35.

81. In section 35 of the same Act, after the words "person appears," the words "to the registering officer" shall be inserted; and after the words "refuse to register the document," the words "as to the person so denying, appearing or dead" shall be inserted.

Amendment of section 51.

82. In section 51 of the same Act, for the figures "87," the figures "89" shall be substituted.

Amendment of section 83.

83. In section 83 of the same Act, for the words "Subordinate Magistrate of the first," the words "Magistrate of the second" shall be substituted.

Addition to section 89.

84. To section 89 of the same Act, the following clause shall be added (namely):—

"Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1."

And whereas it is also expedient to amend the Indian Limitation Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

Amendment of Act XV. of 1877, schedule II.

85. In the second schedule to the said Indian Limitation Act, 1877, after clause 171, the following clauses shall be inserted (namely):—

"171A.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant.	Sixty days ...	The date of the defendant's death.
"171 B.—Under section 371 of the same Code, for an order to set-aside an order for abatement or dismissal.	Ditto ...	The date of the order for abatement or dismissal."

D. FITZPATRICK,

Secy. to the Govt. of India.

The following preliminary Report of a Select Committee, together with the Bill as settled by them was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March 1879:—

WE, 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.

From the Hon'ble H. S. Cunningham, dated 7th 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. 5).
" 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).
Form Register, High Court, Calcutta, No. 400 dated 10th March 1879 (Paper No. 21).

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

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:—

Preamble.

I.—Preliminary.

Short title.

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

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

Repeal of enactments.

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

Interpretation-clause.

3. In this Act—

"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 at raiyatwári 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 of 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.

Right to land formed on shore of sea or lake.

4. Where, from natural causes, land forms gradually on the shore of the sea or of a lake, either by accumulation of mate-

rial 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 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.

Right to islands where channel is not fordable.

5. Where an island is formed, from natural causes, in a river, the sea or a lake, either by accumulation of material or by recession of the 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.

Right to other islands in sea or lake.

6. If, where an island is formed as aforesaid in the sea or a lake the channels between it and either shore are fordable 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.

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

7. 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, and the Government 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.

Islands formed by division of rivers.

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

Right to abandoned river-beds.

9. Where a river suddenly abandons the bed 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.

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

10. The Local Government may, from time to 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.

Savings.

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.

Local usage in Panjáb.

12. In the territories administered by the Lieutenant-Governor of the Panjáb, nothing herein 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.

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

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.

THE SCHEDULE.

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

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

(*b*). Bengal Regulation.

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

(*c*). Bengal Act.

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

(*d*). Rules.

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

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

[*Published with the "Bombay Government Gazette" on the 27th March* 1879.]

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th March 1879, and was referred to a Select Committee :—

No. 4 of 1879.

A Bill to amend the Presidency Banks Act, 1876.

Preamble.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May, 1879.

Amendment of Act XI of 1876, section 28.

2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say :

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

Amendment of section 34 of same Act.

3. In the same Act, section 34, before the words "no Khazánchi," the words "without the previous sanction of the Board" shall be inserted.

Amendments of section 36.

4. In the same Act, section 36, clause (*a*), sub-clause (4), after the words "municipal body," the words "or any body of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (*m*), the following clause shall be inserted, that is to say, "(*m m*) the borrowing of money in India for the purposes of the Bank's business and the giving of security for money so borrowed by pledging assets or otherwise."

Amendment of section 37.

5. In section 37 of the same Act, for clause (*d*), the following shall be substituted, that is to say,

"(*d*) Nor shall they (except upon the security mentioned in section 36, paragraph *a*, Nos. 1 to 5 inclusive)

discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

Amendment of section 63.

6. In section 63 of the same Act, clause (*a*), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

1. The necessity for this Bill has arisen chiefly from a doubt which has been expressed as to whether the Presidency-banks have power under the Presidency Banks Act, 1876, to borrow money for the purposes of their business by pledging assets or otherwise. The need of such a power is obvious.

As observed in a memorial recently submitted to the Governor General in Council by the banks, "it is an ordinary incident of banking-business to obtain funds for temporary purposes by pledging assets. If banks are prohibited from raising money by pledge of assets when occasion arises, they may, on a sudden requisition for cash, be obliged to make forced sales of property at a disadvantage; and this applies with great force to the Presidency-banks of India whose action in forcing Government or other securities on the market might cause a public panic."

The power required will be conferred by a new clause which the Bill (in the last clause of section 4) proposes to add to section 36 of the Act; but it is limited to borrowing in India, because, so long as the Government balances are in the custody of the Presidency-banks, it is not considered expedient that the banks should engage in foreign exchanges or have the power of creating a foreign agency in England, which would be the necessary results of conceding a power to borrow out of India.

2. The other sections of the Bill provide for certain minor amendments of the Act which it has been thought desirable to take this opportunity of making.

Section 2 provides that no person shall be, in two successive years, chosen as President or Vice-President of a Presidency-bank.

3. Section 3, which admits of a khazánchi, cashier or shroff at the principal office of a bank engaging in business with the previous sanction of the Board, has been introduced at the instance of the Bank of Bengal, who represent that the absolute prohibition contained in the present law makes it difficult to secure the services of a suitable person, and that the necessity for any such absolute prohibition has ceased to exist, now that the khazánchi has no longer any concern with the discount business in Native Bills, and is, in fact, a mere cashier.

4. Lastly, clauses have been added to clear up an ambiguity which, in the opinion of Counsel, attaches to section 37, clause (*d*), and section 63, clause (*a*), of the Act; to include in the securities on which loans may be made, and in which the banks may invest, debentures and other securities issued by the Port Trusts under Acts of the Indian legislatures, and to concede to the Banks of Bengal and Bombay the power already possessed by the Bank of Madras of drawing and dealing in negotiable instruments, and issuing bank-post-bills and letters of credit, payable in Ceylon.

(Signed) J. STRACHEY.

Calcutta, the 4th March 1879.

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

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

4-4-79

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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Code of Civil Procedure was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th March 1879:—

REPORT.

WE, the undersigned Members of the Select Committee to which the Bill to amend the Code of Civil Procedure was referred, have the honour to report that we have considered the Bill and the papers specified in the annexed list.

2. In the interpretation-clause, we have expressly declared that an order finally disposing of an application for execution falls within the definition of 'decree.' This will remove a doubt which we understand has been felt in two of the High Courts. We have also provided that 'signed' shall include stamped. The use of a seal capable of producing an impression of the name and title of the person using it is common among Natives of rank.

3. To section 13 we have added an explanation declaring in effect, that a decision in a suit for arrears of rent under any local law relating to landlord and tenant, shall not be deemed to be *res judicata* in case of suits relating to the title to the property in respect of which the rent is claimed.

4. In section 44, we have provided for joining, with claims by and against a legal representative as such, claims which he was personally entitled to, or liable for, jointly with the deceased person whom he represents, *e.g.*, on a promissory note jointly executed by the deceased and the person who becomes his executor.

5. We have altered the last paragraph of section 52, so as to require the examination of the witness to the verification of the plaint only when the Court entertains doubt as to the fact of the signature.

6. We have extended section 108 to all cases in which decrees have been set-aside *ex parte*, and provided for cases in which the summons was not duly served, as well as for those in which the defendant was prevented from appearing.

7. Section 131 does not as Act VIII. of 1859, section 107, did, empower parties to give notice to produce documents generally. We have therefore made section 131 apply to the production of all documents in the possession or power of a party, whether they are or are not referred to in the plaint, written statement or affidavit of the latter.

8. We have struck out from section 230 the words as to granting subsequent applications for execution, when the Court is satisfied that on the preceding application due diligence had been used to procure complete satisfaction. The effect of these words appears to us to discourage leniency and to invite litigation. We have altered the same section, so as to provide (in accordance with the new Limitation Act, Schedule II., Art. 179, paragraph 6) for a decree awarding maintenance, which has been held not to be a decree directing "the payment of money or the delivery of property by instalments."

9. We have amended section 245, so as to provide for non-compliance with the requirements not only of sections 235 and 236, but also of sections 236 and 237.

10. We have altered the first explanation to section 246, so as to bring within its scope decrees made over to a Court for execution.

11. We have amended sections 259 and 260, so as to make it clear that, when an attachment under either section has remained in force for the specified time, if the judgment-debtor has not obeyed the decree and the decree-holder has, within that time, applied for a sale, the property may be sold; but that, if the judgment-debtor has obeyed, and the decree-holder has not made such application, the attachment shall cease.

12. We have provided, in section 268, that, where a moiety of the salary of a public officer or railway-servant is attached, the attachment shall be made by an order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct until the amount of the portions so withheld is equal to the amount of the decree; and we have authorized him to pay into Court every portion so withheld, and declared that such payment shall discharge the Government or the Railway Company. We have struck out the last paragraph of the same section.

13. We have altered section 291, so as to empower the Court directing an execution-sale, as well as the officer conducting one, to adjourn it.

14. Where the holder of a decree, in execution of which property is sold, purchases the property without the Court's permission, we have provided in section 294, that the Court may, if it thinks fit set-aside the sale, and that any deficiency of price which may happen on a re-sale shall be paid by the decree-holder.

15. We think that mortgages, leases and sales made under section 305 by the judgment-debtor should not become absolute until they are confirmed by the Court; and we have added a provision to this effect.

16. We think that, besides the decree-holder and the owner of land sold in execution, any other person interested in the sale should have power to apply to set it aside on the ground of material irregularity; and we have amended section 311 of the Code accordingly.

17. Much doubt exists as to where the title to land sold at an execution-sale vests in the purchaser. We think it should vest from the date of the certificate, which is granted as soon as the sale becomes absolute; and we have added to section 316 a sentence to this effect.

18. We have recast sections 322 and 323 of the Code, so as to make them express clearly what we believe to have been the intention of their author, namely, that, where a money-decree in satisfaction of which the Court has ordered a sale of land has been transferred to the Collector, he should ascertain the amount of *all* existing decrees against the judgment-debtor and raise the amount necessary to discharge all his judgment-debts with interest, by dealing with such land, and such land only, in any of the modes prescribed by section 322.

19. We have altered section 331, paragraph two, so as to express the provisions of the corresponding section (229) of Act VIII. of 1859, and we have redrawn the latter half of section 332, so as to avoid the reference to the Specific Relief Act, section 9, whilst maintaining the procedure required by that enactment and the effect of an order passed thereunder.

20. We think that the first payment of a judgment debtor's monthly subsistence-money should be made to the proper officer of the Court, and that the subsequent payments should be made to the officer in charge of the jail; and we have altered section 339 accordingly.

21. When an applicant for the benefit of the insolvency-chapter (XX.) furnishes sufficient security that he will appear when called upon, we have empowered the Court to release him. The Recorder of Rangoon exercises under the Burma Courts Act insolvency-jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein. We do not think it expedient that any other Courts should exercise such jurisdiction concurrently with him. We have therefore expressly excluded all Courts situate in such towns from the operation of chapter XX.

22. Where a pauper's suit is dismissed for non-appearance of either party, we have empowered the Court to order him to pay the fees which would have been paid by him if he had not been permitted to sue as a pauper.

23. We have amended section 456 of the Code so as to provide for obtaining an order for the appointment of a guardian *ad litem* upon application by the plaintiff; and where there is no other person fit and willing to act as such guardian, we have authorized the Court to appoint any of its officers.

24. We have substituted for section 555 a section providing that in all cases the appellant shall begin.

25. We have made section 560 of the Code provide for the cases when notice is not served on the respondent, as well as for those in which he was prevented from appearing.

26. We have amended section 582 of the Code, so as to preclude the doubt whether the Appellate Court is bound (so far as may be) to perform the duties, as well as authorized to exercise the powers of the Court of first instance.

27. In section 584, clause (*a*), we have omitted the words "some specified," which have been held by some to limit the 'law' there mentioned to a statutory enactment, and by others to require the appellant to express in formal terms the rule which he alleges to have been contravened.

28. We think that appeals should lie from orders under section 57, clause (*a*), returning a plaint on the ground that the suit has been instituted in the wrong Court; and from orders under section 313 refusing an application to set-aside a sale of immoveable property; and we have amended section 588 accordingly. We have also amended the last clause of the same section, so as to give a second appeal from all orders under section 244, as to mesne profits or relating to the execution, discharge or satisfaction of a decree.

29. We have extended section 642, so as to exempt from arrest under the Code the parties to any matter pending before a tribunal having, or believing *bonâ fide* that it has, jurisdiction, their pleaders, mukhtárs, revenue-agents and witnesses while going to, attending or returning from, such tribunal. This will include not only Civil Courts, but Criminal Courts, Courts-martial and arbitrators, and accords with the existing law of England.

30. Sections 223—229 seem to provide sufficiently for the execution of decrees. We have therefore limited section 648 to arrests and attachments made otherwise than in execution, and provided for the release of any person arrested under that section who furnishes security for his appearance before the Court that issued the warrant.

31. We have added to section 649 a paragraph providing for the execution of the decrees of Courts which have ceased to exist, as for example, where a Court of Small Causes is abolished by the Local Government under Act XI of 1865, section 3, or where a Munsif invested with Small Cause jurisdiction, having passed a considerable number of decrees, is transferred to another Munsifi, and his successor at the particular Munsifi at which this jurisdiction was exercised has not been invested with similar jurisdiction.

32. We have inserted after section 650, a section providing for the service of foreign summonses when issued either by Courts established by the Governor General in Council, or by Courts to which the Governor General in Council has applied this provision.

33. We have amended the second schedule, so as to extend to the Small Cause Courts in the Mufassal

sections 223—229, as to execution of decrees;

section 360, enabling the Local Government to invest any Court with insolvency-jurisdiction;

chapter XXXVI, as to Receivers; and

sections 523, 524, as to filing in Court agreements to refer to arbitration, and sections 525, 526, as to filing awards made on reference without the intervention of a Court.

34. We have made several corrections of clerical and typographical errors which need not be specified.

35. Lastly, we have amended the Registration Act, by inserting a clause providing that a copy of every certificate of sale of land granted under sections 316 of the Code shall be sent to the local registering officer, who will file it in his Book No. 1. We have also taken the opportunity to amend three trifling errors in this Act, one of which is a misprint. And we have amended the Limitation Act, by inserting in its second schedule articles providing respectively for applications under sections 368 and 371 of the Code.

36. We recommend that the Bill thus amended be passed. The Bill and Statement of Objects and Reasons have been published in English in all the local Gazettes except those for Assam and Ajmer. They have been published in the vernacular in all the Gazettes except those for the Central Provinces, British Burma, Assam and Ajmer. We do not think that the Bill has been so altered as to require republication.

WHITLEY STOKES.
A. J. ARBUTHNOT.
T. H. THORNTON.
G. H. P. EVANS.
G. C. PAUL.
F. R. COCKERELL.

The 5th March 1879.

LIST OF PAPERS.

From Secretary to Government, North-Western Provinces and Oudh, No. 527A, dated 19th July 1878, and enclosures.
„ Secretary, Calcutta Trades Association, dated 29th July 1878.
„ Secretary to Government, North-Western Provinces and Oudh, No. 577A, dated 1st August 1878.
„ Secretary, Rajsháhái Association, dated 28th July 1878, and enclosure.
„ Acting Under Secretary to Government, Bombay, No. 4426, dated 31st July 1878, and enclosures.
„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 3211-152, dated 8th August 1878, and enclosure.
„ Secretary to Chief Commissioner, Mysore, No. 3477-6J, dated 7th August 1878.
„ Secretary for Birár to Resident, Haidarábád, No. 6B, dated 12th August 1878.
Notes by the Munsif of Khair.
Extract from Report on Administration of Civil Justice in Lower Provinces of Bengal and in Assam in 1877.
Note by C. D. Field, Esq., District and Sessions Judge, Burdwan, dated 13th August 1878.

From Judicial Commissioner, Mysore, to Honourable Whitley Stokes, dated 19th August 1878.
Office Memorandum from Home Department, No. 1144, dated 28th August 1878, and enclosures.
From Under Secretary to Government, Bombay, No. 7812, dated 29th December 1877, and enclosures.
„ Officiating Chief Commissioner, Ajmer and Merwára, No. 589, dated 30th August 1878, and enclosures.
„ Acting Under Secretary to Government, Bombay, No. 5040, dated 30th August 1878, and enclosure.
„ Officiating Secretary to Government, Panjáb, No. 685C, dated 9th September 1878, and enclosures.
„ Ditto ditto No. 691C, dated 10th September 1878, and enclosure.
„ Secretary to Government of Bengal, No. 128R T, dated 2nd September 1878, and enclosures.
„ Secretary to Government, North-Western Provinces and Oudh, No. 675A, dated 9th September 1878, and enclosures.
„ Bábu R. C. Banarjí, Noakhálí, dated 10th September 1878.
Office Memorandum from Home Department, No. 1260, dated 17th September 1878, and enclosures.
From Secretary to Chief Commissioner, Assam, No. 1582, dated 13th September 1878, and enclosures.
Notes by Pandit Bishambar Náth, Pleader, High Court, North-Western Provinces.
From K. Krishna Ráo, dated 23rd September 1878.
„ District Judge, South Kánara, to Hon'ble Whitley Stokes, No. 62, dated 27th September 1878, and enclosure.
„ Officiating Registrar, High Court, Calcutta, No. 1425, dated 8th June 1878, and enclosures.
„ Junior Secretary to Chief Commissioner, British Burma, No. 1439-371, dated 28th September 1878, and enclosures.
„ Vinayekráo Haríchand, Attorney, High Court, Bombay, to Hon'ble Whitley Stokes, dated 5th October 1878.
„ Srí Báládisha Dámodára Ráo, Mangalore, to Hon'ble Whitley Stokes, dated 5th October 1878.
„ Hon'ble L. C. Innes, Judge, High Court, Madras, to Hon'ble Whitley Stokes, dated 9th October 1878.
„ Pandit Suraj Bháu, Lahore, dated 1st October 1878.
„ Officiating Secretary to Government, Panjáb, No. 964C, dated 17th October 1878, and enclosures.
„ Officiating Secretary to Government, Panjáb, No. 1053C, dated 30th October 1878, and enclosure.
„ S. Aiyyasami Aiyyar, Pleader, High Court, Madras, dated 21st October 1878.
„ J. G. W. Sykes, Esq., Advocate, High Court, North-Western Provinces, dated 25th October 1878.
„ Hon'ble M. Melvill, Judge, High Court, Bombay, dated 5th November 1878.
„ Acting Chief Secretary to Government, Madras, No. 2229, dated 31st October 1878, and enclosures.
„ C. Rámchandra Ráo Sahib, Vakíl, High Court, Madras, dated 5th November 1878.
Memorandum by Pandit Rádha Kishn, Lucknow, dated 16th December 1878.
„ in Legislative Department.
From Acting Chief Secretary to Government, Madras, No. 2491, dated 10th December 1878, and enclosure.
Note by Hon'ble Mr. Justice Turner, dated 1st February 1879.
From Honorary Secretary, British Indian Association, dated 20th February 1879, and enclosure.

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

The following supplementary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March 1879 :—

We, the undersigned Members of the Select Committee to which the Bill to amend the Code of Civil Procedure was referred, have the honour to submit the following supplementary Report.

2. Since our report of the 5th March was presented, our colleague Mr. Stokes has received from Mr. Justice Ainslie a note on the Bill which has led us to make certain further changes therein.

3. It seems to us that the definition of "decree," even when made to include orders finally disposing of applications for execution, is not wide enough. It does not, for instance, comprise an order made on settlement of issues overruling pleas of law (such as that the suit is barred by the Limitation Act), and directing a trial of complicated questions of fact or the investigation of complicated accounts; for this does not "decide the suit," as the defendant may have a defence on the facts. Again, it does not include a decretal order for an account, for this does not "decide the suit;" inasmuch as, on taking the account, it may turn out that nothing is due, in which case the plaintiff's suit would in the end be dismissed. Yet a defendant ought not, if he has a good defence, to be put to the possibly enormous expense and inconvenience of an account for (say) twenty years. He should clearly have a right of appeal. The fact is that there may be more than one decree in a suit and that the various points arising may be decided at different hearings and the results embodied in different "formal orders." We have therefore widened the first sentence of the definition of "decree" as follows: "decree means the formal expression of a final adjudication upon any right claimed, or defence set up, in a Court of Justice."

4. We have not overlooked the fact that some of the orders under sections 244 of the Code, from which we purpose to give two appeals by section 588 as now amended, may be held to be decrees within the meaning of this first sentence of the definition; but we deem it safer, in order to prevent all mistake, to give the appeals from these orders in express terms by section 588, and formerly to exclude them from the definition of decree. We have also defined "order" as meaning the formal expression of any decision of a Court of justice which is not a decree, and we have defined "judgment" as the statement given by the Judge of the grounds of a decree or order.

5. There is much evidence to shew that the examination of a witness as to the fact of signature of the verification of the plaint by the person whose name it purports to bear is a useless form. We have therefore, instead of amending section 52 of the Code as proposed by the Bill as last settled, repealed the part of that section requiring such examination.

6. We think that the Court should fix a period within which the sum required to defray the costs of service of a process must be paid into Court by the party concerned. In the absence of such a provision (which was contained in Act XXIII of 1861, section 2), there is no rule by which the Court is to be guided in determining when a party is in default. We have therefore amended section 93 of the Code so as to require a period to be fixed for the payment of the Court-fee, and we have made a similar amendment in section 95, as to payment of postage.

7. It is strongly urged by Mr. Justice Ainslie that our proposed change in section 168 of the word "may" to "shall" would assist litigants to obstruct justice by obtaining unnecessary adjournments. We have accordingly omitted the section of the Bill by which it was proposed to make that change.

8. We have provided in section 289 for fixing up in the Court-house a copy of the proclamation of sale, and we have made a corresponding amendment in sectian 290.

9. The question is constantly arising whether a fresh proclamation is required when a sale is adjourned. We have provided in section 291 that, in case of such adjournment for a longer period than seven days, a fresh proclamation shall be made, unless the judgment-debtor consents to waive it.

10. In section 220 we have provided for the execution of orders as to costs.

11. In our report of the 5th of March we proposed to alter section 311 of the code so as admit of other persons in an execution-sale besides the decree-holder and the owner applying to set aside the sale. We have, at the suggestion of the High Court at Fort William, struck out this amendment of section 311 of the Code. The High Court urges that it would be of little practical benefit, and that it might sometimes be misused to delay the completion of proceedings in execution by persons put forward by the judgment-debtor to dispute the regularty of the sale.

12. We have repealed the last nineteen words of section 13 of Act XI of 1865. They are, in the opinion of the same High Court, unnecessary and occasionally mischievous.

13. The importance of the change now made in the definitions of "decree" and "judgment," make it desirable in our opinion that the Bill should be republished, so as to afford an opportunity for the correction of any oversight into which we may have fallen; but the substance of the amendment has now been so fully discussed that we think that, unless some serious objection is brought to light, there can be no objection to the Bill being passed as it stands; and, looking to the urgency of some of its provisions, we think its passing should not be delayed more than two months.

WHITLEY STOKES.
A. J. ARBUTHNOT.
T. H. THORNTON.
G. H. P. EVANS.
F. R. COCKERELL.

No. III.

A Bill to amend the Code of Civil Procedure, the Registration Act, 1877, and the Limitation Act, 1877.

Preamble.

WHEREAS it is expedient to amend the Code of Civil Procedure; It is hereby enacted as follows:—

Repeal of certain portions of Act X. of 1877.

1. The following portions of the said Code shall be repealed (namely):—

In section 4, the words and figures "The Panjáb Courts Act, 1865," and "The Panjáb Appeals Act, 1873:"

In section 5, the third sentence:

In section 51, the words "with the permission of the Court:"

In section 52, from and including the words "and when he makes it out of Court" to the end:

In section 61, the words "bill of exchange or other:"

In section 64, the words "or as soon thereafter as may be practicable:"

In section 80, the words "or to receive the copy of the summons:"

In section 131, the words "in whose plaint, written statement or affidavits reference is made to any document:"

In section 199, the words from and including "and in" to the end:

In section 224, the word "therewith:"

In section 230, paragraphs three and four, the words "unless the Court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction of the decree; and the order of the Court granting any such subsequent application shall be conclusive evidence that due diligence was used to procure such satisfaction. And no such subsequent application shall be granted:"

In section 246, clause (*e*) and the letters (*f*) and (*g*):

In section 259, the words "and keeping the same under attachment until the further order of the Court:

In section 339, paragraph three, the words "to the proper officer of the Court:"

In section 341, the word "third:"

In section 353, the words "within three months from its publication," and "within three months from the publication of the schedule:"

In sections 407 and 408, the words "upon such examination:"

In section 584, clause (*a*), the words "some specified:"

In section 588, clause (*j*), the words "of the same nature with appealable orders made in the course of a suit:" in the same section, clause (*r*), the figures "481:"

In section 638, the figures "261:"

In the second schedule, the words and figures "section 648 (so far as relates to arrest)."

Amendment of section 2.

2. In section 2, for the definitions of "judgment" and "decree," the following shall be substituted (namely):

"decree" means the formal expression of a final adjudication upon any right claimed, or defence set up, in a Court of justice. An order rejecting a plaint under section 53, clause (*d*), or under section 54, clause (*c*), is within this definition. An order on appeal remanding a suit for retrial is not within this definition, nor is any order specified in section 588:

"order" means the formal expression of any decision of a Court of justice, which is not a decree:

"judgment" means the statement given by the Judge of the grounds of a decree or order.

In the same section, to the definition of "signed," the following words shall be added (namely) "it also includes stamped with the name of the person referred to."

Amendment of section 13.

3. In section 13, Explanation I, for the word "confessed," the word "admitted" shall be substituted; and to the same section, the following shall be added (namely):—"*Explanation VII.*—A Court trying a suit under any law for the time being in force regulating the procedure in suits between land-holders and their tenants or agents, shall not be deemed, as regards the title to the immoveable property in respect of which the suit is brought, a Court of competent jurisdiction within the meaning of the first paragraph of this section."

Amendment of section 43.

4. In section 43, paragraph one, for the words "arising out of," the words "which the plaintiff is entitled to make in respect of" shall be substituted: in the same section, paragraph two, for the word "for" (in each of the places where it occurs) the words "in respect of" shall be substituted; and in the same section, paragraph three, for the word "claim," the words "cause of action" shall be substituted.

Amendment of section 44.

5. To section 44, the following words shall be added (namely), "or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents."

Amendment of section 45.

6. In section 45, for paragraph one, the following shall be substituted (namely), "Subject to the rules contained in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly, and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit:"

in the same section, paragraph two, after the word "defendant," the words "or at any subsequent stage of the suit, if the parties agree" shall be inserted.

Amendment of section 50.

7. In section 50, for the word "abode" in each of the places where it occurs, the word "residence" shall be substituted.

Amendment of section 51.

8. To section 51 the following proviso shall be added (namely) :—

"Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed on his behalf by his duly authorized agent."

Amendment of sundry sections.

9. In section 51, 53, 115, 346, 393, and 403, for the word "subscribed" (wherever it occurs), the word "signed" shall be substituted : in sections 115 and 346, for the word "subscribing" the word "signing" shall be substituted ; and in section 403, for the word "subscription" the word "signing" shall be substituted.

Amendment of section 58.

10. In section 58, for the word "filed," the word "produced" shall be substituted.

Amendment of sections 93 and 95.

11. In section 93, after the word "levied," and in section 95, after the word "paid," the words "within a time to be fixed by the Court" shall be inserted.

Amendment of section 108.

12. In section 108, paragraph one, the words and figures "under section 100" shall be omitted ; and in the same section, paragraph two, for the words "it be proved to the satisfaction of the Court that the defendant," the words "he satisfies the Court that the summons was not duly served, or that he" shall be substituted.

Amendment of section 131.

13. In section 131, paragraph one, for the words "such document," the words "any specified document" shall be substituted.

Amendment of section 136.

14. In section 136, after the word "discovery" (in each of the places in which it occurs), the word "production" shall be inserted.

Amendment of section 139.

15. In section 139, for the words "the production of which has been called for under section 138 and which has not been produced," the words "which should have been, but has not been, produced in accordance with the requirements of section 138" shall be substituted.

Amendment of section 207.

16. In section 207, for the word "suit" the word "decree" shall be substituted ; and for the words "or numbers" to the end, the following words shall be substituted (namely), "or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers."

Amendment of sections 211 and 212.

17. In section 211, for the words "land or other," the words "the recovery of possession of immoveable" shall be substituted ; and in section 212, before the word "immoveable," the words "the recovery of possession of" shall be inserted.

Amendment of section 220.

18. To section 220 the following words shall be added (namely) : "Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money."

Amendment of section 229.

19. In section 229, for the words "Native Prince or State in India," the words "Foreign Prince or State" shall be substituted.

Amendment of section 230.

20. In section 230, clause (*b*), for the words "the payment of money or the delivery of property by instalments—the date of the default in paying or delivering the instalment," the following words shall be substituted (namely), "any payment of money, or the delivery of any property, to be made at a specified date—the date of the default in making the payment or delivering the property."

Amendment of sections 235.

21. In section 235, for the words "in manner hereinbefore provided for the verification of plaints," the following words shall be substituted (namely), "by the applicant or, with the permission of the Court, by some other person proved to the satisfaction of the Court, to be acquainted with the facts of the case."

Amendment of sections 236 and 237.

22. In section 236 and 237, for the words "If the application be," the words "Whenever an application is made" shall be substituted.

Amendment of section 244.

23. In section 244, clause (*c*), after the word "execution," the words "discharge or satisfaction" shall be inserted.

Amendment of section 245.

24. In section 245, for the first sentence, the following shall be substituted (namely), "The Court on receiving an application for the execution of a decree shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with, and if they have not been complied with, the Court shall reject the application, or return it for such compliance, or allow it to be amended then and there."

Amendment of section 246.

25. In section 246, for Explanation I, the following shall be substituted (namely) :—

"*Explanation I.*—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court."

In Explanation II, after the words "assignor as," the words "in respect of judgment-debts due" shall be inserted.

Amendment of section 259.

26. For the second paragraph of section 259, the following shall be substituted :—

"When any attachment under this section has remained in force for six months, if the judgment

debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree, and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

Amendment of section 260.

27. In section 260 in the first paragraph, after the words "the performance of," the words "or abstention from" shall be inserted; and for the second paragraph the following paragraph shall be substituted (namely):—

"When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold, and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

Amendment of section 264.

28. In section 264, after the words "the same" the words "and not bound by the decree to relinquish such occupancy" shall be inserted.

Amendment of section 265.

29. To section 265 the following words shall be added (namely), "and according to the rules for the time being in force for the partition, or the separate possession of shares, of such estates."

Amendment of section 268.

30. For the last paragraph of section 268, the following shall be substituted (namely):—

"In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the amount of the portions so withheld is equal to the amount remaining due under the decree.

"A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

"Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor."

Amendment of section 289.

31. To section 289, paragraph one, the following words shall be added, namely: "and a copy thereof shall be fixed up in the Court-house;" and in section 290, for the words "notification has been affixed" the words "copy of the proclamation has been fixed up" shall be substituted.

Amendment of section 291.

32. In section 291, for the first eight words, the following shall be substituted (namely): "The Court may in its discretion adjourn any sale under this chapter, and the officer conducting any such sale;" and in the same section, after the proviso, the following sentence shall be inserted, namely: "whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it.

Amendment of section 294.

33. To section 294 the following paragraph shall be added (namely):—

"When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set-aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder."

Amendment of section 295.

34. In section 295, first proviso, after the words "shall not," the words "as such" shall be inserted.

Amendment of section 305.

35. In section 305, paragraph two, after the word "therein," the words and figures "and notwithstanding anything contained in section 276," shall be inserted; and for the last paragraph, the following shall be substituted (namely):—

"Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court."

Amendment of section 314.

36. In section 314, after the word "property" the words "in execution of a decree" shall be inserted.

Amendment of section 316.

37. To section 316 the following sentence shall be added (namely): "and the title to the property sold shall be deemed to vest in him from the date of such certificate."

Substitution of sections for sections 322 and 323.

38. For sections 322 and 323 the following sections shall be substituted (namely):—

Procedure of Collector when execution of decree so transferred.

"322. Whenever the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector may either proceed as the Court would

proceed under section 305, or, if he has reason to believe that all the judgment-debts of the judgment-debtor can be discharged without a sale of the whole of such property, he may publish a notice in the language of the district, calling upon all persons holding decrees against the judgment-debtor to notify in writing to the Collector, within sixty days from the date of such publication, the existence of such decrees, the respective dates thereof and the sums remaining due thereon, respectively.

"Such notice shall be published by being posted in the court-house of the Court which made the order under section 304, and at such other places (if any) as the Collector thinks fit.

Powers of Collector in such cases.

"323. The Collector shall ascertain the sums remaining due on such decrees respectively, and may then (notwithstanding any order under section 304, but subject to such rules as may from time to time be made in this behalf by the Chief Controlling Revenue Authority) raise the amount necessary to discharge each of such sums, with interest thereon according to the decree under which it is due, or, if the decree makes no provision as to interest, then with interest (if any) at such rate as he thinks fit—

"(*a*) by letting in perpetuity, or for a term, on payment of a premium equivalent to such amount, the whole or any part of the property of which the sale has been ordered : or

"(*b*) by mortgaging the whole or any part of such property : or

"(*c*) by selling part of such property : or

"(*d*) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale : or

"(*e*) partly by one of the modes mentioned in clauses (*b*), (*c*) and (*d*), and partly by another or others of such modes.

"For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

"So long as any letting or management under clause (*d*) or clause (*e*) continues, the judgment-debtor and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property let or managed or any part thereof."

Amendment of section 331.

39. In section 331, paragraph two, for the words and figures "the Specific Relief Act, 1877, section 9," the word and figure "Chapter V" shall be substituted; and to the same section the following paragraph shall be added (namely), "Every such order shall have the same force as a decree and shall be subject to the same conditions as to appeal or otherwise."

Amendment of section 332.

40. In section 332, first paragraph, for the word "defendant," the word "judgment-debtor" shall be substituted; and for the other paragraphs, the following shall be substituted (namely), "If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute, and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

"In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

"The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but subject to the result of such suit, if any, the order shall be final."

Amendment of section 333.

41. For section 333 the following shall be substituted (namely) "Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made."

Amendment of section 335.

42. In section 335, for the first paragraph, the following shall be substituted (namely) :—

"If the purchaser of any such property is resisted or obstructed by any person, other than the judgment-debtor, claiming in good faith a right to the present possession thereof, or, if in delivering possession thereof any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall enquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit;"

and in the second paragraph of the same section, for the word "conclusive," the word "final" shall be substituted.

Amendment of section 339.

43. In section 339, paragraph four, after the word "made," the words "to the proper officer of the Court" shall be inserted; and to the same paragraph, the following words shall be added (namely), "and the subsequent payments (if any) shall be made to the officer in charge of the jail."

Amendment of section 349.

44. To section 349 the following words shall be added (namely), "or release him on his furnishing sufficient security that he will appear when called upon."

Amendment of section 357.

45. In section 357, line one, for the figures "355," the figures and word "351 or 355" shall be substituted.

Amendment of section 360.

46. To section 360 the following paragraph shall be added (namely) "Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein."

Amendment of sections 361, 362, 363, 365 and 368.

47. In sections 361, 362, 363, 365 and 368, for the words "cause of action" wherever they occur, the words "right to sue" shall be substituted.

48. In section 364, paragraph one, and section 366, paragraph one, after the word "If," the words "within the time limited by law" shall be inserted; and in the latter section, paragraph one, for the words "Court may," the words "Court shall, on the application of the defendant," shall be substituted.

Amendment of sections 364 and 366.

49. In section 373, paragraph one, for the words "for the part," the words "in respect of the part" shall be substituted; and to paragraph two, the words "or in respect of the same part" shall be added.

Amendment of section 373.

50. In section 377, for the first seven words, the following shall be substituted (namely), "Notice in writing of the deposit shall be given through the Court."

Amendment of section 377.

51. In sections 384, 477 and 483, after the word "affidavit," the words "or otherwise" shall be inserted.

Amendment of sections 384, 477 and 483.

52. In section 406, for the word "shall," the words "may if he thinks fit" shall be substituted.

Amendment of section 406.

53. In section 412, after the word "dispaupered," the words and figures "or if the suit is dismissed under section 97 or 98" shall be inserted.

Amendment of section 412.

54. In section 413, for the word "Refusal," the words and figures "An order of refusal made under section 409" shall be substituted.

Amendment of [section 413.

55. In section 424, after the words "against a public officer," the words "in respect of an act purporting to be done by him in his official capacity" shall be inserted; and in sections 428 and 429, after the words "public officer," the words "in respect of such act as aforesaid" shall be inserted.

Amendment of sections 424, 428 and 429.

56. In section 437, for the first sentence, the following shall be substituted (namely), "In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit."

Amendment of section 437.

57. In section 456, for the words "in the name of the minor," the words "in the name and on behalf of the minor or by the plaintiff" shall be substituted; and to the same section the following paragraph shall be added (namely): "Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, provided that he has no interest adverse to that of the minor."

Amendment of section 456.

58. In section 481, after the word "decree," the following words shall be inserted (namely), "or if, pending the suit, he becomes able to give security for his appearance as aforesaid, until he gives such security."

Amendment of section 481.

59. In section 483, after the words "portion of his property," the words "within the jurisdiction" shall be inserted.

Amendment of section 483.

60. In section 484, after the word "suit," the words "or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him" shall be inserted.

Amendment of section 484.

61. In section 497, Clause one, for the words "the injunction," the words "an injunction which it has granted" shall be substituted.

Amendment of section 497.

62. In section 523, paragraph three, for the words "any of," the the word "all" shall be substituted.

Amendment of section 523.

63. In section 544, for the words "decree and," the words "decree, and thereupon" shall be substituted.

Amendment of section 544.

64. For section 555 the following shall be substituted (namely):—

Amendment of section 555.

"555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply."

Right to begin.

65. In section 560, for the words "it be proved that the respondent," the words "he satisfies the Court that the notice was not duly served, or that he" shall be substituted.

Amendment of section 560.

66. In section 561, after the word "notice," the words "in writing" shall be inserted.

Amendment of section 561.

67. In section 566, paragraph two, for the word "issue," the word "issues" shall be substituted.

Amendment of section 566.

68. For the first paragraph of section 582, the following shall be substituted (namely): "The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under chapter V."

Amendment of section 582.

69. In section 584, clause (*c*), after the word "may," the word "possibly" shall be inserted.

Amendment of section 584.

70. In section 588, for clause (*e*), the following shall be substituted (namely): " (*e*) orders returning plaints under section 53, clause (*d*), or section 54, clause (*b*), or section 57 :"

Amendment of section 588.

after clause (*f*), the following clause shall be inserted (namely) :—

" (*ff*) orders rejecting applications under section 108 for an order to set-aside a decree *ex parte* ;"

to clause (*h*) the following words shall be added (namely), " and orders under section 170 for the sale of attached property :"

in clause (*j*) for the word and figures " section 244," the following words and figures shall be substituted (namely), " sections 230, 231, 232, 234 and 244 :"

to clause (*m*) the following words shall be added (namely), " and orders under section 313 refusing an application to set-aside a sale of immoveable property : "

And to section 588 the following words shall be added (namely) :—

" except in the case of appeals against orders under sections 230, 231, 232, 234 and 244, in which case a second appeal shall lie, and shall, in the case of appeals now pending, be deemed to have lain, on any of the grounds mentioned in section 584 and on no other grounds.

" The provisions contained in chapter XLI shall apply, so far as may be, to all second appeals under this section, and to the execution of orders passed therein. But save as aforesaid, no order mentioned in this section shall be deemed to be a decree within the meaning of that chapter."

71. In section 638, for the figures and word " 16 and 17," the figures and word " 16, 17 and 19 " shall be substituted: and in the last paragraph after the word " any," the words " Judge of a " shall be inserted; and the word " its " shall be omitted.

Amendment of section 638.

72. In section 642, for the second paragraph, the following shall be substituted (namely) :— " And except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtárs, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under this Code while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal."

Amendment of section 642.

73. In section 648, for the first forty-two words, the following shall be substituted (namely), " Where any Court desires that any person shall be arrested, or any property shall be attached, under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and :"

Amendment of section 648.

and to the same section, the following words shall be added (namely), " unless the person arrested furnish sufficient security for his appearance before that Court, or (where the case is one under chapter XXXIV.) for satisfying any decree that may be passed against him by such Court in either of which cases the Court making the arrest shall release him."

74. To section 649 the following paragraph shall be added (namely) :—

Amendment of section 649.

" In the same chapter, the expression ' Court which passed a decree' or words to that effect, shall, unless there be something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit."

75. After section 650 the following shall be inserted (namely) :—

Service of foreign summonses.

" 650A. Summonses issued by any Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts ; provided that the Courts issuing such summonses have been established by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts."

76. In section 652, after the words " connected with," the words " its own procedure or" shall be inserted.

Amendment of section 652.

77. In the first schedule, column third, opposite " XI of 1865," for the figures and word " 11, paragraph 2," the figures and words " 11, the last nineteen words of section 13, sections 19," shall be substituted ; and opposite " V. of 1866," after the word " inclusive," the words " and the schedule" shall be inserted.

Amendment of schedule I.

78. In the second schedule—

Amendment of schedule II.

for the figures " 230," the figures " 223" shall be substituted :

before the words and figures " Chapter XXI.," the words and figures " Chapter XX, section 360 —Power to invest certain Courts with insolvency-jurisdiction" shall be inserted :

after the words and figures "Chapter XXXIV— Of arrest and attachment before judgment," the words and figures " except as regards immoveable property, Chapter XXXVI—Appointment of receivers" shall be inserted :

for the figures "522," the figures "526" shall be substituted.

Amendment of schedule IV.

79. In the fourth schedule, in form No. 172, for the word "seven" in each of the places where it occurs, the word "ten" shall be substituted.

Interpretation-clause.

80. In the preceding sections of this Act, the words "section" and "schedule" respectively mean section of, and schedule annexed to the said Code.

And whereas it is also expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

Amendment of Act III. of 1877, section 35.

81. In section 35 of the same Act, after the words "person appears," the words "to the registering officer" shall be inserted; and after the words "refuse to register the document," the words "as to the person so denying, appearing or dead" shall be inserted.

Amendment of section 51.

82. In section 51 of the same Act, for the figures "87," the figures "89" shall be substituted.

Amendment of section 83.

83. In section 83 of the same Act, for the words "Subordinate Magistrate of the first," the words "Magistrate of the second" shall be substituted.

Addition to section 89.

84. To section 89 of the same Act, the following clause shall be added (namely):—

"Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1."

And whereas it is also expedient to amend the Indian Limitation Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

Amendment of Act XV. of 1877, schedule II.

85. In the second schedule to the said Indian Limitation Act, 1877, after clause 171, the following clauses shall be inserted (namely):—

"171A.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant.	Sixty days ...	The date of the defendant's death.
171 B.—Under section 371 of the same Code, for an order to set-aside an order for abatement or dismissal.	Ditto ...	The date of the order for abatement or dismissal."

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

The following preliminary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March 1879 :—

WE, 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.

From the Hon'ble H. S. Cunningham, dated 7th 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. 5).
„ 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).

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 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.

Preamble.

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

I.—Preliminary.

Short title.

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

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

Repeal of enactments.

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

Interpretation-clause.

3. In this Act—

"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 raiyatwári 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 or the particular channel in which the formation of 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.

Right to land formed on shore of sea or lake.

4. Where, from natural causes, land forms gradually on the shore of 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 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.

Right to islands where channel is not fordable.

5. Where an island is formed, from natural causes, in a river, the sea or a lake, either by accumulation of material or by recession of the 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.

Right to other islands in sea or lake.

6. If, where an island is formed as aforesaid in the sea or a lake the channels between it and either shore are fordable 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.

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

7. 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, and the Government 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.

Islands formed by division of rivers.

8. If a river freshly divides and surrounds, or by changing its course, cuts of lands belonging to the owner of the bank, such owner is entitled to the lands so surrounded or cut off.

III.—Abandoned River-beds.

Right to abandoned river-beds.

9. Where a river suddenly abandons the bed 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.

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

10. The Local Government may, from time to 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.

Savings.

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.

Local usage in Panjáb.

12. In the territories administered by the Lieutenant-Governor of the Panjáb, nothing herein 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.

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

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.

THE SCHEDULE.

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

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

(*b*). Bengal Regulation.

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

(*c*). Bengal Act.

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

(*d*). Rules.

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

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

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