



Bombay Government Gazette.

Published by Authority.

THURSDAY, 10TH OCTOBER 1878.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

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 2nd October, 1878, and was referred to a Select Committee:—

Bill No. 7 of 1878.

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

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

I.—Preliminary.

Short title.

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

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

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annexed shall be repealed to the extent specified in the third column. References to the Regulation and Rules so repealed, in enactments passed subsequently thereto, shall be read as if made to this Act.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

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

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

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

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

II.—Alluvion.

4. Where, from natural causes, land forms

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

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

III.—Islands.

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

Right to islands where channel is not fordable.

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

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

Right to other islands.

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

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

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

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

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

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

Islands formed by division of rivers.

IV.—Abandoned River-beds.

8. If a river, whether navigable or not, suddenly forms a new bed, abandoning its ancient bed, the ancient bed is supposed to be divided by what was the thread of the stream immediately before the abandonment, and the owners of the ancient banks are severally

Right to abandoned river-beds.

entitled to the division opposite their banks in proportion to the frontage which they respectively have on the ancient bed :

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

V.—Miscellaneous.

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

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

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

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

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

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

10. Nothing herein contained shall—

Savings.

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

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

(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 beds or channels of navigable rivers; or

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

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

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

Local usage.

Burden of proof.

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

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

THE SCHEDULE.

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

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

(b). BENGAL REGULATION.

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

(c). BENGAL ACT.

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

(d). RULES.

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

STATEMENT OF OBJECTS AND REASONS.

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

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

The Bill attempts to supply these defects as follows:

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

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

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

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

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

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

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

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

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

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

WHITLEY STOKES.

*Simla ;
September 6th, 1878. }*

D. FITZPATRICK,

Secy. to the Govt. of India, Legislative Department.

18-10-78
 J.S.P.

[Published with the "Bombay Government Gazette" on the 17th October 1878.]

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

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

I.—Preliminary.

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

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

Commencement. And it shall come into force at once.

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

Interpretation clause. 3. In this Act—

"island" includes 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

VI.—28 a

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

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

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

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

II.—Alluvion.

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

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

III.—Islands.

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

Right to islands where channel is not fordable.

by recession of the river, sea or lake, if, when the island is first formed, the channel between the bank or shore and such island is not fordable at any point, the Crown is entitled to such island :

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

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

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

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

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

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

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

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

IV.—Abandoned River-beds.

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

Provided that when the ancient bed is proved to have been immediately before the abandon-

ment, the property of the Crown or of a private person, it shall continue to be the property of the Crown or of such person, as the case may be.

V.—Miscellaneous.

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

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

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

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

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

10. Nothing herein contained shall—

(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 beds or channels of navigable rivers ; or

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

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

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

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

THE SCHEDULE.

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

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

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

The Bill attempts to supply these defects as follows:—

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

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

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

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

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

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

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

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

Simla ;
September 6th, 1873. }

WHITLEY STOKES.

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

25-10-78

JKT

[Published with the " Bombay Government Gazette " on the 24th October 1878.]

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VI.—28 b

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

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

II.—Alluvion.

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

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

III.—Islands.

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

Right to islands where channel is not fordable.

by recession of the river, sea or lake, if, when the island is first formed, the channel between the bank or shore and such island is not fordable at any point, the Crown is entitled to such island :

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

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

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

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

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

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

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

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

IV.—Abandoned River-beds.

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

Provided that when the ancient bed is proved to have been immediately before the abandon-

ment, the property of the Crown or of a private person, it shall continue to be the property of the Crown or of such person, as the case may be.

V.—Miscellaneous.

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

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

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

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

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

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

10. Nothing herein contained shall—

Savings.

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

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

(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 beds or channels of navigable rivers ; or

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

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

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

Local usage.

Burden of proof.

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

THE SCHEDULE.

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

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

(b). BENGAL REGULATION.

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

(c). BENGAL ACT.

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

(d). RULES.

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

STATEMENT OF OBJECTS AND REASONS.

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

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

The Bill attempts to supply these defects as follows:—

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

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

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

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

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

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

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

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

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

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

Simla ;
September 6th, 1878. }

WHITLEY STOKES.

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