

The Bengal Alluvion and Diluvion Regulation, 1825

UTTAR PRADESH

India

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Act 11 of 1825

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The Bengal Alluvion and Diluvion Regulation, 1825 (Bengal Regulation No. 11 of 1825) Short title given by Act V of 1897, Section 3 (c) of the Oudh Laws Act, 1876 (Act XVIII of 1876) infra, declared the Reg. to be one of the Laws to be administered by the Court in Oudh. [Passed by the Governor-General in Council on the 26th May, 1825] A Regulation for declaring the rules to be observed in determining Claims to Lands gained by Alluvion, or by Dereliction of a River, or the Sea. Extension of Application - The Act was enforced in the merged States of Rampur on December 30, 1949, by Act No. XII of 1950 and in the States of Banares and Tehri Garhwal by Benares (Application of Laws) Order, 1949 and Tehri Garhwal (Application of Laws) Order, 1949 from November 30, 1949.

1. Preamble.

- In consequence of the frequent changes which take place in the channel of the principal rivers that intersect the [territories] [Substituted by the A.O. 1950 for 'Provinces'.] immediately subject to the Presidency of Fort William, and the shifting of the sands which lie in the beds of those rivers, char or small island are often thrown up by the alluvion in the midst of the stream, or near one of the banks, and large portions of land are carried away by an encroachment of the river on one side, whilst accessions of land are at the same time, or in subsequent years, gained by dereliction of the water on the opposite side; similar instance of alluvion, encroachment and dereliction also sometimes occur on the sea-coast which borders the southern and south-eastern limits of Bengal. The lands gained from the rivers or sea by the means above-mentioned are a frequent source of contention and affray, and, although the law and custom of the country have established rules applicable to such cases, these rules not being generally known, the Courts of Justice have sometimes found it difficult to determine the rights of litigant parties claiming chars or other lands gained in the manner above described. The Court of Sadar Diwani Adalat, with a view to ascertain the legal provisions of the Muhammedan and Hindu laws on this subject, called for reports from their law-officers of each persuasion, and on consideration of the reports furnished by the law officers in consequence, as well as of the decisions which have been passed by the Court of Sadar Diwani Adalat in cases brought

before them in appeal which involved the rights of claimants to lands gained by alluvion or by dereliction of rivers or the sea, the Governor-General in Council has deemed it proper to enact the following rules for the general information of individuals as well as for the guidance of the Court of Judicature, to be in force, as soon as promulgated, throughout the whole of the [territories] [Substituted by AO. 1950 for 'Provinces'.] subject to the Presidency of Fort William.

2. Claims and disputes as to alluvial lands to be decided by usage when clearly recognised and established.

- Whenever any clear and definite usage of shikast paiwast, respecting the disjunction and junction of land by the encroachment or recess of a river, may have been immediately established, for determining the rights of the proprietors of two or more continuous estates divided by a river (such as that the main channel of the river dividing the estates shall be the constant boundary between them, whatever changes may take place in the course of the river, by encroachment on one side the accession on the other) the usage shall govern the decision of all claims and disputes relative to alluvial land between the parties whose estates may be liable to such usage.

3. Where no usage established, claims how decided.

- Where there may be no local usage of the nature referred to in the preceding section, the general rules declared in the following section shall be applied to the determination of all claims and disputes relative to lands gained by alluvion or by dereliction [either] [These words were repealed in Oudh, see Oudh Laws Act, 1876, Schedule II.] of a river [or the sea] [These words were repealed in Oudh, see Oudh Laws Act, 1876, Schedule II.].

4. Land gained by gradual accession from recess of river or sea

- First. - When land may be gained by gradual accession, [whether] [These words were repealed in Oudh, see Oudh Laws Act, 1876, Schedule II.] from the recess of a river [or of the sea] [These words were repealed in Oudh, see Oudh Laws Act, 1876, Schedule II.], it shall be considered an increment to the tenure of the person to whose land or estate is thus annexed, whether such land or estate be held immediately from [Government] [Substituted by A.O. 1950 for 'the crown' which had been Substituted by A.O. 1937 for 'Government'.] by a zamindar or other superior landholder, or as a subordinate tenure by any description of under-tenure whatever: Extents of interests in increment of person in possession. - Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it from the payment to the [Government] [Substituted by A.O. 1950 for 'the Crown' which had been substituted by the A.O. 1937 for 'Government'.] of any assessment for the public revenue to which it may be liable under [the provisions of Regulation II, 1819, or of any other Regulation in force] [So far as it related to the province of Agra, Bengal Reg. II of 1819 was repealed by N. W.P. Land Revenue Act, 1873 (Act XIX of 1873), repealed by U.P. Act III of 1901.]: Nor if annexed to a subordinate tenure

held under a superior landholder shall the undertenant, whether a khud kast-raiyat, holding a maurusi istinvari tenure (Sic) fixed rate of rent per bigha, or any other description of under tenant liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable. Second. - When river by sudden change of course intersects estate. - The above rule shall not be considered applicable to cases in which a river, by a sudden change of its course, may break through and intersect an estate without any gradual encroachment, or may by the violence of stream separate a considerable piece of land from one estate, and join it to another estate, without destroying the identity, and preventing the recognition, of the land so removed. In such cases the land, on being clearly recognised, shall remain the property of its original owner. Third. - Chars thrown up in navigable river. - When a char or island may be thrown up in a large navigable river (the bed of which is not the property of an individual) [or in the sea] [So far as it related to the province of Agra, Bengal Reg. II of 1819 was repealed by N.W.P. Land Revenue Act, 1873 (Act XIX of 1873), repealed by U.P. Act III of 1901.], and the channel of the river [or sea] [So far as it related to the province of Agra, Bengal Reg. II of 1819 was repealed by N.W.P. Land Revenue Act, 1873 (Act XIX of 1873), repealed by U.P. Act III of 1901.] between such island and the shore may not be fordable, it shall, according to established usage, be at the disposal of [Government] [Substituted by the A.O. 1950 for 'the Crown' which had been Substituted by the A.O. 1937 for 'Government']. Property therein when channel fordable. - But, if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land, tenure or tenures of the person or persons whose estate or estates may be most contiguous to it, subject to the several provisions specified in the first clause of this section with respect to increment of land by gradual accession. Fourth. - Chars, etc., thrown up in small shallow rivers. - In small and shallow rivers, the beds of which with the jalkar right of fishery, may have been hereto fore recognized as the property of individuals, any sand bank or char may be thrown up shall, as hitherto, belong to the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section. Fifth. - Disputes relative to lands gained by alluvion or by dereliction not provided for by Regulation. - In all other cases, namely, in all cases of claims and disputes respecting land gained by alluvion, or by dereliction of river [or the sea] [So far as it related to the province of Agra, Bengal Reg. II of 1819 was repealed by N.W.P. Land Revenue Act, 1873 (Act XIX of 1873), repealed by U.P. Act III of 1901.], which are not specifically provided for by the rules contained in this Regulation, the Courts of Justice, in deciding upon such claims and disputes, shall be guided by the best evidence they may be able to obtain or established local usage if there be any applicable to the case, or, if not, by general principles of equity and justice.

5. Encroachment on beds of navigable rivers, and other obstructions.

- Nothing in this regulation shall be construed to justify any encroachments by individuals on the bed or channels of navigable rivers, or to prevent [Zila * * *] [The words 'and city repealed', by Act XVI of 1874.] [Magistrates] [Substituted by Act I of 1903.] or any other officers, of [Government] [Substituted by the A.O. 1950 for 'the Crown' which had been Substituted by the A.O. 1937 for 'Government'.] who may be duly empowered for that purpose, from removing obstacles which appear to interfere with the safe and customary navigation of such rivers, or which shall in any respects obstruct the passage of boats by tracking on the banks of such rivers, or otherwise.