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PROCEEDINGS

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LEGISLATIVE COUNCIL OF INDIA,

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1858.

in Oude, the commencement of the dry season was all that was awaited. These operations, he hoped, would, in one sense, be very different from those which occurred last year. He hoped that we had seen the last of our great and bloody struggles in the field. But a great Military demonstration was very obviously necessary in Oude—a demonstration which would have probably as much a political as a military character. For that, and for many other reasons, it was quite as requisite still that the Head of the Supreme Government should be on the spot, vested with the powers of the Governor General in Council which Act IV of 1858 had given him temporarily, as it was when that Act was passed; and it was necessary therefore for the Council, unless it wished to go backwards, to extend the operation of the Act.

With these observations, he moved the first reading of the Bill. It was very short, as also was the Statement of Objects and Reasons which he had annexed to it; and he suggested that both might be read in full by the Clerk at the table.

The Statement of Objects and Reasons and the Bill were read by the Clerk.

MR. GRANT moved that the Standing Orders be suspended, in order that he might carry the Bill through its remaining stages forthwith.

SIR JAMES OUTRAM seconded the Motion, which was then carried.

MR. GRANT moved that the Bill be now read a second time.

The Motion was carried, and the Bill read a second time.

MR. GRANT moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee without amendment, and was reported.

MR. GRANT moved that the Bill be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. RICKETTS was requested to take the Bill to the President in Council, in order that it may be transmitted to the Governor General for his assent.

The Council adjourned.

Mr. Grant

Saturday, July 24, 1858.

PRESENT:

The Hon'ble the Chief Justice, Vice-President, in the Chair.

Hon. Major Genl. Sir Jas. Outram,	E. Currie, Esq., Hon. Sir A. W. Buller,
Hon. H. Ricketts,	H. B. Harington, Esq.,
Hon. B. Peacock,	and
P. W. LeGeyt, Esq.,	H. Forbes, Esq.

PROCEEDINGS IN LUNACY IN THE SUPREME COURTS.

MR. CURRIE presented the Report of the Select Committee on the Bill "to regulate proceedings in Lunacy in Her Majesty's Courts of Judicature."

INSOLVENT DEBTORS (MOFUSSIL).

MR. LEGEYT presented the Report of the Select Committee on the subject of a Law for the relief of Insolvent Debtors in the Mofussil.

MADRAS MARINE POLICE.

MR. FORBES moved that the Bill "for the maintenance of a Police Force for the Port of Madras" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

INSTITUTION OF SUITS AND APPEALS (NORTH-WESTERN PROVINCES).

MR. HARINGTON moved that the Bill "for the relief of persons who, in consequence of the recent disturbances, may have been prevented from instituting or prosecuting suits or appeals in the Courts of the North-Western Provinces within the period allowed by Law" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

ESTATE OF THE LATE NABOB OF THE CARNATIC.

MR. PEACOCK moved that the Council resolve itself into a Committee on the Bill "to provide for the administration of the estate and for the payment of the debts of the late Nabob of the Carnatic;" and that the Committee be instructed to consider the

Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and was reported.

SETTLEMENT OF ALLUVIAL LANDS (BENGAL).

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I provided as follows:—

"When land is added by alluvial accession to an estate paying Revenue to Government, if it be so agreed on between the Revenue Authorities and the proprietor or proprietors, the Revenue assessed upon the alluvial land may be added to the jumma of the original estate; and in such case a new engagement shall be executed for the payment of the aggregate amount, and that amount shall be substituted in the Collector's rent-roll for the former jumma of the original estate. If the proprietor or proprietors object to such an arrangement, or if the Revenue Authorities are of opinion that a settlement of the alluvial land cannot properly be made for the same term as the existing settlement of the original estate, the alluvial land shall be assessed and settled as a separate estate with a separate jumma, and shall thenceforward be regarded and treated as in all respects separate from, and independent of, the original estate."

MR. PEACOCK said, when this Bill was before the Council on the motion for the second reading, he took the opportunity of mentioning that he should not consider himself bound to the principle upon which it was prepared. It appeared to him that Section I altered the rights of private persons as they at present existed. By Regulation XI. 1825, Section IV, Clause 1, it was enacted as follows:—

"When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from Government by a zemindar or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever."

Regulation II. 1819 enacted that land gained by alluvion should be liable to assessment. Regulation XI. 1825 declared, for the first time, what were to be the rights of claimants to land gained by alluvion. It was merely a declaratory Act. Prior to its being passed, the Sudder Court had decided that all alluvion became a part of, and an increment to, the estate to which it accrued. Now if alluvion became a part of, and an increment to, the estate to which it accrued, he apprehended that the owner of the original estate had the same rights and interests in it as he had in the original estate. This Regulation declared that the increment "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 it reserved the rights of all under-tenants. When the Regulation said that the owner of the original estate was to have no right of property or permanent interest in the alluvion beyond that possessed by him in the original estate, it evidently implied that he was to have a right of property and an interest in it to that extent. As he (Mr. Peacock) understood the matter, the Courts had decided that, when an alluvion took place, it became a part of the original estate. Becoming a part of the original estate, the Regulation provided that it should be assessed with Government Revenue; and the question was—how was it to be assessed? In 1833, the Board of Revenue, by a Circular Order, declared:

"That all proprietors have a right to admission to terms of permanent engagement whenever they may think fit to demand it, unless indeed the alluvion has been let out in farm for a specified term, in consequence of their recusance."

In 1838, the Board issued another Circular Order, in which they said:—

"If the zemindar agrees to the terms of settlement, the jumma of the chur shall be added to, and included in, the original *tahood*, and the parent estate with its increment shall

be considered a single mehal, charged with the aggregate increased jumma. But on the other hand, should the zemindar either refuse to accede to the terms of the settlement, or object to include it in his *tahood*, the land is to be let in farm for a period not exceeding ten years, the proprietor receiving malikana at the usual rate. Should, however, the parent estate be brought to sale for arrear of Revenue, the right of property in the churs will necessarily pass to the auction-purchaser."

By the terms of that Circular Order, the proprietor of an estate, if the estate was permanently settled, was entitled to have the alluvion, which became an increment to his estate, settled as a permanent tenure also. He had a right to have a fair assessment put upon the alluvion, to have the amount of that assessment added to the jumma of the original estate, and to hold both lands as one estate, charged with one consolidated jumma. But in 1841, the Board of Revenue issued another Circular Order, by which it was declared:—

"1st.—That the Commissioner of Revenue shall be the party to determine whether the settlement of a chur shall be permanent or temporary. 2ndly.—That if the party entitled to settlement object to the consolidation of the jumma of the chur with that of the parent estate, the increment shall be settled as a distinct mehal, and be henceforth held separately liable to the jumma assessed upon it."

By this Circular Order, the owner of a permanently settled estate to which alluvion had become annexed was entitled to have the alluvion settled as part of the original estate, and on a permanent footing, only in the event of the Commissioner of Revenue consenting to such a settlement. On the other hand, if the proprietor of the original estate objected to take the alluvion as part of that estate, the alluvion would be settled as a separate tenure, and would be separately liable for its own jumma. In 1857, the Board of Revenue applied to the Government of Bengal to rescind the Circular Order of 1841, and suggested that the proper mode of settling alluvial lands was that laid down in the Circular Order of 1838, to which, accordingly, they proposed that the Revenue Authorities should be permitted to revert. This Bill had been introduced in consequence of that recommendation, and of a decision passed by the Sudder Court. The Council would recollect that, as originally drawn, it appeared in a very different form. It was opposed on the motion for the second reading, and was referred to a Select Committee with instructions to submit a preliminary Report suggesting any alterations in it which they might deem expedient previously to its publication. The Committee recommended certain alterations, but left the Bill very much as before with regard to the rights of under-tenants in alluvial lands. The Bill had since been further amended by them, and it now provided for those rights; but he still considered that it was objectionable. The first objection he had to it was that it still followed the principle of the Circular Order of 1841. Section I did not allow the owner of a permanently settled estate, when it was increased by alluvion, to require the Revenue Authorities to settle it as part of the original estate, if he pleased to add the amount assessed upon it to the jumma of the original estate, and to treat both estates as one tenure. It required the assent of the Revenue Authorities to the settlement of alluvion as a permanently settled estate; and if the Council passed it as it stood, it would deprive proprietors of permanently settled estates of the right which, as he understood the law, they now possessed to insist upon such settlements being made independently of the assent of the Revenue Authorities. By Regulation VII. 1822, which provided that alluvion should be assessed to the Government Revenue, lands, exceeding one hundred Biggahs, held upon invalid tenures were also liable to assessment. Such lands, he apprehended, would be settled permanently if within the limits of a permanently settled estate. But however that might be, Regulation XI. 1825, enacted that an alluvion should be considered a part of the estate to which it became annexed, and that the Zemindar or under-tenant should have in it no right or interest beyond that possessed by him in the original estate; in other words, that he should have in it the same right and interest that he had in the original estate; if, therefore, the original estate were permanently settled, he thought that the proprietor was entitled to have the alluvion settled permanently if he pleased. The Honorable Member for Bengal had communicated with Mr. Trevor, one of the Judges of the Sudder Court on this

subject, and Mr. Trevor had sent a reply, in which he stated the same objection against the Bill which he (Mr. Peacock) was taking to it. He said:—

"The two objections to the Bill as I have seen it are, first, that though you in Section I. in accordance with Regulation XI. of 1825 acknowledge the ownership of the chur to be in the proprietor of the estate to which it accreted, you do not consider him entitled, if he so wishes, to have the chur incorporated with the estate: but you leave it with the Revenue authorities to determine whether the new property which belongs to a man by reason of its having become annexed to other property of his shall be held under the same engagement with the old property or not. Now as laws of settlement are subordinate to and acknowledge rights of property, it seems to me that this should not be, but that the wishes of the owner to have the chur incorporated with the parent estate should entitle him to have that done."

It appeared to him (Mr. Peacock) that, when the Legislative Council was called upon to lay down such a rule as was contained in Section I of this Bill, it ought to consider whether or not it was a rule which affected private rights. An alluvion might be of very great importance to the estate which it adjoined. The value of the estate might greatly depend on its having a frontage on the river; but if an alluvion formed between it and the river, were to be treated as a separate estate, the original estate might be entirely cut off from its river-frontage, and its value consequently be materially diminished. He could see no necessity for the rule laid down in Section I, by which the Revenue Authorities might refuse to settle alluvion permanently, though annexed to a permanently settled estate. The Board of Revenue saw no necessity for it. On the contrary, they considered it right, and had recommended that the Revenue Authorities should be permitted to return to the original rule of 1838, which gave the owner of a permanently settled estate the right of having land added to it by alluvion settled on the same terms as the original estate, and as part of such estate, without the consent of the Revenue Authorities. The Bill itself shewed no very good grounds for altering this private right. It purported to be designed for the removal, not of doubts as to the existence of the right, but of "doubts respecting the course proper to be followed in the settlement of land added by alluvial accession to estates paying revenue to Government." To him, it appeared that, unless some very good reason was shewn to the contrary, which in his opinion there was not, the course proper to be followed was to respect the private rights, which individuals interested in original estates now possessed by law, of insisting on alluvial accretions being incorporated with their estates if they pleased, and not to alter that right by making such incorporation subject to the consent of the Revenue Authorities.

He should move as an amendment that the words "it be so agreed on between the Revenue Authorities and" be omitted from the Section, in order that the following words, "is or are desirous that the alluvial land shall be assessed as part of the original estate," might be introduced after the word "proprietors." He had other objections to the Section, to which he would presently advert; but he thought it better that this point should be separately considered first. He would not pledge himself to support the Bill on the motion for the third reading, even if the amendment which he had proposed were carried; but the amendment would remove much of the objection which he now felt to the Bill, and, as he might be out-voted in his opposition to the motion for the third reading, he desired to avail himself of this opportunity of rendering it as little open to objection as possible.

MR. RICKETTS said, before remarking on the objections which had been brought forward by the Honorable and learned Member, he desired to remove an impression which apparently existed in the Council, and certainly prevailed out of doors, that the resumption and settlement of alluvial lands was still going on in Bengal. This was not the case. Resumption, and consequently settlement of such lands had been stopped in Bengal since the enactment of Act IX of 1847. Previous to the passing of that Act, it was usual for the Revenue Authorities, whenever they heard of alluvion having annexed itself to an estate, to depute persons to measure it, and, having measured it, to institute a suit for its resumption, and then to settle it. But that system had been found to be mischievous in many

ways. It led to all sorts of abuses. If, for instance, a man had a spite against another, he accused him of being guilty of a chur; and corruption, perjury, forgery, and chicanéry, followed as a matter of course. Act IX of 1847 was passed for the prevention of these abuses. It enacted that all investigations then pending regarding the liability to assessment of alluvial lands, should be discontinued forthwith, and that no suits for the resumption of such lands in any district should be instituted until ten years after the approval by Government of the revenue survey. It was necessary he should explain what had been the effect of that Law. For many years past, the whole of the Bengal Presidency had been under survey. This survey had not been completed yet. However much alluvion might now be found annexed to a zemindary, it must, as a matter of course, be measured as part of the original estate. In the Eastern parts of Bengal, there might be a case in which an estate originally consisting of perhaps only one thousand acres, now comprised ten thousand acres. All this increase must now be measured as part of the original estate; but ten years after the approval of the survey now in hand, should another survey take place, then, any land which might be found in excess of the land now measured, would be liable to assessment. There could be no resumption suit instituted now, and therefore there could be no settlement made now; and as the present survey could not be completed for four or five years, there would not be a second survey for some years to come. It appeared to him that this Bill, if passed, would probably be a dead letter for at least fifteen years to come.

He would now come to the objections urged by the Honorable and learned Member opposite (Mr. Peacock) against the Section.

It was quite true that the Revenue Authorities held one opinion as to the meaning of the Law in 1838, and another in 1841. As there was a difference of opinion then, so was there a difference of opinion now; and he would leave it to those learned Members who were better versed in construing law to decide which of these opinions was the correct one. He would apply himself to consider what the practical effect of altering the Section as the Honorable and learned Mover of the amendment desired, would be. These alluvial lands, when first surveyed and settled, were oftentimes nearly entirely waste. There might be one or two squatters; but with such exception, the land was generally entirely waste. The land being entirely waste, there were no legitimate assets on which to assess revenue; there were no rents. But the Revenue Authorities could not give up tens of thousands of acres of alluvion in perpetuity to the zemindars to whose estates the alluvion had attached itself without any revenue at all; and the only alternative would be to settle them subject to a *russuddee* assessment, which, being interpreted, meant an assessment progressively increasing. That must be, at best, mere guess work. But no one could well guess the suitable progressive assessment which should be fixed on many square miles; and the consequence would be that, when the Revenue Authorities came to assess this gradually increasing jumma on alluvial formations, the owners of the original estates would be frightened and unwilling to engage. The engagement might make their fortunes, or it might ruin them, and they would not incur the risk. The necessary result must be that the alluvial formations would be let out in farm, the Revenue Authorities of the day interpreting the Law as it was interpreted by the present Board of Revenue, and the owners of the original estates would lose possession. The settlement which was formerly made with farmers, had been made with the proprietors of original estates for the last twenty years; this was equally advantageous to the proprietors and the Government; and, whatever the intention of the old Laws might be, he certainly thought it advisable to let the existing ruling stand as it was, giving the Revenue Authorities discretion to settle alluvial formations on fair terms with the proprietors of original estates. He should, therefore, oppose the amendment.

MR. HARINGTON said, he concurred generally in the remarks of the Honorable and learned member of Council on his left (Mr. Peacock), and it was his intention to support the amendment moved by him. In the few observations which he had ventured to address to the Council in

the debate which took place on the motion of the Honorable Member for Bengal for the second reading of the Bill now before the Committee, he had stated that he had no doubt that the framers of Regulation XI. 1825 fully intended that alluvial accretions should be incorporated with, and form part of, the estate to which they might annex themselves, and should share its fate, whatever that might be; and that such accretions could not be considered an estate within the meaning of Regulation VIII. 1800, though leased out to a farmer with a separate jumma, so long as they were not formally and absolutely severed from the parent estate with the consent and by the act of the proprietor; and notwithstanding the able arguments which had been adduced in support of a different construction of the law from that placed upon it by himself and others, he adhered to the opinion which he had formerly expressed. The subject had already been so fully discussed that he would not occupy the time of the Council with any lengthened remarks on the present occasion; but he must repeat that the phraseology made use of by the framers of Regulation XI. 1825, as well as by the framers of Act IX. of 1847, clearly shewed that they contemplated and intended the union or incorporation of alluvial formations of land with the estate to which they might become attached, not their separation therefrom, or that they should constitute a separate and distinct holding. In the one Law, we had the words "increment" and "annexed" used more than once: in the other, the word "added"; but in neither Law did we find any words of an opposite tendency, from which it might be inferred that separation was intended to be the rule just as much as addition—disjunction just as much as annexation. The Council had no right to assume that the words which he had quoted, had found their way by accident into the Laws of 1825 and 1847, or that they were made use of by the framers of those Laws merely because they were the most convenient terms they could employ. No doubt, they were introduced designedly, and with the intent which he had already mentioned; and so long as we retained the Law of 1825, which enacted that, "when land may be gained by gradual accession, whether from the recess of a river or the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed"—and the present Bill did not propose to abrogate this Law—he did not see how we could consistently pass an Act declaring the right of the Collector or Settlement Officer to sever such land from the estate to which it had accreted, and to form it into a separate estate with the usual liability to sale for any arrear of revenue that might accrue thereon, notwithstanding that the proprietor of the parent estate might desire the incorporation of the alluvial accretion with that estate, and might be quite willing to pay the additional revenue assessed upon it. The two Laws appeared to him to be incompatible. The one said, the alluvion shall be an increment—that was, something added; the other said, if the Collector pleases, it shall not be an increment, but something separate; and if the Council passed the proposed Law in its present form, he certainly thought it would go contrary to the spirit of the existing Regulations, and to the intention of those who had framed them.

But this was not the only objection that he had to the Section under discussion, as now worded. The object of the Bill, as stated in the title, was to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal; and this object the Bill proposed to accomplish by enacting in Section I that—

> "When land is added by alluvial accession to an estate paying revenue to Government, if it be so agreed upon between the Revenue Authorities and the proprietor or proprietors, the revenue assessed upon the alluvial land may be added to the jumma of the original estate, and in such case a new engagement shall be executed for the payment of the aggregate amount, and that amount shall be substituted in the Collector's rent roll for the former jumma of the original estate."

In the case, therefore, of permanently settled estates, in which there was this agreement between the two contracting parties—namely, the Government on the one side, and the proprietor of the alluvion on the other—the assessment of the alluvion became a permanent assessment, just as much as the assessment of the original estate had been a permanent as-

sessment from the date of the decennial settlement, and the entire estate, composed partly of the original lands and partly of lands gained by alluvion, was a permanently settled estate within the meaning of the Law. So far, good; and in such cases, it was obvious that no injustice was done to the proprietors of alluvial lands, if willing to engage for the revenue assessed upon them. But the Section went on to say—

"If the proprietor or proprietors object to such an arrangement, or if the Revenue Authorities are of opinion that a settlement of the alluvial land cannot properly be made for the same term as the existing settlement of the original estate, the alluvial land shall be assessed and settled as a separate estate with a separate jumma, and shall thenceforward be regarded and treated as in all respects separate from, and independent of, the original estate."

Under this part of the Section, therefore, the right of determining whether the settlement of the alluvion should be a permanent or only a temporary settlement—whether it should be in perpetuity or for a term of years only—virtually rested with the Collector or Settlement Officer, subject to the control of the superior Revenue Authorities. But he knew of no Law which conferred this power, or this large discretion on the Revenue Officers. Section III Regulation II. 1819, according to which the settlement of alluvial lands was required to be made, certainly did not give it; and he would ask—from whence was it derived? It appeared to him that the owner of the alluvion in a permanently settled estate either had a right to have the revenue assessed thereon fixed in perpetuity, supposing him to be willing to pay the same, or that he had not that right. If he had a right to a permanent settlement, he (Mr. Harington) was not aware of any law under which the Collector could deprive him of it. If he had no such right, he (Mr. Harington) was equally ignorant of any law under the authority of which the Collector could confer it upon him. The question, then, resolved itself into one of right or no right; and he thought that this question should be carefully considered, and that a decision should be come to upon it by the Committee before passing the Section under discussion in its present form. After much consideration, the conclusion at which he had arrived was that the right existed; and he found himself borne out in this view by a Circular Order issued by the Sudder Board of Revenue under date the 24th August 1830, to which was appended a letter from Government dated the 27th July preceding, in which the Government said:—

"On the other hand, in cases of alluvion, land of wastes reclaimed, of jagheers resumed, of which there are no proprietors, and in all similar cases where the proprietary right is vested immediately in Government, the prohibition of the Honorable Court against the alienation of that right" (referring to permanent settlements) "applies in full force; but it does not apply to cases in which the Regulations have expressly declared the proprietary right to be vested in individuals. Of such lands, the proprietors are entitled to obtain perpetual settlements in those districts in which the revenue has been settled in perpetuity on their conforming to the conditions of the Regulations. The principle, indeed, has been distinctly recognized by the Honorable Court in reply to a letter from this Government dated the 1st August 1822, citing a former letter which contained the reasons for the conclusion that the zemindars in Behar are entitled, under the rules of 1793, to have the settlement of their lands made perpetual. The Honorable Court, in their Despatch dated the 10th November 1824, observed as follows:—'When the Law gives, as here you say it does, a right to the settlement in perpetuity, there is no doubt with respect to the proceeding which ought to be adopted; and even where the case may appear somewhat doubtful, Government should afford to individuals the benefit of a liberal construction.'"

The right of the proprietor of all alluvial lands to a permanent settlement of such lands when annexed to an estate settled in perpetuity, was further declared in the Sudder Board of Revenue's Circular dated 30th April 1833, and in the letter to the address of the Commissioner of Chittagong which was annexed thereto. In the concluding paragraph of that letter, the Board expressly said:—

"Whenever there is a right of property or permanent interest, as there must always be, in alluvial increments to permanently assessed estates, the zemindars of such permanently settled estates are entitled to engage for the revenue assessed upon the new land in perpetuity; and whenever there exists not this right of property or permanent interest, the orders of the Honorable the Court of Directors forbid a perpetual assessment."

Now, assuming this to be a correct interpretation of the law as respected the settlement of alluvial lands in per-

manently settled estates—and as, at the date of these Circulars, serious objections were entertained to permanent settlements, it could scarcely be conceived that the Government would have conceded the right of the owner of alluvial lands in permanently settled estates to a settlement thereof in perpetuity, had the law not clearly recognized such right—the Section of the Bill before the Committee appeared to him to violate the right of the proprietors of alluvial formations of land in permanently settled estates in this respect just as much as it infringed what he considered to be the right of the owner of the estate to insist upon the incorporation of the alluvion therewith upon the sole condition of his agreeing to pay the revenue assessed upon it. The two rights appeared to him to go together.

With regard to the observations which the Honorable Member of Council opposite (Mr. Ricketts) had based upon Act IX of 1847, he deemed it sufficient to remark that that law made no alteration in the rules existing at the date of its promulgation for the settlement of alluvial lands. On the contrary, Section VI expressly declared that—"whenever land has been added to any estate paying revenue directly to Government, the local Revenue Authorities shall without delay assess the same with a revenue payable to Government according to the rules in force for assessing alluvial increments, and shall report their proceedings to the Sudder Board of Revenue, whose orders thereupon shall be final." The rules here alluded to were those contained in Section III Regulation II. 1819 and Regulation XI. 1825; and Act IX of 1847 had, therefore, no bearing on this part of the question. No doubt, as remarked by the Honorable Member of Council, there was a difficulty in making a permanent settlement of alluvial lands immediately after their formation; but the difficulty in carrying a law into effect was no reason for acting contrary to it so long as it existed. The Collector must do his best, leaving to proprietors of alluvial lands either to accept or to decline the settlement of them on the terms proposed, according as they might consider most for their own interest.

THE CHAIRMAN said, the difficulties of this Revenue question (and the difficulties of most Revenue questions were neither few nor inconsiderable to those who had not, like the Honorable Member on his left, Mr. Ricketts, been conversant with such subjects from their youth upwards) were, he thought, greatly increased by the somewhat singular conduct which Honorable Members had thought it proper to adopt with respect to the Bill. The question which he had had the honor to put from the Chair was that the Council should resolve itself into a Committee upon the Bill, and should consider it in the form in which it had been recommended by the Select Committee to be passed. Among the names of the Members who composed that Select Committee, he found that of the Honorable Member for the North-Western Provinces; and yet, as far as he could follow the Honorable Member's speech, the Honorable Member seemed to have serious objections to the Bill itself, and he certainly had very considerable objections to the form in which it was recommended by the Select Committee to be passed. Then, the Honorable and learned Member who had moved the amendment, appeared to treat this Bill as if it were designed for the invasion of private rights, and in the observations which he had made, had not confined himself to the subject matter of his amendment or of the Section, but had gone largely into reasons tending to shew that no such Bill ought to be passed at all. He (the Chairman) must emphatically deny, for himself and for the other Members of the Council who were connected with the Bill, that they had the slightest intention to interfere with any private right whatever. He must also say that it was not exactly correct that the Select Committee which amended the Bill before publication, had made no provision for the rights of under-tenants. He admitted that the Select Committee to which the Bill had been referred after publication, had made ampler and clearer provision for them; but the Bill, as amended by the first Select Committee, fully reserved to under-tenants the rights conferred upon them by Section IV of Regulation XI. 1825. There had been considerable difference of opinion in the Council as to what the actual law was, and as to another point, which was perhaps not properly

a matter for discussion here, namely, the correctness of a decision passed by the Sudder Court; but he had understood all in the Council—with, perhaps, the exception of the Honorable and learned Member—to be agreed in the propriety of a Bill which should provide, in some way or another, for the legalization and recognition of the separate settlement of these churs; and he understood the intention of the Act was rather to benefit than to invade the rights of the zemindar or the under-tenant, by protecting them from the disadvantages which, it was admitted, would result from the incorporation of an alluvial formation with the original estate. No one desired to do anything in derogation of the rights of zemindars or under-tenants. The main difficulty of the question arose from this. There were two distinct subjects, and distinct laws relating to each subject. On the one hand was the proprietary right in alluvial accretions, and the law declaring and defining that; on the other hand there was the superior right of the Government to the revenue to be assessed on these accretions, and the laws declaring that, and defining the mode in which the right should be asserted. All that was designed by this Section was to enable the Government to assert that right in a way which, while it would protect the public revenue, would, at the same time, be beneficial to the landholder. He admitted that it was a fair and legitimate question to raise whether the Section did not go too far in requiring the assent of the Revenue Authorities as well as the consent of the proprietor to the incorporation of the alluvial land with the original estate. The reasons for this provision had been stated by the Honorable Member on his left (Mr. Ricketts); and it appeared to him that, whether the Council thought it right or not to affirm the principle as this Section affirmed it, it must practically come to the same thing; because these churs were, in many cases, incapable of permanent assessment on any just principle; and if the Revenue Authorities were driven to incorporate them with the estates to which they accrued, subject to a permanent jumma, this must follow—that, to protect the public revenue, they must fix some arbitrary sum which would represent the right of the Government in the chur not as it existed then, but as it might be presumed to exist at some future time. The zemindar would say—"I shall not agree to such an arrangement. I prefer a settlement for a certain term, or to have the land let on lease;"—and if the chur were settled for a certain term, it must be settled as a separate holding. Therefore, whether the Section required the assent of the Revenue Authorities or not, the result would be the same.

On principle, he had no great objection to the amendment, but from all he had heard from the Revenue Authorities, he thought it would be better for all parties to leave the Section as it stood.

MR. CURRIE said, he should first say a few words in reference to the prefatory observations of the Honorable Member on his right (Mr. Ricketts). The Honorable Member had said that this Bill, if passed, would be a dead letter for at least fifteen years to come. If he (Mr. Currie) thought so, he certainly would not have introduced it so prematurely, or, having introduced it, he would not have continued to press it upon the attention of the Council after the strong opposition which had been raised against it upon the Motion for the second reading. But he considered it a very necessary and important Law. It was very true, as stated by the Honorable Member, that resumption operations had been discontinued since the passing of Act IX of 1847; but the churs which had been resumed before that period had, for the most part, been settled on temporary engagements. These settlements were continually falling in; re-settlements had to be made; and the Settlement Officers required some Law for their guidance. Again, the new Law was enacted in 1847. The Survey of the Behar Province was pretty well finished when that Law came into operation. The Act provided that at any time after the expiry of ten years from the approval of a revenue survey in any district, the Government of Bengal might direct "a new survey of lands on the banks of rivers and on the shores of the sea, in order to ascertain the changes that may have taken place since the date of the last previous survey;" and that if, on such re-survey, land should appear

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to have been added to any estate, it should be assessed with a revenue payable to Government. The Act also declared the approval of the revenue survey of Chittagong to have taken place on the 6th September 1842; of Behar, on the 9th November 1844; of Patna, on the 22nd June 1841; of Shahabad, on the 28th November 1846; of Sarun, on the 18th February 1847; and so on. The Government, therefore, if it chose, might now order a re-survey of the estates situate on the banks of rivers in those districts, and the present Bill, if passed, would at once come into operation. It would be necessary to settle the newly-formed lands, and they would be settled according to the Law and the practice which might be in force. He, therefore, thought that it was a very pressing and important measure.

With regard to the objection taken by the Honorable and learned Mover of the amendment, he had very little to say in addition to what had already been so justly urged by the Honorable Member on his right (Mr. Ricketts) and the Honorable and learned Chairman. The Honorable and learned Member, as had been remarked already, had not confined himself merely to his amendment, but had entered into arguments which went to the whole principle of the Bill. The principle of the Bill had already been determined by the vote of the Council on the Motion for the second reading. That vote recognized the expediency and justice of the separate settlement of alluvial lands. He should, therefore, on this occasion, confine himself to the objection that the Section as it stood deprived the owners of estates, to which alluvion had accrued, of the right of claiming that the alluvion should be incorporated with those estates. Now, the only ground on which the Revenue Authorities could ever object to incorporate alluvial land with the original estate, would be that the land was not fit for permanent settlement. Indeed, that was the ground expressly indicated in the Bill. If an alluvion was fit to be settled permanently, there could be no possible objection on the part of the Revenue Authorities to incorporate it with the original estate. The question therefore resolved itself into this:—Was the zemindar entitled to claim that, in all cases, he should have a permanent settlement? He (Mr. Currie) admitted at once that in permanently-settled districts, the general principle was that any settlement that was made, should be permanent; but cases might arise in which a permanent settlement would be obviously inexpedient; and where that was the case, permanent settlement should not be made, unless there was a legal necessity for it. No such legal necessity existed here. The pledge given at the decennial settlement applied only to estates which were at that time settled with the proprietors, or held khas, or let in farm. It was not necessarily applicable to lands which had formed since that period, or to lands which were waste, and not included in any estate at the time of the settlement. With respect to both these descriptions of land, the practice had been to make temporary settlements whenever the condition of the land was such as to be unfit for settlement in perpetuity.

The Honorable Member for the North-Western Provinces had relied especially on the terms of Regulation XI. 1825. He (Mr. Currie) had always contended, and he maintained still, that Regulation XI. 1825 had nothing whatever to do with the arrangements between the Government and the proprietor of the estate. Its object and effect were to determine the proprietary right in the alluvion as between individuals. The arrangements between the Government and the proprietor were expressly reserved to be dealt with under other Laws.

The Honorable Member had also referred in support of his argument to the wording of Act IX of 1847. But Act IX of 1847, so far as it bore on the question at all, was rather in favor of the view which he (Mr. Currie) took. Section V of the Act said:—

"And it is hereby enacted that whenever, on inspection of any such new map, it shall appear to the Local Revenue Authorities that land has been washed away from, or lost to any estate paying revenue directly to Government, they shall, without loss of time, make a deduction from the Sudder jumma of the said estate equal to so much of the whole Sudder jumma of the estate as bears to the whole the same proportion as the Mofussil jumma of the land lost bears to the Mofussil jumma of the whole estate."

And Section VI said :—

"And it is hereby enacted that whenever, on inspection of any such new map, it shall appear to the Local Revenue Authorities that land has been added to any estate paying revenue directly to Government, they shall without delay"—

do what? Not add the revenue payable upon it to the Sudder jumma of the estate, which would be the correlative of the previous Section, but—

"assess the same with a revenue payable to Government according to the rules in force for assessing alluvial increments."

Therefore, he maintained that, whether we looked at the pledge given at the time of the decennial settlement, or at the law now in force with respect to the settlement of alluvial lands, there was no legal right in a Zemindar to claim a permanent settlement of such lands. It was very true that, as the Honorable Member had said, the Board of Revenue did, in 1833 and 1838, recognize this right as attaching to proprietors of alluvial lands; but he doubted whether that construction had ever been acted upon; certainly, it had not been acted upon to any great extent; and the very same Authority interpreted the law differently in 1841. It then held that the Revenue Authorities should determine whether the assessment of alluvial formations should be permanent or temporary. The rule which was laid down in 1841, with the sanction of Government, and circulated to all Revenue Officers, and which had regulated the practice ever since, was this :—

"The Local Commissioner shall determine, with reference to the circumstances of each alluvial formation, whether a temporary lease for any number of years, or a permanent settlement shall be made. Should the party entitled to a settlement object to the consolidation of the jumma assessed on the increment with that of the original estate, the increment shall be settled as a distinct Muhal, and shall thenceforth be held separately liable for the jumma assessed upon it."

That was the rule now in force; and, as had been shewn already by the Honorable Member on his right and the Honorable and learned Chief Justice, it was highly expedient that such should continue to be the rule. The Honorable Member on his right had explained that, unless the Revenue Authorities were allowed to make temporary settlements when the land was not fit for settlement in perpetuity, the only alternative open to them would be to offer terms to proprietors which the proprietors could not, with any prudence, accept. Perhaps, it might not be out of place here to read the view which was taken by the Government regarding settlements of this nature. In a letter addressed by the Government to the Commissioner of Chittagong in the year 1842, occurred the following :—

"The objection taken by the Government to a russudee settlement is this,—that it is an assessment upon a contingency, and not upon a reality, and upon a contingency the occurrence of which is very likely to be prevented by the imposition of an assessment in anticipation. This objection, you will observe, applies as forcibly to a settlement in which the new jumma is suddenly imposed in full at the end of six years, as to one in which the enhancement is more gradual.

"The Government jumma, which is a tax upon rent, cannot properly be assessed until rent has begun to exist. A zemindar or farmer will often agree to a russud; and it may seem possible to argue that what one party willingly offers in a contract, the other may fairly take. But the consent of owners or speculators to given terms of contract in land revenue settlements in the country, is found by experience to rest very frequently upon no well-considered reasons; to be often occasioned by rivalry or spite; to be hasty, capricious, and improvident.

"Even if it were otherwise, as doubtless may sometimes be the case, it would seldom be right, upon the agreement of even a very careful party, to tax himself many years in anticipation of his resources, to hazard, not only the stability of the whole settlement, but what is of more consequence, the happiness of his under-tenants and cultivators, which must inevitably be affected by every change of settlement, farm, or ownership." * * * *

"Therefore, when a Mehal is to be settled of which more than a due proportion is out of cultivation, the settlement, if the Law allows an option, should be only temporary; the Mehal, under such circumstances, not being fit for permanent settlement. The assessment should be laid on the cultivated land, and during the term of the settlement, the uncultivated land should be left free of assessment."

He thought it had been clearly shewn that it would be for the interest of all parties—of the proprietor as well as of the Government—indeed, of the proprietor much more than of the

Government—that the Revenue Authorities should have the power of saying, in the first instance, whether the settlement should be permanent or temporary. The amendment proposed by the Honorable and learned Member opposite, though, as stated by the Honorable and learned Chief Justice, not objectionable in point of principle, was unpractical, unnecessary, and inexpedient; and he should, therefore, resist it.

MR. PEACOCK said if, in the course of his argument, he had said anything which could be interpreted into the assertion that this Bill was *intended* to interfere with private rights, he must ask to be forgiven. But he believed that he had said nothing which would admit of such a construction, and that he had been misunderstood. He had not said that the Bill was *designed* to interfere with private rights, but that it *did* interfere with private rights; and in order to shew that it did, it had been necessary for him to go into arguments proving that the Zemindar or owner of an estate to which alluvion had accrued, was, as the law now stood, entitled to have the alluvion settled as a permanently settled estate without the consent of the Revenue Authorities. He had taken no new ground to-day. When the Report of the Select Committee who amended the Bill before publication was presented to the Council, he urged against Section I the same objection which he was urging now. He said on that occasion:

"In assenting to the adoption of the Report, and the publication of the Bill in the form in which it was now presented, he must not be considered as binding himself to the alterations made in the Bill by the Select Committee. The first part of Section I authorized the assessment of alluvion as part of the estate, provided the Government should agree to that arrangement; whereas it appeared to him that the Zemindar had a right to insist upon such an assessment. The second part withheld from the Government the right of dissent in cases in which he thought it ought to have that right. * * * It appeared to him, therefore, that the Section was wrong—first in requiring the assent of Government to settlements to which Zemindars were entitled of right; and secondly, in not giving the Government a right of dissent in cases in which it might be necessary to exercise it—a right which he believed was now vested in them by law."

These were the two principal objections which he had to the Bill; and if he had trespassed on the time of the Council in advancing arguments in support of them which were unnecessary, he could only beg pardon; but he was not aware that he had brought forward any argument that had no bearing on the question. He wished to show that the owner of a permanently settled estate to which an alluvion had attached, had a right, as the law stood, to insist on the alluvion being likewise permanently settled, without the consent of the Revenue Authorities. The Honorable Member opposite (Mr. Ricketts) wished that the law should remain as it was; that was exactly what he (Mr. Peacock) wished. He wished the law to remain as it was; but the question was, what *was* the law? As he understood it, it was that which the Board of Revenue had interpreted it to be. The Board of Revenue said that the Circular Order of 1841 was not according to law, but that the Circular Order of 1838 was; and they asked permission to revert to the rule laid down in the latter Order. If the Circular of 1841 was law, where was the *necessity* for Section III of this Bill, which provided that "every separate settlement of alluvial land heretofore made shall be held as good and effectual for the purposes specified in Section I as it would have been if made subsequently to the passing of this Act?" If there was no doubt that the Circular Order of 1841 was law, there could be no necessity for declaring that all separate settlements of alluvion hitherto made under it, should be valid.

The Honorable Member opposite (Mr. Ricketts) had referred to Act IX of 1847. He (Mr. Peacock) had not alluded to that Act because he thought it bore more directly upon the objection which he had to the second branch of the first Section of the Bill than upon the point now under discussion; but it appeared to him that, taking the whole of the first Section together, it was directly at variance with that Act, and that, according to all the laws of construction, it would be a repeal of it *pro tanto*. According to the Act, as the Honorable Member opposite had shewn, ten years after the completion and approval of a revenue survey in any district, the Government of Bengal must direct a second survey.

MR. CURRIE—*not must*, but may.

MR. PEACOCK said, the intention was obviously that there should be a second survey ten years after the completion and approval of the first, and that a new map should be made in accordance with such survey: but, even if it were not compulsory, no settlement of alluvial land could be made until such a map was prepared. Section V of the Act said:—

"And it is hereby enacted that whenever, on inspection of any such new map, it shall appear to the Local Revenue Authorities that land has been washed away from or lost to any estate paying revenue directly to Government, they shall, without loss of time, make a deduction from the Sudder jumma of the said estate equal to so much of the whole Sudder jumma of the estate as bears to the whole the same proportion as the Mofussil jumma of the land lost bears to the Mofussil jumma of the whole estate."

Section VI of the Act said:—

"And it is hereby enacted that whenever, on inspection of any such new map, it shall appear to the Local Revenue Authorities that land has been added to any estate paying revenue directly to Government, they shall without delay assess the same with a revenue payable to Government according to the rules in force for assessing alluvial increments, and shall report their proceedings forthwith to the Sudder Board of Revenue, whose orders thereupon shall be final."

The object of these provisions was to make an allowance to the Zemindar in respect of land which might have been washed away from his estate, and at the same time to secure revenue to Government in respect of land which might have been added to his estate by alluvial accession. But Section I of this Bill said that, *whenever* land was added by alluvial accession to an estate, the increment should be assessed. Now a Zemindar might lose as much or more land on one side of his estate by encroachment of a river than he might gain on the other by recess of the river. Under Act IX of 1847, the revenue authorities could make no deduction in the sudder jumma of the estate for his loss and no increase with jumma for the gain until a new map was framed according to a re survey; but under Section I of this Bill, they could fix an assessment on the land gained whenever it accrued. He contended, therefore, that this Bill was inconsistent with Act IX of 1847, and it appeared to him that it was wholly unnecessary. It appeared to him unnecessary to say that a Zemindar should not be entitled to have an accretion to his estate settled permanently, like the original estate. When the Board of Revenue proposed that the Circular Order of 1841 should be rescinded, and that the Circular Order of 1838 should be reverted to, it consisted of three Members, Messrs. Dampier, Stainforth, and Allen. They observed:—

"Little need be said, the Board imagine, to prove to his Honor that the Circular Order of 1841, in so far as it differs essentially from that of 1838, must be, if not contrary to the law, at any rate at least defective in acting up to the requirements of it. The Board that recommended the rule of 1841 allowed the legality of the practice enjoined in 1838. This gave the zemindar the power of insisting upon a permanent settlement when engaging for the chur; that leaves it entirely with the Commissioner to determine the nature of the settlement. This lays it down that, if the zemindar refuses to have the jumma of the chur incorporated with that of the parent mehal, the chur is to be farmed out and the zemindar is only to receive malikana; that (in the event of a like refusal) he may engage for the chur as a separate estate."

He could see no greater difficulty in carrying out the rule laid down in the Circular Order of 1838, than there was in carrying out the rule laid down in the Circular Order of 1841. If the Zemindar wished to have an alluvion adjoining his estate, incorporated with the estate, and was by law entitled to have it so incorporated, let not the right be taken from him. It was idle to say that there would be difficulty in settling the alluvion as a permanently settled estate; because that difficulty applied, not only to this, but to other cases, and the Honorable Mover of the Bill did not propose to remove it with respect to any case except this. The difficulty must be got over. The law had pledged the Government to a permanent settlement of alluvial lands adjoining permamently settled estates. He contended that this was the true construction of the law: the Sudder Court had adopted the same view: the Board of Revenue in 1838 and in 1857 had adopted it: and of the present Board, one Member, Mr. Dampier, had recorded the following Minute:—

"I think that the proposed Law will complicate settlements of such alluvial lands much, and, where these lands are increments on under-tenures, will cause serious inconvenience to the holders of such tenures, to whom it is an object to have such lands, valuable from their river-frontage, incorporated with, and to be a part of these tenures. I also think that the wording of the proposed Law in Section I is obscure and confused. The alluvial land is to be assessed and settled as a separate estate with a separate jumma, subject to all provisions respecting the rights of property thereon which are contained in Section IV Regulation XI. 1825, and it is thenceforward to be treated as independent of the original estate—this is so far as the *estate* is concerned; but by Section IV Regulation XI. 1825, the proprietor of the under-tenure has the same right in the increment as he has on his tenure of which it is part. Is the estate to be separate, and the tenure not? or, if both are to be separate, and the tenure is a Putnee, how is the Zemindar to proceed for the recovery of his rents when due under Section VIII Regulation VIII. 1819? Is he to take a fresh pottah for the increment? and what course is he to pursue when he has, in the pottah of the original tenure, expressly relinquished any demands for rent on an increment of alluvion? whilst the alluvial lands formed part of the parent estate, this was easily arranged, but the new Law will embarrass the under-tenants and lead to much litigation.

"Again, why is the Zemindar to have the right of objecting to the alluvial lands being added to the parent estate, and the Revenue Authorities have no power to insist on such an arrangement? and why should the Revenue Authorities have the option of not assessing them as part of the estate, where the proprietors are willing? These rules interfere with the old customs and laws of the country supported by the decisions of the highest Courts, and are uncalled for. Section V Act IX of 1847 secures to the proprietors of estates deductions from their assessment whenever any proceedings under that Law are taken. Sections V and VI must be put in force simultaneously. Under all circumstances, and particularly with reference to Act IX of 1847 which secures to the Zemindars indemnity for losses, and to the Government its Revenue, from alluvial increments by periodical surveys, I can see no object to be gained for the Government, the proprietors of estates, or the holders of under-tenures, by the adoption of the proposed Law."

Another Member, Mr. Stainforth, wrote thus:—

"I object to the Preamble of the Bill, and approve of that part of it which legalizes past errors in making separate settlements of alluviated land.

"As to future settlements, they will mainly be those made under Act IX of 1847, and there would, I think, be little need of the Bill in respect to them if Officers were placed at our disposal to survey gains and losses of land. We should then be enabled to relieve landholders losing land, and take away all substantial ground of objection to adding the jumma assessed on new lands to that of the estate to which they are added."

On the whole, then, considering that all the Members of the Board of Revenue were against this Bill at the outset; that they held that the Circular Order of 1841 could not be enforced according to law; that they recommended that the Circular Order of 1838 should be followed; and that there would be no difficulty in following it;—considering, too, that this Bill interfered with private rights, he felt bound to oppose the first part of Section I as it stood, and to press his amendment.

THE CHAIRMAN said, the argument urged by the Honorable and learned Member that the Bill would interfere with Act IX of 1847, was a new one. He (the Chairman) could not follow the Honorable and learned Member on that point, because Section VI of Act IX of 1847 said:—

"And it is hereby enacted that whenever, on inspection of any such new map, it shall appear to the Local Revenue Authorities that land has been added to any estate paying revenue directly to Government, they shall without delay assess the same with a revenue payable to Government according to the rules in force for assessing alluvial increments."

As he understood this Section, "the rules in force" after the passing of this Bill, would be the rules laid down in the Bill. He would not conceive that the Legislature which passed Act IX of 1847 imagined that it had the power of tying up the hands of future Legislatures so as to provide that the rules which were in force then should continue to be in force for all time to come.

The diminution of the jumma of an original estate for land washed away from the estate was altogether a distinct question. If the proprietor lost any land by encroachment of the river, he had a right to have the jumma originally assessed on the estate diminished *pro tanto*. The sum which he should pay for land which had accrued to his estate by alluvion, could not be ascertained until the new land were assessed according to the rules in force, of which this Act would form part. He apprehended that this Bill was not intended to subject any land to assessment which was not now so liable by the existing law.

The Honorable and learned Member had laid stress on the fact that the Board of Revenue were opposed to this Bill. With all possible respect for the gentlemen composing the present Board of Revenue, he must remind the Honorable and learned Member that there were in this Council, and in favor of the Bill, two gentlemen who had been Members of the Board, and whose experience of Revenue questions, in the estimation of all who were conversant with such questions, ranked as high as that of any one in the Service.

MR. CURRIE said, the words of the Section were:—"When land is added by alluvial accession to an estate paying revenue to Government, if it be so agreed on between the Revenue Authorities and the proprietor or proprietors"—then, what was to be done? Not that the Revenue Authorities should immediately assess the revenue upon it, but that—"the revenue assessed upon the alluvial land"—that was to say, the revenue which might be assessed upon it when the time for assessment came—"may be added to the jumma of the original estate." This did not give the Revenue Authorities any power of bringing the land under assessment which they did not possess under the present law. It had never been intended that the Section should interfere with Act IX of 1847, nor, as far as he could see, did it interfere with it; but if it did, a verbal amendment might be introduced to save the operation of the Act.

THE CHAIRMAN suggested that this object would be gained by making the first part of the Section run thus:—

"When land added by alluvial accession becomes liable to assessment," &c.

MR. PEACOCK said, he had endeavored to shew that, under Act IX of 1847, alluvion which accrued to an estate could not be assessed with revenue except on inspection of a new map, framed in accordance with a re-survey; and that, when the Revenue Authorities referred to this map for the purpose of ascertaining how much land had been added to the estate by the river, they must also refer to it for the purpose of ascertaining how much land had been washed away from it by the river, in order that, as they would assess new revenue for Government in respect of the gain, so they might make a deduction from the original jumma for the benefit of the proprietor in respect of the loss. By the same Act, the re-survey according to which the new map must be framed, could not be held until ten years after the completion and approval of the previous survey. The Government could not assess a district *de novo* nine years after such survey. But Section I of this Bill said—first that, whenever land was added by alluvial accession to an estate, it might be assessed as a permanent estate, if both the Revenue Authorities and the proprietor of the estate so agreed; and secondly, that—

"if the proprietor or proprietors object to such an arrangement, or if the Revenue Authorities are of opinion that a settlement of the alluvial land cannot properly be made for the same term as the existing settlement of the original estate, the alluvial land shall be assessed and settled as a separate estate with a separate jumma and shall thenceforward be regarded and treated as in all respects separate from and independent of the original estate."

Under this Clause, therefore, if land should be added to an estate by alluvion five years after a survey, the Revenue Authorities would have the power of at once calling on the proprietor, without any map shewing what his loss by encroachment of the river might have been, to consent to a permanent settlement of the accretion. If the proprietor should refuse his consent, and should claim to have a settlement according to the provisions of Act IX of 1847, the Collector would say—"Since you will not take the land as a permanently settled estate, as I offer, I am bound by this Bill to assess it as a separate estate," and he would proceed to assess it accordingly. Or the Collector might be of opinion that a settlement of the land could not properly be made for the same term as the settlement of the original estate; and in that case, he would feel himself bound at once to assess and settle it as a separate estate. This was contrary to the provisions of Act IX of 1847, and it was not fair. No assessment of land gained by alluvion ought to take place until the Government was in a position to make a deduction from the sudder jumma for land which had been washed away.

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MR. CURRIE asked if the Honorable and learned Member would have the goodness to point out the words in the Section which required the Collector to proceed to make a settlement before a new survey. He (Mr. Currie) contended that there was nothing in the Section which required the Collector to do any thing of the kind; but if the Honorable and learned Member could shew that there was, or that such was the effect of the wording of the Section, he would most readily insert words making it clear that the alluvion was not to be assessed until it became liable to assessment under the Law of 1847.

THE CHAIRMAN asked, did the Honorable and learned Member contend that no change could take place by law in the rules in force for the assessment of land which came to be assessed under Act IX of 1847?

MR. PEACOCK replied, he had never contended anything of the sort. If this Bill had proposed to repeal Act IX of 1847 in so many words, he should not have said that the Council had no power to repeal that Act; but he should have argued against the expediency of repealing it.

THE CHAIRMAN asked, if the Honorable and learned Member contended that there ought to be no change in the rules which were in force for the assessment of alluvial lands in 1847? If not, then the objection which arose on Act IX of 1847 would be only as to the occasion on which the rules would come into force, and not as to the provisions of this Bill. He would willingly agree to any amendment which would make it more clear that this Bill was not intended to interfere with Act IX of 1847, or define when land gained by accretions was to be assessed for revenue.

MR. PEACOCK said, what he contended was, that to alter the rules as they now existed would be an unjust interference with the rights of proprietors. He had endeavored to shew that the Section as it stood would alter the existing rules, inasmuch as it would authorize the assessment of land within ten years after a survey, and before a new map could be made. In the first place, he would lay down this position: the word "shall" was compulsory; the word "may" gave an option. He would now proceed to shew how the Bill was inconsistent with Act IX of 1847, and how the Revenue Authorities might assess lands before a new map was made out. Section I said:—"When land" by which, he understood "Whenever land" "is added by alluvial accession to an estate paying revenue to Government, if it be so agreed on between the Revenue Authorities and the proprieter or proprietors, the revenue assessed upon the alluvial land, may be added to the jumma of the original estate." He would suppose a case in which it was not so agreed upon;—a case in which the proprietor objected to such an arrangement—and the Honorable Mover of the Bill had shewn some very strong reasons why proprietors might in some cases object to such arrangements—what would follow in such a case? Under the second branch of the Section; "the alluvial land *shall* be assessed and settled as a separate estate with a separate jumma, and it *shall* thenceforward be regarded and treated as in all respects separate from and independent of the original estate." Or if the Revenue Authorities refused to settle it as part of the original estate, the same rule would follow. In either of the cases supposed, it would be the duty of the Collector to assess the land as a separate estate with a separate jumma, and it must thenceforward be treated as absolutely distinct from the original estate, and if a new map should not be made, the proprietor would still have to pay the jumma under the separate assessment though he could not have the benefit of a reduction of his original jumma in respect of the land which he had lost. That, he (Mr. Peacock) thought, was objectionable and unfair. The rule laid down in Act IX of 1847 appeared to him a just rule; namely, that the Government should wait for ten years after each survey and then reassess, on the one hand charging additional revenue upon land gained, and on the other allowing a deduction for land lost, during that period.

[MR. RICKETTS remarked that that was the intention of the Act.]

Would the Council, then, alter the rule laid down by Act IX of 1847? He, for his own part, would not. He saw no reason for such alteration; and the Board of Revenue saw none. He would let the law remain as it stood, applying the

principles of the Circular Order of 1838. If there was any doubt as to that Circular Order being law, he would make it law.

MR. CURRIE said, as the discussion had been already a great deal too much prolonged, he should say but a few words in reply. He had listened to the Honorable and learned Member's remarks with the greatest attention, but they failed to satisfy him that the Bill as it stood gave the Revenue Authorities any power which they did not now possess for assessing alluvial land. The Bill did not say that, when land is added by alluvial accession to an estate paying Revenue to Government, the Revenue Authorities *shall assess* revenue upon it; but that, when that event occurred, "*the revenue assessed* upon the alluvial land may be added to the jumma of the original estate;"—that was to say, the land, having become liable to assessment under other Laws, the mode in which it should be assessed was to be that which was provided by this Bill, and the second branch of the Section was merely a continuation of the first. He would not dwell on the objection taken, because it was a mere question of words; but he must say, in his own defence, and in that of his colleagues in the Select Committee, that neither they, nor any of the Officers who had commented on the Bill—the Board of Revenue and the Sudder Court Judges—had understood it as affecting the operation of Act IX of 1847. As he had said before, however, he had no objection to insert some additional words in it to save, beyond all question, the operation of that Act.

The Honorable and learned Member had read the remarks made by Mr. Dampier on the Bill, and had laid great stress upon them, and upon the opinions expressed by the Board of Revenue. No doubt, upon a Revenue question, the opinions of the Board of Revenue were entitled to great respect; but, as the Honorable and learned Chief Justice had observed, the Council should have regard not only to the present Members of the Board, but also to those who had gone before them. From some papers which he had obtained from the Board, he found that, on the 27th of February 1839, or only seven months after the Circular Order of 1838, which was so much insisted on, a note was written by the Secretary to the Board, shewing that the rules prescribed in the Circular were not generally acted on, and recommending some modification of them. With the permission of the Council, he would read some extracts:—

"Recent references from Jessore and Patna shew that some more distinct construction of the Law is necessary, no uniformity of practice being observed in the mode of settling alluvial formations, and enforcing payment of the revenue assessed upon them. * * *

In the great majority of cases, it is not considered expedient or equitable to make a permanent settlement of the accretion. The interests alike of the State and of the proprietor are opposed to such a measure. In such cases, then, it is impossible to double up the accretion with the original estate. Whether the former be engaged for by the proprietor on a temporary lease, or let in farm to a stranger, the accretion and the settled estate must be borne upon the Collector's books as two distinct Mehals, and the inconvenience of being compelled to regard and treat them as a single property is abundantly evident. In such cases, they must, I conceive, almost of necessity, be allowed to become separate estates, each being held separately responsible for the revenue assessed upon it. * * * * *

I submit that it is expedient to modify in some measure the Circular Order of August 1838, and that the consolidation of the accretion with the parent estate as a single property, be insisted on only when a permanent settlement of the former be made and consummated. It might unobjectionably be made a condition of the proprietor being admitted to permanent engagements that he consent to the union of the accretion with his settled estate. But in all cases of temporary settlement and farming lease, the alluvion being necessarily borne on the Towjee as a separate and substantive Mehal, it will be convenient, if not absolutely necessary, to recognize it as a distinct property."

He read this to shew that, almost immediately after the issue of the Circular Order of 1838, the impracticability of carrying out that Order had become apparent. Notwithstanding that Circular Order, he believed that the practice which had existed from the first had been very nearly that which was prescribed in the Circular Order of 1841; and he would take it upon himself to say that the statement of Mr. Dampier, that the rules laid down in this Bill (following as they did the rules of 1841) were opposed to the old customs of the country, was not borne out by the fact. He had in his hand a Memorandum which shewed that in the single

District of Nuddea, there were no less than a hundred and eighty-three churs on the Collector's rent-roll. Of these, sixteen were farmed to strangers; five were said to be pending settlement; ten were settled permanently; and all the rest were settled temporarily with the proprietors. That was conclusive proof of the existing custom, and he could see no reason for departing from it. Subject to any amendment for saving the operation of Act IX of 1847, he hoped the Council would allow the Section to stand in its present form.

THE CHAIRMAN said, there was no intention whatever to interfere with Act IX of 1847; but to obviate all possible doubt on the point, he would move the insertion in the Section of the words which he had suggested before, if the Honorable and learned Member on his right (Mr. Peacock) would allow his amendments to take precedence of the one proposed by himself.

MR. PEACOCK withdrew his amendment.

THE CHAIRMAN then moved his amendments, which made the first lines of the Section run thus:—

"When land added by alluvial accession to an estate paying Revenue to Government, becomes liable to assessment," &c.

The amendments were severally agreed to.

MR. PEACOCK moved that the words "it be so agreed on between the Revenue Authorities and" be left out of the Section.

The amendment having been put, the Council divided:—

Ayes 3.	*Noes* 5.
Mr. Harington.	Mr. Forbes.
Sir Arthur Buller.	Mr. Currie.
Mr. Peacock.	Mr. LeGeyt.
	Mr. Ricketts.
	The Chairman.

So the amendment was negatived.

MR. PEACOCK said, he should now move to amend the second branch of the Section. By that part of the Section, if the owner of an estate to which alluvion had attached, refused to incorporate the alluvion with the estate, he would be entitled to insist on its being settled as a separate estate, in opposition to Government. He (Mr. Peacock) thought that the owner ought not to have that right, but that the separate settlement should be subject to the consent of Government, because the position of the alluvion might be such that the separation might depreciate the value of the original estate; and the security of the Government for the public revenue assessed upon it. Suppose the original estate to be a dock or a wharf, and alluvion to have formed between it and the river. It was obvious that, if the alluvion were made a separate estate, the dock or the wharf, from being cut off from its river-frontage, would become valueless, and the security of Government for the revenue payable in respect of it, might be destroyed.

Then, there was another difficulty. He did not quite see what was meant by the phrase "settled as a separate estate," as used in the Section. Was it intended that the alluvion should be so settled permanently, or that it should be so settled for a term? If the latter, the meaning ought to be clearly expressed.

MR. CURRIE said, the Bill as drawn, allowed the alluvion to be settled permanently or temporarily. He did not see any objection to that. At the same time, it might perhaps be unobjectionable to allow the claim of the proprietor to permanent settlement only on condition of his incorporating the alluvion with the original estate.

After some conversation, in the course of which Mr. Peacock read a proposed amendment, which however he said required some modification—

MR. CURRIE said, it was very difficult to see all the bearings and effects of an amendment on a question of this nature at the moment; and he should therefore move that the further consideration of the Bill be postponed until next Saturday, if the Honorable and learned Member would give previous notice of the alterations which he intended to move.

The motion was agreed to, and the Council resumed its sitting.

MR. PEACOCK gave notice that he would on Saturday the 31st instant, move to leave out all the words after

the word "estate" in the 18th line of Section I of the above Bill, and to substitute the following for them:—

"If it be not agreed as aforesaid, and the Revenue Authorities and the proprietor or proprietors agree that the alluvial land shall be assessed and settled as a separate estate, it may be settled accordingly, and such separate settlement shall be permanent if the settlement of the original estate is permanent. Whenever alluvial land is assessed separately, it shall thenceforward be regarded and treated as in all respects separate from and independent of the original estate. If the Revenue Authorities and the proprietor or proprietors cannot agree that the revenue assessed shall be added to the original jumma, or that the alluvial land shall be assessed and settled as a separate estate, the land shall be let in farm for a period not exceeding years, reserving Malikana at the usual rate to the proprietor or proprietors for the time being of the original estate."

MR. PEACOCK also gave notice that he would on the same day move to introduce the following new Section after Section II of the above Bill:—

"Whenever a settlement of alluvial land is made, the Revenue Officer shall determine whether any and what additional rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenure in the original estate, to the proprietor or proprietors or to the farmer or farmers of the original estate; and if the alluvial land be let on lease under this Act, whether any and what rent shall be payable by the person or persons holding such under-tenures, to the farmer or farmers of the alluvial land."

MADRAS MARINE POLICE.

MR. FORBES moved that Mr. Ricketts be requested to take the Bill "for the maintenance of a Police Force for the Port of Madras" to the President in Council in order that it may be submitted to the Governor General for his assent.

Agreed to.

INSTITUTION OF SUITS AND APPEALS (N. W. PROVINCES).

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill "for the relief of persons who, in consequence of the recent disturbances, may have been prevented from instituting or prosecuting suits or appeals in the Courts of the North-Western Provinces within the period allowed by law" to the President in Council in order that it may be submitted to the Governor General for his assent.

Agreed to.

INSOLVENT DEBTORS (MOFUSSIL).

MR. LEGEYT gave notice that he would on Saturday the 31st instant move that the Report of the Select Committee on the subject of a Law for the relief of Insolvent Debtors in the Mofussil be adopted.

NABOB OF SURAT.

MR. PEACOCK gave notice that he would on the same day move that Meer Jaffeer Alee Khan be informed that the Legislative Council have considered his Petition and that they see no sufficient ground for complying with the prayer thereof or for amending Act XVIII of 1848.

The Council adjourned.

Saturday, July 31, 1858.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. H. Ricketts,	H. B. Harington, Esq.
Hon. B. Peacock,	and
P. W. LeGeyt, Esq.	H. Forbes Esq.
E. Currie, Esq.	

GOVERNOR-GENERAL'S ABSENCE.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor-General had given his assent to the Bill "to continue in force for a further period of six months Act IV of 1858 for providing for the exercise of certain powers by the Governor-General during his absence from the Council of India."

STAMP DUTIES (BENGAL).

THE CLERK presented a Petition from the Rajah of Burdwan stating that the Petitioner's pecuniary interests were very largely involved in the success of the proposed Bill "to amend Regulation X. 1829 of the Bengal Code" for the