

THE



Bombay Government Gazette.

Published by Authority.

SATURDAY, 5TH APRIL 1879.

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

PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Report of the Select Committee of the Council of His Excellency the Governor of Bombay on the "Bill to provide for Irrigation in the Bombay Presidency," and the Bill as amended by the Committee are, in accordance with Rule 25 of the Rules for the Conduct of Business at Meetings of the Council, published for general information :—

Report of the Select Committee appointed to consider Bill No. 11 of 1878 (a "Bill to provide for Irrigation in the Bombay Presidency").

We the undersigned Members of the Select Committee appointed to consider the Bill to provide for Irrigation in the Bombay Presidency, have considered the Bill and the papers noted in the margin, and have the honour to present this report.

2. The Bill as introduced into Council has appeared to us to be capable of a more systematic arrangement with a view to greater intelligibility and facility of reference, and we have therefore made several changes in the sequence of the parts and of the sections. Part IX. of the Bill, which treated "Of Jurisdiction," we have omitted altogether, transferring the sections contained in it to more appropriate parts of the Bill. On the other hand, we have brought together into one part (Part V. of the amended Bill) all the sections relating to "the award of compensation," and Parts II, III. and IV.

of the Bill as introduced, which all related to the construction and maintenance of irrigational works, we have thrown together (*minus* the sections concerning compensation) into one part (Part II. of the amended Bill), headed "Of the Construction and Maintenance of Canals."

3. The changes made by us in the sections contained in Parts I., II., IV. and VIII. of the amended Bill are not of sufficient importance to need to be specially remarked upon.

4. In Part III. (=Part V. of the original Bill) relating to "Water-courses" we have omitted the definition of the word "person" (section 26 of the original Bill) as being unnecessary. The Bombay General Clauses Act (Bombay Act X. of 1866) already contains a definition of that word. Sections 51, 52, and 53 of the original Bill, which related to the settlement of disputes concerning water-courses, we have had re-drafted and inserted, as section 25, in this part.

5. But the only subject dealt with in Part III. in which we have made any material changes is that of the "Rights and Obligations of Owners of Water-courses" (sections 20—24 of amended Bill = sections 32 to 35 of original Bill). This subject is one of first importance in connection with the successful administration of canals and has been very fully and carefully considered by us. The Bill as introduced proposed to authorize canal officers to permit other persons to have the use of existing water-courses for the purpose of obtaining a supply of canal-water for their land on payment of such rent to the owners of the water-courses and on such other terms as the canal officers might think equitable. We are of opinion that in a matter of so much importance the orders of canal officers should be subject to the approval of the Collector, and we have provided in section 22 accordingly. But it is urged that the provision enabling canal officers to compel owners of existing water-courses thus to allow the use of their water-courses to other parties may tend to discourage the ryots in the first instance from spending their money in the construction of water-courses. We have therefore provided that the canal officers, subject to the approval of the Collector, may in each case exercise a discretion as to whether the person applying to take advantage of an existing water-course shall have the use of it on paying the owner a rent, or shall be required to become a joint owner on payment to the original owner of compensation, in the shape of a lump sum or otherwise. And with a view to give to any such order when once duly passed the force of law, we have added words to clause (10) of section 60 of the revised Bill (= clause (3), section 56 of the original Bill), rendering resistance on the part of the original owner penal. We have, on the other hand, sought to protect the latter, as far as possible, (1) by making a person who has the use merely of a water-course liable for a share of the expenses of repair (*vide* para. 2 of section 24); and (2) by providing that any rent due to him for the use of his water-course shall be recoverable for him as an arrear of land-revenue (*vide* para. 3 of section 56).

6. In Part V. of the amended Bill, the first section (section 30) is a reproduction of sections 7 and 39, clause (b) of the original Bill. Our object has been to simplify as much as possible the rules relating to the award of compensation, and it will be observed that we have removed from amongst the exceptions to the general rule which permits the award of compensation in respect of any substantial damage, the cases of stoppage or diminution of percolation or floods, and of deterioration of soil. We consider that compensation should be given if it can be proved that substantial damage has arisen from any of these causes. On the other hand, we have inserted a general proviso (section 30, clause (c)) against the award of compensation in respect of any supply of water which has not been utilized for a period of five years.

7. In section 31 (=sections 8 and 25 of the original Bill) we have extended the period within which claims for compensation may be brought from six to twelve months. Section 38 (=section 9 of the original Bill) has been amended, by including in it several important sections of the Land Acquisition Act which had been accidentally omitted, and sections 41 and 42 (=sections 10 and 11 of the original Bill) have been modified so as to suit the peculiar relations of landlords and tenants in this Presidency.

8. To the provisions of Part VI. (= Part VII. of the Bill as introduced into Council) we have made several important additions.

9. We have deemed it necessary to make provision for the levy of water-rates in cases in which existing water-supply is improved more clearly and definitely than was done in section 41 of the original Bill. This necessary provision will be found in para. 2 of section 43 of the amended Bill.

10. In a country like the Deccan, where the soil is often of a very porous nature, it is, we think, imperatively necessary to impose rates upon land deriving benefit from percolation and leakage so as to guard the State against loss by the indirect and often surreptitious abstraction of water from canals; but we think it advisable to fix a limited

distance of 200 yards to which this levy shall be confined when the benefit is derived from percolation or from wells situated within that distance from a canal, and we have therefore modified section 47 (= section 45 of the original Bill) accordingly.

11. As regards the "Protection-rate" provided for in sections 46 and 47 of the original Bill, we adhere to the principle therein set forth; but we consider that those sections were not sufficiently clear and defined. We have devoted especial attention to this very important matter, and have introduced certain provisions and conditions which we believe will most completely secure the interests of the people upon whom the rate may be imposed. These sections stand in the amended Bill as 48 to 55. We have increased the period before the expiration of which such rate shall not be levied from 2 to 3 years from the time when the land first becomes irrigable, and we have provided that the land on which the rate is levied shall not only be culturable but cultivated, and that the rate shall not even then be levied unless it can be shown that the annual value of the produce of the land, or its productive powers will be increased by irrigation, and unless specific offers have been made by the canal officers to the landholder to assist him in starting irrigation by an advance of money (section 49). We have also inserted a new section (section 50) to remove any doubt as to what persons shall be ultimately liable for the payment of the protection-rate.

12. In Part VII. we have modified section 57 (= section 49 of the original Bill) so as to limit the liability under it to such able-bodied persons as shall from time to time be named in a list to be prepared by the Collector. In the new sections we have taken as our guide the provisions of the Burma Embankment Act, (XIII. of) 1877.

13. It only seems necessary further to notice that we have extended the number of cases in which under section 66 (= section 54 of the original Bill) an appeal shall lie from an order of a canal officer to the Collector, and that we have inserted a new section (section 68) to provide for the manner of serving notices under the Act.

(Signed) L. R. ASHBURNER.
 „ E. W. RAVENSCROFT.
 „ W. C. ANDERSON.
 „ C. J. MERRIMAN.

I object to Sections 48 and 49 and 57 and to a few minor points in connection with the Report.

(Signed) MORARJEE GOCULDASS.

I have not signed the Report as I was prevented by stress of official duties from being present at any of the meetings of the Select Committee.

(Signed) DOSABHOY FRAMJEE.

5th April 1879.

Bill No. 11 of 1878.

A Bill to provide for Irrigation in the Bombay Presidency.

WHEREAS it is necessary to make provision for the construction, maintenance, and regulation of canals, for the supply of water therefrom, and for the levy of rates for water so supplied, in the Bombay Presidency; It is enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called "The Bombay Irrigation Act, 1879."

Short title.

It extends to the whole of the Presidency of Bombay, except the City of Bombay.

Local extent.

2. In this Act, unless there be something repugnant in Interpretation Section. the subject or context,

(1)—"canal" includes—

(a) all canals, channels, pipes, and reservoirs constructed, maintained, or controlled by Government for the supply or storage of water;

(b) all works, embankments, structures, and supply and escape channels connected with such canals, channels, or reservoirs, and all roads constructed for the purpose of facilitating the construction or maintenance of such canals, channels, or reservoirs;

(c) all water-courses, drainage-works, and flood-embankments as herein-after respectively defined;

(d) any part of a river, stream, lake, natural collection of water, or natural drainage-channel, to which the Governor in Council may apply the provisions of section four, or of which the water has been applied or used before the passing of this Act for the purpose of any existing canal;

(e) all land belonging to Government which is situate on a bank of any canal as hereinbefore defined, and which has been appropriated, under the orders of Government, for the purposes of such canal;

(2)—“water-course” means any channel

“Water-course.” or pipe not maintained at the cost of Government, which is supplied with water from a canal, and includes all subsidiary works connected with any such channel or pipe, except the sluice or outlet through which water is supplied from a canal to such channel or pipe;

(3)—“drainage-work” means any work

“Drainage-work.” in connection with a system of irrigation or reclamation made or improved by the Government for the purpose of the drainage of the country, whether under the provisions of section fourteen or otherwise, and includes escape-channels from a canal, dams, weirs, embankments, sluices, groins, and other works connected therewith, but does not include works for the removal of sewage from towns;

(4)—“flood-embankment” means any

“Flood-embankment.” embankment constructed or maintained by Government in connection with any system of irrigation or reclamation works for the protection of lands from inundation, or which may be declared by the Governor in Council to be maintained in connection with any such system, and includes all groins, spurs, dams, and other protective works connected with such embankments;

(5)—“Collector” means the head revenue officer of a

“Collector.” district, and includes any officer appointed by the Governor in Council to exercise all or any of the powers of a Collector under this Act;

(6)—“canal officer” means any officer

“Canal Officer.” lawfully appointed or invested with powers under section three;

(7)—“owner” includes every person having a joint interest in the ownership of

“Owner.” the thing specified; and all rights and obligations which attach to an owner under the provisions of this Act shall attach jointly and severally to every person having such joint interest in the ownership.

3. Government or, subject to such orders as may from time to time be passed by Appointment of Canal Officers. Government, any officer of Government whom the Governor in Council empowers in this behalf, may

(a) appoint such officers with such designations, and assign to them respectively such powers and duties under this Act as Government or such officer may deem fit;

(b) invest any Government officer in any department, either personally, or in right of his office, or any other person, with such powers, and impose upon him such duties, under this Act, as Government or such officer may deem fit:

Provided that any assignment of, or investment with, powers or duties made under this section may at any time be cancelled or varied by the authority who made it.

PART II.

OF THE CONSTRUCTION AND MAINTENANCE OF CANALS.

Application of Water for purposes of Canals.

4. Whenever it appears expedient to Notification to issue the Governor in Council that the water when water-supply is to be applied for purposes of any river or stream of any Canal. flowing in a natural channel, or of any lake, or any other natural collection of still water should be applied or used by the Government for the purpose of any existing or projected canal;

the Governor in Council may, by notification in the *Bombay Government Gazette*, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

Powers of Entry on Land, &c.

5. At any time after the day so named Powers of canal officers for the purpose of so applying a water supply. any canal officer duly empowered in this behalf may enter on any land, remove any obstruction, close any channel, and do any

other thing necessary for such application or use of the said water, and for such purpose may take with him, or depute, or employ, such subordinates and other persons as he deems fit.

6. Whenever it shall be necessary to make any enquiry or

Entry for enquiry.

examination in connection with a projected canal, or with the maintenance of an existing canal, any canal officer duly empowered in this behalf and any person acting under the general or special order of any such canal officer, may

(a) enter upon such land as he may think necessary for the purpose, and

(b) exercise all powers and do all things in respect of such land as he might exercise and do if the Government had issued a notification under the provisions of section four of the Land Acquisition Act, 1870, to the effect that land in that locality is likely to be needed for a public purpose, and

(c) set up and maintain water-gauges and do all other things necessary for the prosecution of such enquiry and examination.

7. Any canal officer duly empowered

Power to inspect and regulate water-supply.

in this behalf and any person acting under the general or special order of any such canal officer, may enter upon any land, building, or water-course, on account of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the land irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of the canal from which such water is supplied.

8. In case of any accident being apprehended or happening

Power to enter for repairs, and to prevent accidents.

to a canal, any canal officer duly empowered in this behalf and any person acting under the general or special order of any such canal officer, may enter upon any land adjacent to such canal and may take trees and other materials, and execute all works which may be necessary for the purpose of preventing such accident, or repairing any damage done.

9. When a canal officer or other person

Notice to occupier of building, &c.

proposes, under the provisions of any of the three last preceding sections, to enter into any building or

enclosed court or garden attached to a dwelling-house, not supplied with water from a canal, and not adjacent to a flood-embankment, he shall previously give to the occupier of such building, court, or garden such reasonable notice as the urgency of the case may allow.

Canal Crossings.

10. Suitable means of crossing canals

Means of crossing canals and of drainage to be provided as may be deemed necessary by Government.

shall be provided at such places as the Governor in Council thinks necessary for the reasonable convenience of the inhabitants of the adjacent land; and suitable bridges, culverts, or other works shall be constructed to prevent the drainage of the adjacent land being obstructed by any canal.

Removal of Obstructions to Drainage.

11. Whenever it appears to the Governor

Governor in Council may prohibit formation of obstructions of rivers, &c., within certain limits.

in Council that injury to the public health, or public convenience, or to any canal, or to any land for which irrigation from a canal is available, has arisen or may arise from the obstruction of any river, stream, or natural drainage-course, the Governor in Council may, by notification published in the *Bombay Government Gazette*, prohibit, within limits to be defined in such notification, the formation of any such obstruction, or may, within such limits, order the removal or other modification of such obstruction.

Thereupon so much of the said river, stream, or natural drainage-channel, as is comprised within such limits, shall be held to be a drainage-work as defined in section two.

12. Any canal officer duly empowered

Canal officer may issue order to person causing obstruction.

in this behalf may, after such publication, issue an order to any person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in such order.

13. If, within the time so fixed, such

Canal officer may cause obstruction to be removed.

person does not comply with the order, the canal officer may cause the obstruction to be removed or modified; and if the person to whom the order was issued does not, when called upon, pay the expenses of such removal or modification, such expenses shall be recoverable by the Collector as an arrear of land-revenue.

Construction of Drainage Works.

14. Whenever it appears to the Governor in Council

When drainage-works are necessary Governor in Council may order a scheme to be drawn up and carried out.

that any drainage work is necessary for the public health or for the improvement of the proper cultivation or irrigation of any land, or that protection from floods or other accumulations of water, or from erosion by a river, is required for any land, the Governor in Council may cause a scheme for such work to be drawn up and carried into execution,

and the person authorized by the Governor in Council to draw up and execute such scheme may exercise in connection therewith the powers conferred on canal officers by sections six, seven, and eight, and shall be liable to the obligations imposed upon canal officers by sections nine and thirty-three.

PART III.

OF WATER COURSES.

Construction of New Water Courses.

15. Any person may, with the permission of a canal officer duly empowered to grant such permission, construct a new water-course if he has obtained the consent of the holder of the land required therefor.

16. Any person desiring to construct a new water-course, but being unable or unwilling to construct it under a private arrangement with the holder of the land required for the same, may apply, in writing, to any canal officer duly empowered to receive such applications, stating

(1)—that he is ready to defray all the expenses necessary for acquiring the land and constructing such water-course;

(2)—that he desires the said canal officer in his behalf and at his cost to do all things necessary for constructing such water-course.

17. If the canal officer considers the construction of such water-course expedient, he may call upon the applicant to deposit any part of the expense such officer may consider necessary,

and upon such deposit being made, shall cause enquiry to be made into the most suitable alignment for the said water-course,

and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof,

and shall forthwith publish a notification in every village through which the water-course is proposed to be taken, that so much of such land as is situated within such village has been so marked out,

and shall send a copy of such notification to the Collector of every district in which such land is situated for publication on such land.

The said notification shall also call upon

any person who wishes to share in the ownership of such water-course to make his application in that respect to the canal officer within thirty days of the publication of such notification.

If any such applicant appears, and his ap-

plication is admitted, he shall be liable to pay his share in the construction of such water-course, and in the cost of acquiring the land for the same, and shall be an owner of such water-course when constructed.

18. On receipt of copy of such notification, the Collector shall proceed to acquire such land under the provisions of the Land Acquisition Act, 1870, as if a declaration had been issued by the Government for the acquisition thereof under section six of that Act, and as if the Government had thereupon directed the Collector to take order for the acquisition of such land under section seven of the said Act, and (if necessary) as if the Government had issued orders for summary possession being taken under section seventeen of the said Act.

19. On being put in possession of the land, the canal officer shall construct the required water-course; and on its completion shall give to the owner notice thereof, and of any sum payable by him on account of the cost of acquiring the land and constructing the water-course. On such notice being given, such sum shall be due from the owner to the canal officer. On receipt of payment in full of all expenses incurred, the canal officer shall make over possession of such water-course to such owner.

Rights and Obligations of Owners of Water-courses.

Obligations of owner of water-course. 20. Every owner of a water-course shall be bound—

(a) to construct and maintain all works necessary for the passage across such water-course, of canals, water-courses, drainage-channels, and public roads existing at the time of its construction, and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the occupants of neighbouring lands ;

(b) to maintain such water-course in a fit state of repair for the conveyance of water ;

(c) to allow the use of it to others or to admit other persons as joint owners thereof on such terms as may be prescribed under the provisions of section twenty-two ;

and every owner of a water-course and every person duly authorized under the provisions hereinafter contained to use a water-course shall be entitled—

(d) to have a supply of water by such water-course at such rates and on such terms as may from time to time be prescribed under section forty-three and by the rules made by the Governor in Council under section sixty-eight :

Provided always that any owner of a water-course and subject to the terms of any agreement between the parties, or to any condition imposed under section twenty-two, any such person as aforesaid may at any time by giving three months' previous notice in writing in this behalf to a canal officer duly empowered to receive such notices, resign his interest in such water-course.

21. Any person desiring to have a supply of water through a water-course, of which he is not an owner, may make a private arrangement with the owner for permitting the conveyance of water thereby, or may apply to a canal officer duly empowered to receive such applications for authority to use such water-course, or to be declared a joint owner thereof.

22. On receipt of any such application, the canal officer shall serve notice on the owner to show cause why such authority should not be granted, or such declaration should not be made, and, if no objection be raised, or if any objection be raised and be found insufficient or invalid, shall, subject to the approval of the Collector, either authorize the applicant to use the water-course, or declare him to be a joint owner thereof on such conditions as to the payment of compensation or rent or otherwise as may appear to him equitable.

23. No land acquired under this Part for a water-course shall be used for any other purpose without the previous consent of a canal officer duly empowered to grant such permission.

24. If any owner of a water-course fails to fulfil any obligation imposed upon him by clause (a) or (b) of section twenty, any canal officer duly empowered in this behalf may require him by notice to execute the necessary work or repair within a period to be prescribed in such notice, of not less than fifteen days, and, in the event of failure, may execute the same on his behalf ; and, except as hereinafter provided in this section, all expenses incurred in the execution of such work or repair shall be a sum due by such owner to Government.

Every person other than an owner who uses any water-course in respect of which any repair has been executed by a canal officer under this section shall, in the absence of any agreement between the parties or of any condition imposed under section twenty-two at the time such person was authorized to use such water-course to the contrary, be liable to pay to Government such proportion of the expenses incurred in the execution of such repairs as shall be determined by the said canal officer.

Settlement of Disputes concerning Water-courses.

25. Whenever a dispute arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction, or

maintenance of a water-course, or among joint owners of a water-course as to their respective shares of the expense of constructing or maintaining such water-course, or as to the amounts severally contributed by them towards such expense, or as to failure on the part of any owner to contribute his share,

any person interested in the matter of such dispute may apply, in writing, to any canal officer duly empowered to receive such applications, stating the matter in dispute.

Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to enquire into the said matter,

and if all the persons interested consent, in writing, to his being arbitrator, he may pass his order thereon ;

failing such consent, he shall transfer the matter to the Collector, who shall enquire into and pass his order thereon.

Any order passed by the Collector under this section shall remain in force until set aside by a decree of a civil court.

PART IV.

OF THE SUPPLY OF WATER.

Applications for Supply.

26. Every person desiring to have a supply of water from a canal shall submit a written application to that effect to a canal officer duly empowered to receive such applications in such form as shall from time to time be prescribed by Government in this behalf.

If the application be for a supply of water to be used for purposes other than those of irrigation, the canal officer may, with the sanction of Government, give permission for water to be taken for such purposes under such special conditions and restrictions as to the limitation, control, and measurement of the supply as he shall be empowered by Government to impose in each case.

Provisions as to Supply.

27. The supply of water to any water-course or to any person who is entitled to such supply shall not be stopped except—

- (a) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority ;

- (b) whenever and so long as any water-course by which such supply is received, is not maintained in such repair as to prevent the wasteful escape of water therefrom ;

- (c) whenever and so long as it is necessary to do so in order to supply in rotation the legitimate demands of other persons entitled to water ;

- (d) whenever and so long as it may be necessary to do so in order to prevent the wastage or misuse of water ;

- (e) within periods fixed from time to time by a canal officer duly empowered in this behalf, of which due notice shall be given.

28. When canal-water is supplied for the irrigation of one or more crops only, the permission to use such water shall be held to continue only until such crop or crops shall come to maturity, and to apply only to such crop or crops.

29. Every agreement for the supply of canal-water to any land, building, or other immovable property shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such land, building, or other immovable property takes place.

No person entitled to the use of any work or land appertaining to any canal, and except in the case of any such agreement as aforesaid, no person entitled to use the water of any canal, shall sell, or sub-let, or otherwise transfer his right to such use without the permission of a canal officer duly empowered to grant such permission.

PART V.

OF THE AWARD OF COMPENSATION.

Compensation when claimable.

30. Compensation may be awarded in respect of any substantial damage caused by the exercise of any of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation ;

Provided that no compensation shall be so awarded in respect of any damage arising from

Exceptions.

- (a) deterioration of climate, or
- (b) stoppage of navigation, or the means of rafting timber, or of watering cattle, or
- (c) stoppage or diminution of any supply of water in consequence of the exercise of the power conferred by section four, if no use have been made of such supply within the five years next before the date of the issue of the notification under section thirty-six, or
- (d) failure or stoppage of the water in a canal, when such failure or stoppage is due to—
 - (1) any cause beyond the control of Government,
 - (2) the execution of any repairs, alterations or additions to the canal, or
 - (3) any measures considered necessary by any canal officer duly empowered in this behalf for regulating the proper flow of water in the canal, or for maintaining the established course of irrigation;

but any person who suffers loss from any stoppage or diminution of his water-supply due to any of

Remission of water-rates when allowable.

the causes named in clause (d) of this section shall be entitled to such remission of the water-rate payable by him as may be authorized by the Governor in Council.

31. No claim for compensation under this Act shall be entertained after the expiration of twelve months from the time when the damage complained of commenced unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

Limitation of claims.

32. No compensation shall be claimable under this Act in respect of any work executed before it came into force, or of any damage caused by or in the execution of any such work.

Compensation not claimable in respect of works executed before this Act came into force.

Summary Decisions.

33. In every case of entry upon any land or building under section five, section six, section seven, or section eight, the canal officer or person making the entry shall ascertain and record the extent of

Compensation for damage caused by entry on land, &c.

the damage, if any, caused by the entry, or in the execution of any work, to any crop, tree, building, or other property,

and within one month from the date of such entry compensation shall be tendered by a canal officer duly empowered in this behalf to the land-holder, or owner of the property damaged.

If such tender is not accepted, the canal officer shall forthwith refer the matter to the Collector for the purpose of making enquiry as to the amount of compensation and deciding the same.

34. If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in clause (d) of section thirty the holder of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector, after consulting the canal officer, shall award to the petitioner reasonable compensation for such loss.

Compensation on account of interruption of water-supply.

35. The decision of the Collector under either of the last two preceding sections as to the amount of compensation to be awarded, or, if in any rule framed under section sixty-nine such decision shall be declared to be appealable, then the decision of the authority to whom the appeal lies, shall be conclusive.

Decision as to amount of compensation under either of the last two sections to be conclusive.

Formal Adjudications.

36. As soon as practicable after the issue of a notification under section four, the Collector shall cause public notice to be given at convenient places, stating that the Government intend to apply or use the water as aforesaid, and that claims for compensation may be made before him.

Notice as to claims for compensation in certain cases.

A copy of sections thirty, and thirty-one shall be annexed to every such notice.

37. All claims for compensation under this Act, other than claims of the nature provided for in sections thirty-three and thirty-four, must be made before the Collector of the district in which such claim arises.

Claims to be preferred to the Collector.

38. The Collector shall enquire into every such claim and determine the amount of compensation, if any, which should in

Collector to be guided by the provisions of the Land Acquisition Act, 1870.

his opinion be given to the claimant, and sections eleven, twelve, fourteen, fifteen, eighteen to twenty-three (inclusive), twenty-six to forty (inclusive), fifty-one, and fifty-eight of the Land Acquisition Act, 1870, shall apply to such enquiries:

Provided that instead of the last clause of the said section twenty-six the following shall be read: "The provisions of this section and of sections thirty and thirty-nine of the Bombay Irrigation Act, 1879, shall be read to every assessor in a language which he understands before he gives his opinion as to the amount of compensation to be awarded."

39. In determining the amount of compensation under the last preceding section, regard shall be had to the diminution in the market-value, at the time of awarding compensation, of the property in respect of which compensation is claimed;

and where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property, caused by the exercise of the powers conferred by this Act.

40. All sums of money payable for compensation awarded under section thirty-eight, shall become due three months after the claim for such compensation was made;

and simple interest at the rate of six per centum per annum shall be allowed on any such sum remaining unpaid after the said three months, except when the non-payment of such sum is caused by the neglect or refusal of the claimant to apply for or receive the same.

Abatements of Land Revenue and Rent.

41. If compensation is awarded under section thirty-eight on account of a stoppage or diminution of supply of water to any land paying revenue to Government, and the amount of the revenue payable on account of such land has been fixed with reference to the water-advantages appertaining thereto, the holder of the said land shall be entitled to an abatement of the amount of revenue payable to such extent as shall be determined by the Collector.

42. Every inferior holder of any land in respect of which such compensation has been paid shall, if he receives no part of the said compensation, be entitled to an abatement of the rent previously payable by him to the superior holder thereof in proportion to the reduced value of the holding;

but if a water-supply which increases the value of the holding is afterwards restored to the said land otherwise than at the cost of the inferior holder, the superior holder shall be entitled to enhance the rent in proportion to such increased value: provided that the enhanced rent shall not in any case exceed the rent payable by the inferior holder before the abatement, unless the superior holder shall, independently of the provisions of this section, be entitled so to enhance the previous rent.

PART VI.

OF WATER RATES.

Supply Rates.

43. Such rates shall be leviable for canal-water to be determined by Government. Rates for supply of water supplied for purposes of irrigation, or for any other purpose, as shall from time to time be determined by the Governor in Council.

If, owing to the construction of a new canal or to the improvement or extension of an existing canal, the amount or duration of any water-supply, in respect of which either no revenue, or a fixed amount of revenue has hitherto been paid to Government, is increased, rates shall be leviable under this section in respect of the increased water-supply only.

The said rates shall be payable by the person on whose application the supply was granted, or by any person who uses the water so supplied.

Occasional Rates.

44. If water supplied through a water-course be used in an unauthorized manner, and if the person by whose act or neglect such use has occurred cannot be identified.

the person or all the persons on whose land such water has flowed, if such land has derived benefit therefrom,

or if no land has derived benefit therefrom, the person or all the persons chargeable in respect of the water supplied through such water-course,

shall be liable, or jointly liable, as the case may be, for the charges which shall be made for such use under the rules prescribed by the Governor in Council under section sixty-nine.

45. If water supplied through a water-course be suffered to

Liability when water runs to waste. run to waste, and if, after enquiry, the person through whose act or neglect such water was suffered to run to waste cannot be discovered,

the person or all the persons chargeable in respect of the water supplied through such water-course shall be liable or jointly liable, as the case may be, for the charges which shall be made, in respect of the water so wasted, under the rules prescribed by the Governor in Council under section sixty-nine.

All questions arising under this and the last preceding section shall, subject to the provisions of section sixty-six, be decided by a canal officer duly empowered in this behalf.

46. All charges for the unauthorized use or for waste of water

Charges recoverable in addition to penalties. may be recovered, as water-rates, in addition to any penalties incurred on account of such use or waste.

Percolation and Leakage Rates.

47. If it shall appear to a canal officer

Land deriving benefit from percolation liable to water-rate. duly empowered to enforce the provisions of this section, that any cultivated land within two hundred yards of any canal receives, by percolation or leakage from such canal, an advantage equivalent to that which would be given by a direct supply of canal-water for irrigation,

or that any cultivated land, wherever situate, derives by a surface-flow, or by means of a well sunk within two hundred yards of any canal after the admission of water into such canal, a supply of water which has percolated or leaked from such canal,

he may charge on such land a water-rate not exceeding that which would ordinarily have been charged for a similar direct supply to land similarly cultivated.

For the purposes of this Act, land charged under this section shall be deemed to be land irrigated from a canal.

Protection Rate.

48. If at the close of any financial year it shall appear

Levy of rate on lands irrigable, but not irrigated. to the Governor in Council that the gross revenue from water

supplied from any canal, or from the completed portion of any canal, during the said year has not amounted to five per centum of the total capital expended in the construction of such canal, or of the completed portion thereof, he may direct the levy in the year then next ensuing of a rate not exceeding eight annas per acre on all cultivated land which is under command of such canal, but is not irrigated: Provided—

(1)—that the rate to be so levied in respect of any such land Provisoes. shall not in any case exceed one-fourth of the full dry-crop rate at which such land is at the time being assessed for the purposes of the land-revenue;

(2)—that when the area of the land under command of the canal exceeds the area for which water is available therefrom for the irrigation during the monsoon months of such dry-crops as are ordinarily grown in the tract of country through which such canal passes, the maximum rate leviable under the foregoing proviso shall be reduced in the proportion which the area for which water is so available bears to the area under command.

For the purposes of this section the amount of the total capital expended on the construction of a canal, or of any completed portion of a canal, shall be ascertained and determined in such manner as Government shall direct. The proportion in which the maximum rate shall be reduced in respect of the lands under command of any canal to which the second proviso of this section is applicable, shall also be determined under the orders of Government.

49. The said rate shall not be leviable in respect of any land—

- (a) which has not been irrigable from such canal for a period exceeding three years;
- (b) if during the year for which such rate might otherwise be levied, water sufficient for the irrigation of such

land has not been supplied when duly applied for by the holder thereof;

(c) unless the net annual value of the produce of such land, or the productive powers thereof will be increased by the irrigation thereof by canal-water, after deducting all necessary expenses incurred in cultivating the same, conveying the water thereto, and paying all Government charges in respect of such irrigation;

(d) unless a canal officer duly empowered in this behalf shall have offered to permit the person who would otherwise be liable to pay the said rate, to construct the water-course necessary for conveying the water to the said land under section fifteen, or, if the said person shall so prefer, to apply the provisions of sections seventeen, eighteen, and nineteen, or of sections twenty-one and twenty-two, as the case may be, for the construction of a water-course, or for authorizing such person to use or to become a joint owner of some other water-course,

and shall have tendered an advance of money sufficient to provide for the construction of the said water-course or the acquisition of such authority or joint ownership, as the case may be; such advance to be repayable in conformity with the rules for recovering advances made under the Land Improvement Act, 1871.

If any question shall arise whether the aforesaid conditions have been complied with it shall be determined by the Collector.

Questions as to fulfilment of said conditions to be determined by the Collector.

50. If there are both superior and inferior holders of any land in respect of which the said rate is chargeable, the rate shall be payable by the superior holder, who shall be entitled to assistance in the recovery of the same from the inferior holder in accordance with the law at the time in force for assisting such superior holders in recovering land revenue demands from their inferior holders.

Procedure for determining Liability to Protection Rate.

51. Immediately on the issue of an order by the Governor in Council for the levy of a rate under section forty-eight, a Collector to publish notice of liability of irrigable lands,

general notice shall be published by the Collector of every district affected thereby proclaiming the liability of all lands under command of the canal to the rate prescribed in the said order, unless such lands are irrigated, and setting forth the general boundaries within which the same will be leviable.

52. As soon as practicable after the issue of a notice under the last preceding section a canal officer duly empowered in this behalf shall prepare and submit to the Collector a sketch map showing clearly the extent and boundaries of the area under command of the canal, or of the completed portion of the canal, in his district.

53. The Collector shall by the aid of such sketch map, prepare a list of the land-holders whom he shall deem to be liable to the payment of the said rate.

Collector to prepare and publish list of persons liable to the rate.

The said list shall be published in such manner as the Collector deems fit in every village concerned, together with an intimation that all objections to any entry therein must be made to the Collector, in writing, within one month from the publication thereof.

54. All objections duly made within the said period shall be heard and determined by the Collector, or, if the Collector shall so direct, by the Assistant or Deputy Collector in charge of the taluka concerned, and the decision of the Collector, or of the Assistant or Deputy Collector, as the case may be, shall be final.

55. A copy of the said list, as finally corrected, shall be given to the Patel, or other officer empowered under section fifty-six to collect the said rate, and shall be his warrant to collect the rate from the persons named therein.

Copy of list to be furnished to officer empowered to collect the rate.

Recovery of Water Rates and other Dues in Arrears.

56. Every water-rate leviable under this Act shall be payable in such instalments and on such dates and to such officers as shall from time to time be determined under the orders of the Governor in Council.

Water-rates when and to whom to be paid.

Any such rate, or instalment of the same, which is not paid on the day when it becomes due, and any sum due to Government or to a canal officer, whether on behalf of Government or of any other person, under Part III. of this Act, which is not paid when demanded, shall be recoverable according to the law and under the rules for the time being in force for the recovery of arrears of land-revenue.

Rent payable to the owner of a water-course by a person authorized to use such water-course shall be payable in such instalments and on such dates as the canal officer duly empowered to act under section twenty-two shall direct, and may be recovered, on behalf of the owner according to the law and rules aforesaid: Provided always that no more shall at any time be payable to the owner than is actually recovered from the said person,

PART VII.

OF OBTAINING LABOUR FOR CANALS ON EMERGENCIES.

57. Whenever it appears to a Canal Officer duly empowered to act under this section, that unless some work or repair is immediately executed, such serious damage will happen to any canal as to cause sudden and extensive public injury,

or, that, unless some clearance of a canal or other work which is necessary in order to maintain the established course of irrigation is immediately executed, serious public loss will occur,

and that the labourers necessary for the proper execution of such repair, clearance, or work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of the same so as to prevent such injury or loss,

the said officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such repair, clearance, or work; and thereupon every able-bodied person who resides or holds land in the vicinity of the locality where such repair, clearance, or work has to be executed, and whose name appears in the list hereinafter mentioned, shall, if required to do so by such officer or

by any person authorized by him in this behalf, be bound to assist in the execution of such repair, clearance, or work by labouring thereat as such officer or any person authorized by him in this behalf may direct.

All persons so labouring shall be entitled to payment at rates which shall not be less than the highest rates for the time being paid in the neighbourhood for similar labour.

58. Subject to such rules as may from time to time be prescribed under section sixty-nine in this behalf, the Collector shall prepare a list of the persons liable to be required to assist as aforesaid, and may from time to time add to, or alter such list or any part thereof.

59. All orders made under section fifty-seven shall be immediately reported to the Collector for the information of the Commissioner of the division, and likewise to the Chief Engineer for Irrigation for the information of Government.

PART VIII.

OF PENALTIES.

60. Whoever voluntarily and without proper authority,

(1)—damages, alters, enlarges, or obstructs any canal;

(2)—interferes with, or increases or diminishes the supply of water in, or the flow of water from, through, over, or under any canal, or by any means raises or lowers the level of the water in any canal;

(3)—corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;

(4)—destroys, defaces or moves any land or level-mark or water-gauge fixed by the authority of a public servant;

(5)—destroys, tampers with, or removes any apparatus, or part of any apparatus, for controlling, regulating, or measuring the flow of water in any canal;

(6)—passes, or causes animals or vehicles to pass in or across any of the works, banks, or channels of a canal contrary to rules made under section sixty-nine, after he has been desired to desist therefrom;

(7)—causes or knowingly and wilfully permits cattle to graze upon any canal or flood-embankment, or tethers, or causes, or knowingly and wilfully permits cattle to be tethered upon any such canal or embankment, or roots up any grass, or other

vegetation growing on any such canal or embankment, or removes, cuts, or in any way injures or causes to be removed, cut, or otherwise injured any tree, bush, grass, or hedge intended for the protection of such canal or embankment ;

(8)—neglects, without reasonable cause, to assist or to continue to assist in the execution of any repair, clearance, or work, when lawfully bound so to do under section fifty-seven ;

(9)—violates any rule made under section sixty-nine for breach whereof the Governor in Council shall, in such rules, direct that a penalty may be incurred ;

and whoever—

(10)—being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of the water therefrom, or uses such water in an unauthorized manner, or prevents or interferes with the lawful use of such water-course by any person authorized to use the same or declared to be a joint owner thereof under section twenty-two ;

shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, on conviction before a Magistrate, be punished for each such offence with fine which may extend to fifty rupees, or with imprisonment, of either description within the meaning of the said Code, for a term which may extend to one month, or with both.

For endangering stability of a canal, &c. 61. Whoever without proper authority,

(1)—pierces or cuts through, or attempts to pierce or cut through, or otherwise to damage, destroy, or endanger the stability of any canal ;

(2)—opens, shuts or obstructs, or attempts to open, shut or obstruct any sluice in any canal ;

(3)—makes any dam or obstruction for the purpose of diverting or opposing the current of a river, or canal on the bank whereof there is a flood-embankment, or refuses or neglects to remove any such dam or obstruction when lawfully required so to do ;

shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, on conviction before a Magistrate of the First or Second Class, be punished for each such

offence with fine which may extend to two hundred rupees, or with imprisonment, of either description within the meaning of the said Code, for a term which may extend to six months, or with both.

62. Whenever any person is convicted under either of the last two preceding sections, the convicting Magistrate may order that he shall remove the obstruction, or repair the damage in respect of which the conviction is held within a period to be fixed in such order. If such person neglects or refuses to obey such order within the period so fixed, any Canal Officer duly empowered in this behalf may remove such obstruction, or repair such damage, and the cost of such removal or repair, as certified by the said officer, shall be leviable from such person by the Collector as an arrear of land-revenue.

63. Any person in charge of, or employed upon any canal, may remove from the lands or buildings belonging thereto, or may take into custody without a warrant, and take forthwith before a Magistrate or to the nearest Police Station, to be dealt with according to law, any person who within his view—

(1)—wilfully damages, obstructs, or fouls any canal, or

(2)—without proper authority interferes with the supply or flow of water, in or from any canal, or in any river or stream, so as to endanger, damage, make dangerous or render less useful any canal.

64. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission made punishable by this Act : provided that no person shall be punished twice in respect of one and the same act or omission.

65. Whenever any person is fined for an offence under this Act, the Court which imposes such fine, or which confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms part, may direct that the whole or any part of such fine may be paid by way of award to any person who gave information leading to the detection of such offence or to the conviction of the offender.

If the fine be awarded by a Court whose decision is subject to appeal or revision,

the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal.

PART IX.

MISCELLANEOUS.

66. Every order passed by a canal officer under sections twelve, seventeen, twenty-four, twenty-nine, forty-four, forty-five, and forty-seven shall be appealable to the Collector, provided that the appeal be presented within thirty days of the date on which the order appealed against was communicated to the appellant.

All orders and proceedings of a Collector under this Act shall be subject to the supervision and control of the Commissioner of the division.

67. Any officer empowered under this Act to conduct any enquiry, may exercise all such powers connected with the summoning and examining of witnesses and the production of documents as are conferred on Civil Courts by the Code of Civil Procedure; and every such enquiry shall be deemed a judicial proceeding.

68. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed by the officer therein mentioned. Whenever it may be practicable the service of the notice shall be made on the person therein named. When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the

person therein named ordinarily dwells or carries on business; and if such person has no ordinary place of residence within the district, service of any notice may be made by sending copy of such notice by post in a registered cover addressed to such person at his usual place of residence.

69. The Governor in Council may from time to time make rules not inconsistent with this Act to regulate the following matters:—

- (a) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;
- (b) the cases in which, the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable;
- (c) the person by whom, the time, place, or manner at or in which, anything for the doing of which provision is made in this Act, shall be done;
- (d) the amount of any charge to be made under this Act,
- (e) and generally to carry out the provisions of this Act.

The Governor in Council may, from time to time, alter or cancel any rules so made.

Such rules, alterations, and cancellments shall be published in the *Bombay Government Gazette*, and shall thereupon have the force of law.

70. Nothing in this Act shall be deemed to apply to any canal, channel, reservoir, lake, or other collection of water vesting in any municipality.

By order of His Excellency the Honourable the Governor in Council,

J. NUGENT,

Under Secretary to Government.

Bombay Castle, 5th April 1879.