

BENGAL EMBANKMENT ACT, 1882

2 of 1882

[21st June, 1882]

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BENGAL EMBANKMENT ACT, 1882

2 of 1882

[21st June, 1882]

An Act to amend the law relating to Embankments and Water-courses. WHEREAS it is expedient to make better provision for the construction, maintenance and management of embankments and water-courses in the territories subject to the Lieutenant-Governor of Bengal; It is enacted as follows :

PART 1

Preliminary

1. Short title. Local extent :-

This Act may be called the Bengal Embankment Act, 1882.¹[It extends to the State² of West Bengal and Bihar, and also to that part of the State² of Orissa which on the twenty-first day of June, 1882, was subject to the Lieutenant- Governor of Bengal, but only as provided in Part IX.] (Commencement). Rep. by Act 1 of 1903.

1. This Para subs. by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order. 1948.

2. Word subs, by the Adaptation of Laws Order, 1950.

2. Repeal of former Acts :-

1.....² [the Bengal Embankment Act, 1873], with the exception of the sections set out and schedules specified in Schedule I to this Act annexed, shall be repealed. The references in the said sections, which are mentioned in Schedule II to this Act annexed, shall be read as if the references were made to the portions of this Act mentioned against such references respectively in the third column of such schedule. Sections 80 and 81 of this Act shall be applicable respectively to the proclamation and notice mentioned in sections 26 and 28, Bengal Act 6 of 1873.

1. Words rep. by Act 1 of 1903.

2. Words and figures subs, by Ben. Act 1 of 1939.

3. Interpretation :-

The following words shall, for the purposes of this Act, have the

meanings hereby declared, save where, from the context, a contrary intention appears : "Collector" means any Revenue-officer in independent charge of a district or portion of a district, or specially appointed by the ¹[State] Government of e(West Bengal] to perform the functions of a Collector under this Act: "district" means the local area throughout which a Collector is authorised to exercise his ordinary functions : "embankment" includes every bank, dam, wall and dyke made or used for excluding water from, or for retaining water upon, any land; every sluice, spur, groyne, training-wall, 7lberm] or other work annexed to, or portion of, any such embankment; every bank, dam, dyke, wall, groyne or spur made or erected for the protection of any such embankment or of any land from erosion or overflow by or of rivers, tides, waves or waters : and also all buildings intended for purposes of inspection and supervision : "estate" means any land or share in land included under one entry on the general register of revenue-paying lands and of revenue-free land prepared and maintained by the Collector of a district under the Land Registration Act, 1876, or any similar law for the time being in force: "land" includes interests in land and benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth : "public embankment" means an embankment maintained by the ²[servants of the Government] : "public water-course" means a water-course under the charge of the ²[servants of the Government] : "section" means a section of this Act : "tenure" includes all interest in land which are held permanently at a fixed rental, or which are held rent-free, other than estates as above defined : "the Engineer" means the Engineer in charge of the public embankments of the district or any part thereof, or any Engineer specially appointed by the ²[State Government] to perform the function of an Engineer under this Act in respect of any tract of country or any works: "water-course" includes a line of drainage, weir, culvert, pipe or other channel, whether natural or artificial, for the passage of water : "zamindar" means all or any of the holders of an estate : and, where two or more zamindars are jointly holders thereof, they shall be jointly and severally liable under this Act.

Explanation. For the purposes of Part VI ²[the State Government] shall be deemed to zamindar

(a) of every estate of which the zamindari title is not vested elsewhere than in the ² [Governme nt];

(b) of every estate which is let in farm or held khas under the provisions of section 43 of Regulation 8 of 1793 in consequence of the proprietor refusing or omitting to engage for the settlement thereof.

1. Word subs, by the Adaptation of Laws Order. 1 950.

2. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

4. Public embankments, etc., to vest in Government :-

Every public embankment and every public water-course, and all land, earth, pathways, gates, berms and hedges belonging to, or forming part of, or standing on, any such embankment, or water-course and every embanked tow-path maintained ¹[by the State Government], shall vest in ¹[the State Government]. The embankments mentioned in Schedule D annexed to Bengal Act 6 of 1873 and every embankment and water-course which may be included in such schedule under section 43 of this Act, and every embanked tow-path as aforesaid, shall be held on behalf ¹ [of the State Government]; and all other public embankments and water-courses shall be held [by the State Government] on behalf of the persons interested in the lands to be protected or benefited by such embankments or watercourses, subject to the provisions of section 87; and all moneys received on account of such lands shall be credited to the cost of the construction and maintenance of such embankments and water-courses respectively.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

5. Survey of lands hitherto used for obtaining earth for repairs :-

All plots or parcels of land which, before the commencement of this Act, have been used for the purpose of obtaining earth or other materials for the repair of any public embankment, water-course or embanked tow-path as aforesaid, or which by agreement have been substituted for such lands, shall be deemed to be at the disposal of ¹ [the State Government] for such purpose, without payment of compensation for the use or removal of such earth or other materials. The Collector may cause all such plots or parcels to be ascertained surveyed and demarcated.

1. Words subs, by the Government of India (Adaptation of Indian

Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

6. Notification :-

The ¹[State Government] may, from time to time, by notification in the ² [Official Gazette] declare the limits of any tract within which the provisions of clause (b), section 76, shall take effect; and the said provisions shall take effect one month after the publication of such notification. As soon as possible after the said publication, the Collector shall cause a translation of the notification in the vernacular to be published in the manner prescribed in section 80.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

2. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937.

PART 2

Powers of Collector and Procedure thereon; Embankment Committees

7. Powers of Collector :-

Subject to the provisions of part III, whenever it shall appear to the Collector that any of the following acts should be done, ¹[or works (including any work of repair) executed], that is to say :

(1) that any embankment which connects public embankments, or forms by junction with them part of a line of embankments, or that any embankment or water-course which is necessary for the protection or drainage of the neighbouring country, should be taken charge of and maintained by the officers of Government;

²(1a) that any embankment which connects public embankments or forms by junction with them part of a line of embankments or is necessary for the protection of the neighbouring country should be repaired;

(2) that any embankment, or any obstruction of any kind, which endangers the stability of a public embankment or the safety of any town or village, or which is likely to cause loss of property by interfering with the general drainage or the flood drainage of any tract of land, should be removed or altered;

(3) that the line of any public embankment should be changed or lengthened, or that any public embankment should be renewed, or that a new embankment should be constructed instead of any

public embankment, or that any embankment should be constructed for the protection of any lands or for the improvement of any water-course, or that a sluice in any public embankment should be made;

(4) that any sluice or water-course should be made, or that any public water-course should be altered for the improvement of the public health, or for the protection of any village or cultivable land;

(5) that any road which interferes with the drainage of any tract of land should be altered, or that any water-course under or through such road should be constructed; he shall cause to be prepared estimates of the cost of such works, including such proportion of the establishment charges as may be chargeable to the works in accordance with the rules for the time being in force under this Act, or as may be especially ordered by the ³ [State Government] together with such plans and specifications of the same as may be required. He shall also cause to be prepared from the survey map of the district a map showing the boundaries of the lands likely to be affected by the said acts and works, and he shall cause a general notice to be given of his intention to cause such works to be executed.

1. Words and brackets subs, by W.B. Act 11 of 1948.

2. Clause (1a) ins. by W.B. Act 11 of 1948.

3. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

8. Form of notice :-

Such general notice shall as far as possible be in the form, and state the particulars mentioned, in Schedule III to this Act annexed; and to it shall be annexed a list of all estates and villages, as far as is known, which are likely to be affected by the proposed work and to be chargeable in respect of the expenses of executing the same; and a copy of the said estimates, specifications and plans, together with a copy of the map as aforesaid, shall be deposited in the office of the Collector, and shall be open to the inspection of any persons interested, who shall be allowed to take copies thereof.

9. Proclamation to be published for thirty days :-

Every such general notice shall be published in the manner provided by section 80 not less than 30 days before the day appointed for hearing the persons interested.

10. Hearing of objections to works :-

The Collector shall, on the day appointed for the hearing, or on any subsequent day to which the hearing may be adjourned, hold an inquiry and hear the objections of any persons who may appear, recording such evidence as he may deem necessary.

11. Order after inquiry :-

After holding such inquiry the Collector shall proceed as follows, that is to say :

(a) if he considers that the proposed ,act or work, or any modification of the same, should not be done or executed, he shall record his opinion to that effect;

(b) if he considers that the proposed act or work, or any modification of it, should be done or executed, he shall submit a report to the Commissioner of the Division.

12. Order of Commissioner :-

On receipt of a report submitted under section 11, the Commissioner, after making any further inquiry which he may deem necessary, may record an order refusing to support the proposal made in the report of such Collector for the execution of such work; or may forward the report submitted by such Collector, together with any remarks he may think proper, for the consideration of the ¹ [State Government].

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

13. Order of Board :-

Rep. by Ben. Act 5 of 1915.

14. Order of State Government :-

On receipt of ¹[the report forwarded by the Commissioner] the ² [State Government] shall proceed to consider the same and may order that the proposed act or the proposed work, or any modification thereof, be done or executed. Every such order shall be notified in the [Official Gazette].

1. Words subs, by Ben. Act 5 of 1915.

2. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

15. Special powers which may be conferred by State

Government :-

Notwithstanding anything contained in this part, the ¹[State Government] may by a special order passed in respect of any act or work specified in section 7, or by a general order in respect of any class of such acts or works, authorize the Collector, after holding such inquiry as is prescribed in section 10, without previous reference to any superior authority, to pass an order that such act or work or any modification thereof may be done or executed; or the ¹[State Government] may authorize the Commissioner ³* * * * to pass such order without previous reference to any superior authority :

Provided that every order passed under the authorization of the ¹[State Government], given under this section shall be subject to the provisions of section 85.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

3. Words om. by Ben. Act 5 of 1915.

16. Alteration of railroads and construction of water-courses :-

Rep. by Act 9 of 1890.

17. Procedure of Collector :-

Whenever an order shall have been passed In cases falling under section 7, clause (5), ¹* * * * * directing that any road ¹* * * * which interferes with the drainage of any tract of land be altered, or that any watercourse be constructed under or through such road ¹⁸* * * * the Collector may require the person in charge of such road ¹⁸* * * * to make such alteration or construct such water-course, and in the event of such person failing to comply with such requisition in such manner and within such time as the Collector shall prescribe, the Collector may cause the road ¹* * * * to be altered or the water-course to be constructed by the officers of Government. ⁴* * * * The expenses of such alteration or construction shall be borne by the person in charge of the said road ¹* * * * 80 far as the same shall have been incurred on account of insufficient provisions having been made at the time of the construction of the said road ¹* * * * for the natural drainage then existing, and the remainder of the expense, if any, shall be charged upon, and recovered from, the proprietors of the lands benefited in accordance with the provisions of this Act. If any

dispute arises as to the apportionment of expenses under this clause between the person in charge of a road ¹* * * * and the proprietors of the lands benefited, the dispute shall be decided by the ⁸ [State Government], whose decision shall be final.

1. Words rep. by Act 9 of 1890.

4. Proviso rep. by Act 9 of 1890.

8. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

18. Application for new sluices, embankments or drainage

:-

(a) If any person desires that a sluice be made in any public embankment for the purpose of drainage or irrigation.

(b) or, if within any tract of country which has been included within a notification under section 6, any person desires that any new embankment be created, that any existing embankment be lengthened, enlarged, repaired or removed, or that the line of any embankment be altered, or that any new water-course be made, or that any water-course be obstructed or diverted, he may make an application in writing to the Collector. The application shall contain such particulars of the land likely to be affected by the work as may enable the Collector to judge of the advantage which may be derived from the project. If it should appear to the Collector that the work applied for is one which may probably be executed with advantage the procedure mentioned in the 7th and following sections of this Act shall be followed in respect of the proposed work.

19. Power to remove houses, etc :-

Whenever the Collector, after considering any report of the Engineer or otherwise, shall be of opinion that the removal of any trees, houses, huts or other buildings, situated between a public embankment and the river, is necessary, or that land is required for widening an existing embanked tow-path, or for constructing a new embanked tow-path, he shall make a report to that effect to the Commissioner, accompanied by a detailed statement of the trees, houses, huts or other buildings to be removed, or of the land required. Such report shall be submitted ¹[to the State Government] in order that proceedings may be taken for obtaining possession of such trees, houses, huts, and buildings or land in

accordance with the provisions of the Land Acquisition Act,² [1894], or other law for the time being in force for the acquisition of land for public purposes.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

2. Figures subs, by Ben. Act 1 of 1939.

20. Authority to take proceedings where lands likely to be affected by the works are in different districts :-

If any works proposed to be undertaken in accordance with this Act, or the lands which are likely to be affected by such works, are situated within the limits of different districts, the Collector of any district within which any portion of such works or lands is situated may apply to the Commissioner of the Division for authority to proceed in such matter; and the Commissioner of the Division, with the concurrence of any other Commissioner within whose Division any such lands are situated, may give authority to such Collector, or to any other Collector within whose district any portion of such lands is situated, to carry out all or any proceedings under this Act in respect of all the lands affected by such works.

21. State Government may appoint Embankment Committee :-

The ¹[State Government] may, if ² [it] think fit, appoint an Embankment Committee for any district, and may from time to time appoint and accept the resignation of the members of such Committee, and direct that any person shall cease to be a member thereof.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

2. Word subs, by the Government of India (Adaptation of Indian Laws) Order, 1937.

22. Consultation of Committee by Collector :-

The ¹[State Government] may from time to time direct that any such Committee shall be consulted by the Collector in the discharge of any function or the performance of any duty imposed on him by this Act; and by a notification published in the ² [Official Gazette] may from time to time direct that any such function or duty shall be performed or discharged by such Committee.

1. Words subs, by the Government of India (Adaptation of Indian

Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

2. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937.

23. Business of Committee :-

The business of every such Committee shall be conducted under such rules as the ¹ [State Government] may from time to time make in that behalf.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order. 1950. respectively.

24. Reference to Commissioner :-

Whenever, in any matter on which the ¹ [State Government] has directed that the Collector shall consult the Committee, the Collector may differ from the Committee, he shall, if so required by the Committee, submit the question to the Commissioner of the Division for decision, with copies of any remarks which may have been recorded by the Committee or any members thereof.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order. 1950. respectively.

PART 3

Procedure in Cases of Imminent Danger to Life or Property

25. Proceedings in emergencies :-

Whenever the Collector shall be of opinion that the delay in the execution of any work occasioned by proceedings commenced by a general notice under the 7th and following sections of this Act would be attended with grave and imminent danger to life or property, he may forthwith cause the execution of such work to be begun in anticipation of the completion of such proceedings :

Provided that he shall without delay cause to be prepared the estimates, specifications and plans of the proposed works, together with a copy of the map as provided in section 7, and shall cause general notice to be given that the work mentioned therein has already been commenced; and thereupon such proceedings and inquiries shall be had as in and by Part II of this Act are directed.

26. Restoration of embankments, etc :-

Whenever it may have been determined in the final order to be passed on any such inquiry that anything done by the Collector or

by the Engineer under the last preceding section was unnecessary, any person who shall have sustained damage by the execution of such works shall receive compensation from t h e ¹[State Government] to be assessed according to the provisions contained in Part V of this Act; and, on receipt of any application to that effect by the Collector from any such person affected the land or the embankments or drainage shall, so far as any alteration thereof shall appear to have unnecessary, be, at the expense to the ¹[State Government], restored as nearly as possible to the state in which they were when the Collector commenced to act under the provisions of this Part.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order. 1950. respectively.

27. Authority to take proceedings where lands in different districts :-

If any portion of the land likely to be affected by any work to be undertaken under this Part lies within another district, the Collector who causes the work to be executed shall, when commencing upon it, give notice of the same to the Collector of such other district, and the provisions of section 20 shall be applicable to all proceedings connected with the work and the cost thereof.

PART 4

Powers of the Engineer

28. Engineer subject to control of Collector :-

The powers conferred on the Engineer under this Act shall be exercised subject to the general control and orders of the Collector.

29. Power to Engineer to act in urgent cases :-

In cases in which the Engineer may be of opinion that delay for the purpose of obtaining the orders of the Collector would be attended with grave and imminent danger to life or property, the Engineer may exercise the powers conferred on the Collector by section 25. The Engineer shall forthwith report to the Collector any action taken by him under this section and shall be guided by any instructions which he may receive from the Collector in respect thereof.

30. Power to make repairs :-

The Engineer may make any repairs in, and may do all acts necessary and proper for the maintenance of, any public

embankment, public water-course or any other work executed or taken charge of under the provisions of this Act or of any previous similar Act.

31. Power to make temporary roadway, water-course or dam :-

Whenever any person desires that a temporary roadway should be made over, or that a temporary water-course should be made through, any public embankment, or that a temporary dam should be constructed in any embanked river or public water-course, he shall apply to the Engineer, or to any person who has been appointed in that behalf by the Engineer. Such Engineer or person shall communicate the application with his opinion to the Collector, and shall await the Collector's order in respect thereof, unless he thinks that there is special reason for the immediate execution of the work, in which case he may execute the same without waiting for the orders of the Collector. If the proposed work is to be executed by an officer of [the Government], the applicant, before the commencement of the work, shall deposit the amount estimated by the Engineer to be necessary to defray the expenses of, and incidental to, making and removing such roadway, or of, and incidental to, making, closing or removing such water-course or dam. If the amount deposited is found afterwards to exceed the amount required, such excess shall be returned to the said applicant.

32. Sluices to be opened or shut under authority of the Engineer :-

Sluices constructed in any public embankment shall be opened or shut only by or with the general or special permission of the Engineer or of the officer in the immediate charge of the embankment, under such orders, either general or special, as he may receive from the Engineer.

32A. Power to remove, dismantle or demolish embankment, fishery etc :-

Notwithstanding anything contained elsewhere in this Act, the Engineer or any other person duly authorised by him in this behalf may remove, dismantle or demolish any embankment, fishery, hut, building, sluice, obstruction, encroachment, or any other construction which in the opinion of the Engineer is likely to interfere with, counteract or impede any public embankment or any public watercourse.

32B. Protection of action taken under this Act :-

No suit, prosecution or other legal proceeding shall lie against the Engineer or any person duly authorised by him for anything which is in good faith done or intended to be done under this Act.

33. Powers to enter and survey land, etc :-

It shall be lawful for the Engineer, or any person whom he may authorize in that behalf, in order to carry out any of the purposes of this Act, to enter upon, and survey, and take levels of any land; to dig or bore into the sub-soil; to do all other acts necessary to ascertain whether the land is adopted to the purpose projected by such Engineer or by the Collector; to set out the boundaries of the land proposed to be taken and the intended line of the work proposed to be made thereon; to mark such levels, boundaries and line, by placing marks and cutting trenches; and, where otherwise the survey cannot be completed or the levels taken, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven day's notice in writing of his intention to do so.

The Engineer or other person so authorized shall at the time of such entry tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

34. Power to take earth from lands :-

Whenever it is deemed requisite to repair any embankment or water-course, or embanked, towpath maintained by [State Government], it shall be lawful for the Engineer, or any person authorized in that behalf, to enter in and upon the lands mentioned in section 5, and take possession of, appropriate and remove any earth or other material therefrom, and use the same for the purposes of such repairs.

35. Procedure where crops on such lands :-

The Collector shall proceed in respect of any crops standing on such land as provided in section 13, Bengal Act 6 of 1873; and the provisions of that section shall be applicable to claims for the payment of compensation for damage done to such crops.

36. Acquisition of land made permanently unfit for cultivation :-

When any such land is rendered permanently unfit for cultivation by any such act as aforesaid, the ¹ [State Government] shall, upon application for that purpose made by the owner thereof, acquire such lands under the provisions of the Land Acquisition Act, 1870, or other law for the time being in force for the acquisition of land for public purpose.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order, 1950, respectively.

PART 5

Acquisition of Lands and Compensation

37. Acquisition of land :-

Whenever, in the course of proceedings under this Act, save in those cases in which the Collector has proceeded under the provisions of sections 12 and 13, Bengal Act 6 of 1873, it appears that land is required for any of the purposes thereof, proceedings shall be forthwith taken for the acquisition of such land in accordance with the provisions of the Land Acquisition Act [1894], or other law for the time being in force for the acquisition of lands for public purposes.

38. Compensation for consequential damage :-

Subject to the provisions of section 5, whenever any land other than land required or taken by the Engineer, or any right of fishery, right of drainage, right of the use of water or other right or property, shall have been injuriously affected by any act done or any work executed under the due exercise of the powers or provisions of this Act, the person in whom such property or right is vested may prefer a claim by petition to the Collector for compensation :

Provided that the refusal to execute any work for which application is made, and the refusal of permission to execute any work for the execution of which the permission of the Collector or any other authority is required under this Act, shall not be deemed acts on account of which a claim for compensation can be preferred under this section.

39. Limitation to claim for compensation :-

No claim under the last preceding section shall be entertained

which shall be made later than two years next after the completion of the work by which such right is injuriously affected.

40. Procedure for determining compensation :-

When any such claim is made, proceedings shall be taken in view to determine the amount of compensation, if any, which should be made and the person to whom the same should be payable, as far as possible, in accordance with the provisions of the Land Acquisition Act, ¹ [1894], or other law for the time being in force for the acquisition of land for public purposes.

1. Figures subs, by Ben. Act 1 of 1939.

41. Matters to be considered in determining compensation :-

In any such case which is referred to the Judge and assessors for the purpose of determining whether any, and, if so, what amount of compensation should be awarded, the Judge and assessors shall take into consideration First, the market-value of the property or right injuriously affected at the time when the act was done or the work executed; Secondly, the damage sustained by the claimant by reason of such act or work injuriously affecting the property or right. Thirdly, the consequent diminution of the market-value of the property or right injuriously affected when the act was done or the work executed; Fourthly, whether any person has derived, or will derive, benefit from the act or work in respect of which the compensation is claimed, or from any work connected therewith, in which case they shall set off the estimated value of such benefit, if any, against the compensation which would otherwise be decreed to such person, But the Judge or assessors shall not take into consideration First, the decree of urgency which has led to the act or work being done or executed; Secondly, any damage sustained by the claimant, which if caused by a private person, would not in any suit instituted against such person justify a decree for damages.

PART 6

Cost of Works, Proceedings, etc.1. Ascertainment thereof.

42. Embankments in Schedule D :-

The provisions of section 47 and the following sections in this Part contained shall not apply to any of the embankments mentioned in Schedule D to Bengal Act 6 of 1873 annexed, or which may be hereafter included therein, save so far as any works or repairs are executed therein, or in relation thereto, under the provisions of

section 18 or of section 31; or to any of such embankments as may hereafter be erected for the protection of lands which at the commencement of this Act are protected by the embankments mentioned in the aforesaid Schedule, save so far as the erection of such embankments may protect lands not protected by the embankments in the aforesaid schedule. All sums payable in respect of any works or repairs executed in or in relation to the embankments mentioned in the aforesaid Schedule, except under the provisions of section 18 or of section 31, shall be paid by the [State Government].

43. Exclusion from Schedule D :-

If at any time after the commencement of this Act, on inquiry made by the Collector as far as possible in accordance with the provisions of Part II of this Act, it shall be found that it is unnecessary for the public interests to retain any embankment mentioned in the said Schedule D, or any embankment or water-course which may have been included in the said Schedule D under the clause next following of this section, the [State Government] may direct that the same shall be no longer included in the said Schedule :

Provided that the [State Government] may restore the same to the said Schedule if on any subsequent inquiry similarly conducted it shall appear to the [State Government] that it is necessary so to do.

The [State Government] may, at any time after the passing of this Act, by a notification published in the [Official Gazette], direct that any embankment not mentioned in the said Schedule D or any water-course, be included therein and the provisions of this section apply to such embankment or water-course.

44. Contribution of public money towards the maintenance of the embankments in the parganas entered in Schedule E to be continued :-

In accordance with the custom heretofore in force in respect of the parganas entered in Schedule E annexed to Bengal Act 6 of 1873, the [State Government] shall continue to contribute annually the sum noted therein for each pargana respectively towards the maintenance of the embankments thereof.

45. If such embankments are declared to be public, Collector to keep a separate account :-

If the embankments maintained in either of the said parganas shall at any time be declared to be public embankments under the

provisions of section 7, the Collector shall, from the date of such declaration, keep a separate account for such parganas, in which the aforesaid sum shall be credited at the commencement of each financial year. The unexpended balance at the close of each year shall be carried on to the credit of the account in the next succeeding year, and shall be available for the cost of repairing or erecting all the embankments which it may be deemed necessary to maintain in such pargana.

46. Contribution may be discontinued if it be found unnecessary for the public interest to maintain the embankments :-

If at any time * * * * * on an inquiry made by the Collector as far as possible in accordance with the provisions of Part II, it shall be found that it is unnecessary for the public interests to retain any embankment in either of the said parganas, the [State Government] may direct that such contribution shall cease in respect of such pargana :

Provided that such contribution shall again be made in accordance with the provisions hereinbefore contained, if it shall appear to the [State Government] on the report of an inquiry similarly conducted, that the maintenance of any embankment in such pargana has again become necessary for the public interest.

47. Estimates and specifications to be prepared :-

Subject to the provisions of Part III of this Act, before the Collector or the Engineer undertakes, under the provisions of this Act, the execution of any repairs or of any work other than any new work of which the estimates, specifications and plans have been prepared and deposited in the Collector's office for public inspection as provided in section 7, specifications and estimates of the expenses to be incurred in respect of the repairs or works, including such proportion of establishment charges as the [State Government] shall direct, shall be prepared by the Engineer.

48. Preparation of further estimates and specifications :-

Whenever it appears that the actual expenses to be incurred in respect of any work will exceed by one-tenth any estimates of such work which may have been transmitted to the office of the Collector under the next succeeding section the Engineer shall forthwith prepare further estimates, and if necessary, further specifications.

49. Estimates and specifications to be open to inspection :-

Copies of all specifications and estimates prepared under the two last preceding sections shall be transmitted to the office of the Collector, together with vernacular translations thereof, or such abstracts thereof as the [State Government] may from time to time direct, and may be examined by any person interested in such works and repairs.

50. Notice of receipt of estimates and specifications :-

A general notice of the receipt of any such specifications and estimates shall be published in the manner prescribed in section 80, and in such general notice shall be specified all estates chargeable for, or likely to be affected by, the said works or repairs. Special notices shall also be served in respect of every estate in which the area liable to the assessment of the apportioned charge is likely to exceed one hundred acres; or, instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served in respect of every estate chargeable for, or likely to be affected by, the said works and repairs. Should any objection in regard to such specifications and estimates be preferred by any such person within a period of one month from the date of service of such notice, the Collector shall pass such orders as may appear to him reasonable and proper.

51. Preparation of accounts and Engineers certificate of expenses :-

The accounts of the actual expenses incurred in executing any works or repairs, or of any portion of the actual expenses with which the Collector may determine to deal separately under this and the following sections, shall be prepared as soon as possible after the completion thereof. The Engineer shall sign a certificate stating the amount of all such expenses, and specifying the boundaries of the lands which are benefited or affected by the said works or repairs, and stating generally how and to what extent the lands so specified or any parts of them, are effected. Any such certificate may be amended at any time before the Collector has made an order charging or apportioning the amount under section 58. On receipt of such certificate or amended certificate, the Collector shall cause a statement to be prepared of the villages of which any lands are benefited or protected by such works and repairs, and of the estates to which they belong, and, except as otherwise in this Act provided, the zamindars of such estates and villages shall be liable to pay the said amount. Copies of the said account, certificates and statements shall be deposited in the office

of the Collector, and may there be examined by any person interested.

52. Notices and inquiry into objections :-

General notice of the receipt and deposit of such accounts, certificates and statements in the office of the Collector shall be given. Special notices thereof shall also be served in respect of every estate in which the area liable to assessment of the apportioned charges exceeds one hundred acres; or, instead of causing a general notice to be published, the Collector may cause special notice to the same effect to be served in respect of every estate and tenure on or among the zamindars or tenure-holders of which any sum is charged or apportioned; and if, within one month of such general notice being given, or of such special notice (if any) being served on him, any interested person shall object to the accounts on the ground either that the work charged has not been performed, or that the whole sum charged has not been expended, or that the rates of charge are higher than those mentioned in estimates, the Collector shall inquire into such objection, and pass orders thereon.

53. Total sum payable :-

The Collector shall add to the amount appearing in the said certificate all sums which have been paid or have become payable in respect of the said works and repairs whether as compensation, costs and expenses under, and incidental to, any proceedings taken or directed to be taken under Part II or Part V of this Act, or under sections 26 to 29 of Bengal Act 6 of 1873, as cost of making of surveys and plans, as cost of preparing the estimates, accounts, certificates and statements, as cost of the issuing and service of notices up to date, or on any other account, and shall then make an order specifying the total sum found payable, and in respect of works done under section 17 and section 31 the persons by whom, or in respect of other works, estates in respect of which, the same is payable to him. If the order is made in respect of work done under section 17 or section 31, the same shall forthwith be served upon the party or parties liable to pay; otherwise the Collector shall proceed under the provisions in the next chapter contained. Interest may be charged upon any sum paid as compensation from the date of payment thereof at five per centum, or as such rate, not exceeding five per centum per annum, as the [State Government] may from time to time determine.

54. Parties liable to pay :-

The total sum aforesaid, save so far as is otherwise provided in this Act, shall be paid to the Collector by the zamindars of the estates in which are situated the lands benefited or protected by the repairs or works executed :

Provided that the sum standing to the credit of a pargana in Schedule E to Bengal Act 6 of 1873 annexed in the account kept by the Collector, at the time when the total amount payable is fixed under the provisions of section 53, shall be deducted from the total amount payable in respect of such portion of any embankment as is situated in such pargana, and that the zamindars of the estates situated in such pargana shall be charged only with the balance of the amount (if any) which may remain payable.

55. Recovery from under-tenants :-

Every zamindar, who is liable under the last preceding section for the payment of the whole or a portion of such total sum, shall be entitled to recover from the holder of every tenure held immediately under him, and from the holder of any land which is declared under the provisions of section 60 to form part of his estate, the sum apportioned to such tenure or land by the Collector under the provisions of section 59. And, similarly, every tenure-holder shall be entitled to recover from the holder of any tenure subordinate to his own and from the holder of any land declared under section 60 to form part of his tenure, the sum apportioned to such subordinate tenure or land by the Collector, under the said provisions.

56. Notice to be given before apportionment :-

So soon as the total sum payable as aforesaid has been ascertained, the Collector shall cause general notice to be given specifying the estates in respect of which any portion of such total sum will be chargeable, and special notices to be served in respect of every estate in which the area chargeable exceeds one hundred acres; or, instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served in respect of every estate and tenure on or among the zamindars or tenure-holders of which any sum is charged or apportioned. Such notices shall make it known that an inquiry will be held at a day and place therein named for the purpose of apportioning amongst the zamindars and tenure-holders the said total sum, with interest and the cost of apportionment.

57. Names of tenure-holders :-

In any such inquiry the Collector shall take down in writing the names of all persons who may claim, or who may be alleged by any party interested to be holders of tenures within any of the estates mentioned in such notice. In default of appearance of any such person, the Collector shall issue and serve a notice calling on him to appear at the date and place therein mentioned, and to show cause against being included in the order of apportionment to be made therein, and shall adjourn the inquiry till such date.

58. Apportionment amongst zamindars :-

At such or any subsequently adjourned inquiry, the Collector, if there be only one estate liable, shall charge the zamindar thereof with the total amount payable; and if there be two or more estates, he shall apportion the same amongst the zamindars thereof, either

(a) rateably in proportion to the respective benefits derived by such estates from such works or repairs; or

(b) in proportion to the areas of the lands benefited or protected thereby, and comprised within such estates respectively; or

(c) with the sanction of the [State Government], in proportion to the amount of revenue payable for such estates respectively :

[Provided that the said amount payable in respect of the embankments on the right bank of the river Gandak shall be chargeable, in accordance with the custom in force for such estates, to the zamindars of all estates situated in the district of Saran. in proportion to the amount of revenue respectively payable for such estates :

Provided also that the total amounts which may have been expended by the Government before the commencement of this Act, and the total amounts which may become payable in accordance with the provisions of this Act, on account of any year in respect of the embankments on the left bank of the river Gandak in the district of Muzaffarpur, shall be chargeable, and shall be deemed always to have been chargeable, in accordance with the custom hitherto in force in respect of such embankments; that is to say, chargeable to the zamindars of all the estates situated in the following parganas, viz., Rati, Gadasand, Hajipur, Bhatsala, Garjaol, Nae, Saresa and Balagah, in proportion to the amounts of lands-revenue payable for such estates respectively, but so that the amount out of any total sum apportioned in respect of each estate

in Rati, Gadasand and Hajipur, shall bear such a proportion to the land-revenue payable for such estate as shall be twice as great as the proportion which the amount apportioned in respect of each estate in the remaining parganas shall bear to the land-revenue payable for such estate.]

59. Apportionment amongst tenure-holders :-

The Collector shall in like manner [except in respect of the said embankments on the right bank and left bank of the river Gandak.] charge or apportion the amount payable in respect of each estate upon or amongst the holders of the tenure therein rateably in the proportion of benefits so received or of area so benefited or protected, first deducting therefrom such sum as, on the like principle of proportion, is payable in respect of such portion of the estate as is not included within any tenure.

60. Provisions as to lands held without payment of rent not being estates :-

All lands held without payment of rent, not being estates, may, for the purposes of this Act, be deemed to form part of any estate or of any tenure within the local boundaries of which they are included; and if they are not included within the local boundaries of any estate, then to be a part of such conterminous estate as the Collector in whose district such conterminous estate is situated shall, by an order under his seal -and signature, declare.

61. Amount apportioned payable by instalments :-

The amount charged to or apportioned on any estate or tenure shall be payable in equal instalments on such days as the [Commissioner of the Division] shall direct : Provided that no instalment shall exceed four annas for every acre of land in respect of which the same is payable, and that not more than four instalments shall be payable in any one year. * * * * *

61A. Interest payable on amount apportioned :-

Interest shall be charged from the date of apportionment on the amount charged to or apportioned on any estate or tenure, less any instalment of such amount paid from time to time. The interest shall be at the rate of five per centum or at such rate, not exceeding five per centum per annum as the [State Government] may from time to time determine.

62. Apportionment of further expenses :-

If after the apportionment of the expenses of any works and

repairs as above prescribed any expenses not included in such apportionment shall be found to have been paid or to have become payable on account of the said works or repairs, whether as compensation or otherwise, the Collector may proceed to apportion such further expenses in the manner in this part provided.

63. Alternative power of apportioning estimated expenditure for a series of years :-

Instead of the procedure prescribed above for charging upon, and recovering from zamindars, the expenses actually incurred in the repairs and maintenance of public embankments and water-courses and the works connected therewith, the [State Government] may, by an order to be published in the [Official Gazette], direct that an estimate be made of the expenses to be incurred in respect of such repairs, maintenance and works during any number of years, not exceeding thirty, which [it] may think fit. and may by a subsequent order fix the total sum payable during such number of years by the zamindars of the estates benefited by such repairs, maintenance and works :

Provided that no order fixing such total sum shall be passed by the [State Government] until three month after the amount of such estimate shall have been published in the [Official Gazette], and by a general notice calling on all persons interested to prefer to the Collector any objections they may think proper against such amount being fixed as the total sum. Every such objection shall be submitted to the [State Government] for [its] consideration.

64. Period included in the last section, what to include :-

The period fixed in any order under the section last preceding may include also years previous to the commencement of this Act :

Provided that in such case the total sum mentioned in the said section shall be calculated by adding the amounts actually expended before the making of such order to the estimate of expenses to be incurred during the rest of the period included in such orders.

65. Works in respect of which such estimate may be made :-

The total sum mentioned in section 63 or in section 64 may be made recoverable in respect of the expenses of repairs and maintenance, and the expenses of works connected with the repairs and maintenance

(a) of any protective works which may be specified in such orders;

(b) of all the public embankments and water-courses in any district; or

(c) of all the public embankments and water-courses within any tract of country specified in the order of the [State Government] and any such tract may contain the whole or portions of any one or more districts; and no further sum shall be recoverable during such period in respect of the expenses of such repairs, maintenance and works connected therewith save so far as any such works or repairs are executed under the provisions of section 18 or of section 31. But such total sum shall not include the expenses of executing any new works which may be undertaken under the provisions of this Act within any district or tract as aforesaid. Whenever the [State Government] shall declare that any work executed or to be executed within such district or tract is a new work within the meaning of this section, the cost of executing such work and of maintaining the same shall be payable by the zamindars to the Collector under the provisions of this Act, in addition to any total sum fixed under section 63 or section 64 as payable by them.

66. Mode of apportionment :-

On publication of any order of the [State Government] under section 63, the Collector shall proceed to charge or apportion the said total sum upon or among the zamindars and [except in respect of the embankments on the right and left banks of the river Gandak as provided in section 58] among the tenure-holders who are liable to pay the same, as above provided.

67. Payment of sum apportioned :-

The sum so apportioned in respect of any estate or tenure on account of any such period as is mentioned in section 63 shall be payable in equal portions in each of the years included in such period, and each such portion if unpaid shall carry interest at five per centum, or at such rate, not exceeding five per centum per annum as the [State Government] may from time to time determine from the end of the year in which it is payable.

68. Final order of apportionment :-

On the completion of any charge or apportionment under this Act, the Collector shall make an order specifying the estates and tenures in respect of which any sum charged or apportioned is payable, and the sums payable in respect of each of the instalments of such

sums, and the dates on which such sums are payable.

69. Publication of final order of apportionment :-

As soon as may be after any final order of apportionment is made, as provided in the section last preceding, the Collector shall cause copy of such order to be published with a general notice stating that the amounts apportioned on the zamindars in respect of estates are payable to the Collector, and the amounts apportioned on the tenure-holders in respect of tenures are payable to the zamindars, or superior tenure-holders. Instead of causing a general notice to be published the Collector may cause special notices to the same effect to be served in respect of every estate and tenure on or among the zamindars or tenure-holders of which any sum is charged or apportioned.

70. Recovery of sums apportioned :-

If any such sum payable to the Collector, or any instalment thereof, be not pursuant to the said order, paid, the same with interest may be recovered as arrears of a demand under the provisions of [the Bengal Public Demands Recovery Act, 1913], or, any similar Act for the time being in force.

71. Effect of opening separate account under Act 11 of 1859 or Ben. Act 7 of 1876 :-

When a recorded sharer of a joint revenue- paying estate has opened a. separate account under Act 11 of 1859, or under section 70 of Bengal Act 7 of 1876 or any similar law for the time being in force for the regulation of the opening and maintaining of such separate accounts, he shall be entitled, in regard to the payment and realization of all sums due under this Act, to all the advantages of separate liability enjoyed by him under the said Act 11 of 1859, and Bengal Act 7 of 1876, respectively in regard to the payment and realization of revenue, and shall be entitled to separate assessment and to the issue of a separate notice in every case in which special notice is, by this Act, required to be served, from the date on which such advantages shall take effect in respect of the demand of Government revenue. Similar privileges shall attach to every recorded holder of a revenue-free estate who has opened a separate account under section 46 of Bengal Act 9 of 1880 in respect of the amount of cesses payable by him.

72. Liability of estate for sum apportioned :-

Notwithstanding anything contained in section 70, any such sum shall be a first charge on the estate in respect of which it is

apportioned and shall be deemed to be a demand debited to the estate in the public accounts of the district within the meaning of section 31 of Act 11 of 1859, and such charge shall not be avoided by any sale, nor shall the joint liability of the entire estate for such sum be affected by any partition of the said estate which may subsequently take place.

73. Amount apportioned may be raised by leasing or mortgaging estate :-

If the Collector thinks it inexpedient to proceed for the recovery of such sum or any part thereof under the provisions of section 70, or having so proceeded shall have failed to realize the sum due, he may, with the sanction of the [Commissioner of the Division], raise the amount necessary to discharge the sum or instalment remaining unpaid

(a) by mortgaging the whole or any part of such estate;

(b) by letting in farm or managing by himself or another the whole or any part of such estate;

(c) partly by one of such modes and partly by another or others of them.

For the purposes of this section the Collector may exercise all the powers of the owner of such estate, and his signature shall be a good and sufficient signature to any document necessary to carry into effect the said purposes.

74. Recovery by zamindars and tenure-holders :-

Every zamindar or tenure-holder to whom any sum or instalment thereof is payable under an order made in pursuance of section 68 may recover the same with interest as aforesaid in the manner provided for the recovery of arrears of rent in respect of patni tenures by the provisions of clauses 2 and 3 of section 8, sections 9, 10, 14, 15, and clauses 1, 2 and 3 of section 17 of Regulation 8 of 1819, as amended by Bengal Act 8 of 1865, or by the provisions of any similar Act for the time being in force :

Provided that the right or interest of any person holding from the defaulter shall not be affected by any sale held under these provisions.

PART 7

Penalties

75. Penalty for obstructing persons in exercise of powers

conferred by Act :-

Whoever wilfully obstructs any person duly authorized under this Act in removing or levelling any embankment, house, hut or other building, or in the lawful exercise of any of the powers in this Act conferred, shall, in case such obstruction shall not amount to an offence within the provisions of the Indian Penal Code, ¹ [be liable to imprisonment of either description for any period not exceeding three years, or to a fine not exceeding one thousand rupees or to both.]

1. Words subs, by W.B. Act 33 of 1980.

76. Penalty for unauthorised interference with embankments or drainage :-

(a) Every person, who, in any of the territories to which this Act extends, without the previous permission of the Collector, shall erect, or cause or wilfully permit to be erected, any new embankment, or shall add to any existing embankment, or shall obstruct or divert, or cause or wilfully permit to be obstructed or diverted, any water-course, if such act is likely to interfere with, counteract or impede any public embankment or any public water-course;

(b) every person who, within the limits of the tract included in any prohibitory notification under section 6, without the previous permission of the Collector, shall erect, or cause or wilfully permit to be erected, any new embankment, or shall add to any existing embankment, or shall obstruct or divert, or cause or wilfully permit to be obstructed or diverted any water-course; and

(c) every person who shall abet any such act as is mentioned in clauses (a) and (b), shall be liable, on conviction, 47(to a fine not exceeding one thousand rupees, or to imprisonment of either description for a period not exceeding three years or to both.)

¹ [Exception. This section shall not render unlawful the repair, of a breach or cut in an embankment so as to restore the embankment to the same dimensions as it had immediately before such breach occurred or cut was made; provided that

(a) such cut was not made under the orders of the Collector;

(b) such repair is made within one year after such breach occurred or cut was made; if, however, the repair cannot be completed

within this period, the sanction of the Collector shall be obtained to the completion of the work;

(c) such breach or cut forms a gap or, if unrepaired, may form a gap between two portions of an existing embankment which were continuous before the breach occurred or cut was made;

(d) the part of the embankment in which the breach occurred or cut was made was not erected or added to in contravention of this section or of any other provision of law for the time being in force.]

1. 'Exception ins. by Ben. Act 8 of 1933.

77. Penalties for injuring embankments, etc :-

No person shall, without due authority, cut through, or attempt to cut through, any public embankment, or destroy or attempt to destroy, any such embankment, or open or shut or obstruct any sluice in any such embankment or any public water-course; and every person who shall commit any breach of the provisions of this section shall, in case the act shall not amount to mischief within the meaning of the Indian Penal Code, ¹ [be liable to imprisonment of either description for a term not exceeding three years, or to a fine not exceeding one thousand rupees or to both.]

1. Words subs, by W.B. Act 33 of 1980.

78. Penalties for diverting rivers or permitting cattle to graze on embankments, etc :-

Every person who shall make any dam or other obstruction for the purpose of diverting or opposing the current of a river or water-course wherein or whereon there are public embankments, without the permission of the officer in immediate charge of the embankments, or shall refuse or neglect to remove any such dam or obstruction so made by him when required to remove it by the Engineer, or without the permission of the Engineer previously obtained shall cut or otherwise alter the banks of any embanked river or water-course, or remove the earth from any public embankment, or drive stakes into it, or by any other wilful act destroy or diminish the efficiency of such embankment; and every person who without such permission shall cause or knowingly and wilfully permit any cattle to graze upon any such embankment or tether or cause or wilfully permit any cattle to be tethered upon any such embankment, or root up any grass or other vegetation growing on any such embankment, ¹ [shall be liable to imprisonment of either description for a term not exceeding three

years, or to a fine not exceeding one thousand rupees or to both.]

1. Words subs, by W.B. Act 33 of 1980.

79. Obstructions to be removed and damage repaired :-

Whenever any person is convicted of an offence under either of the three last preceding sections the convicting Magistrate may order that he shall remove the embankment or 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 fixed period the Engineer may remove such embankment or obstruction or repair such damage, and the cost of such removal or repair shall be levied from such person in addition to any other penalty in the manner provided in "(sections 421, 422 and 425 of the Code of Criminal Procedure, 1973.)]

79A. Offences to be cognizable and non-bailable :-

¹ Notwithstanding anything contained in any other law for the time being in force, an offence punishable under this Act shall be cognizable and non-bailable.

1. Sec. 79A ins. by W.B. Act 33 of 1980.

PART 8

Miscellaneous

80. Mode of publishing proclamation and issuing notices :-

Every proclamation and general notice by this Act required to be issued or given shall be published by affixing a copy of the same in the office of every Collector, Subdivisional Officer and Munsif within his jurisdiction, and at every police-station within the limits of which any lands affected by such proclamation or notice are known by the Collector to be situated; and by affixing copies of the same in conspicuous positions in such hats, bazars, towns, villages or other public places (as the Collector may direct; and also by giving notice by beat of drum at such public places) that such copies have been affixed and that one copy of the papers containing the information which is the subject of such proclamation or general notice is open to inspection by all concerned at the office of the Collector.

81. Service of special notices :-

Every special notice or order by this Act required to be served shall be served,

(1) by delivering a copy of the same to the person to whom it is

directed, or, on failure of such service, by posting a copy on some conspicuous part of the house in which the said person resides, or by delivering a copy to any agent authorized to appear generally for the person to whom such notice or order is directed; or

(2) by sending a registered letter containing a copy of such notice or order directed to the said person at his usual place of abode, or at the place where he may be known to reside; or

(3) by posting a copy of the notice or order at the mal-cutcherry of the estate, village or tenure to which the same relates; or, If no such mal-cutcherry be found, on some conspicuous place on the said estate, village or tenure; or

(4) if the person on whom the notice or order is to be served is a zamindar, by delivering a copy thereof to the agent who shall have paid an instalment of revenue next before or who may pay the instalment next after the preparation of such notice or order, on behalf of such zamindar. In all cases where two or more persons are holders of an estate or tenure, service under the last two clauses shall be deemed to be good and sufficient service on each and all of such persons.

82. Powers of Collector and Commissioner on inquiry and appeal :-

In any inquiry or appeal held under this Act, the Collector and the Commissioner shall respectively have the same powers as those conferred on Courts by the Code of Civil Procedure,¹ [1908,] of summoning and examining witnesses and compelling the production of documents.

1. Figures ins. by Ben. Act 1 of 1939.

83. No proceedings to be impeached for mistake or want of form :-

No proceedings under this Act shall be impeached or affected by reason of any mistake in the name of any person thereby rendered liable to pay any sum of money, or in the description of any estate or tenure of land in respect of which he is rendered liable to pay, provided the directions of this Act be in substance and effect complied with; and no proceedings under this Act shall for want of form be quashed or set aside in any Court of Justice.

84. Appeal from orders :-

Every order passed by the Collector in respect of applications under

section 18, and every order passed under sections 11, 50, 52 or 68, shall be appealable to the Commissioner of the Division, and every such order of the Commissioner except when otherwise directed by this Act, shall be appealable to the Board of Revenue; but no appeal shall lie under this section against any order unless the same be presented within one month from the date of the order.

85. General control of Commissioner and Government :-

All the powers of a Collector under this Act shall be exercised under the general control and orders of the Commissioner of the Division, and all the powers of Collectors and Commissioners shall be exercised subject to the general control and orders of the Board of Revenue and of the ¹ [State Government]. Every order passed by any of the said authorities shall be subject at any time to be varied or set aside by the controlling authority.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

86. Orders to be final :-

Subject to the provisions of the two sections last preceding, every order passed by the Collector in respect of applications under section 18 and every order passed under sections 11, 50, 52 or 68, and every order passed by a controlling authority in respect of such order of a Collector, shall be final, and not liable to be modified or altered otherwise than as expressly provided in this Act.

87. Disposal of lands no longer required for embankments :-

Whenever the maintenance of any public embankment, or the retention of any land appropriated to the purposes thereof, may no longer be required, and the permanent relinquishment of the same may be deemed expedient, such land shall be restored by the Collector to the estate or tenure from which such land was originally taken on repayment of the compensation, if any, which was paid for such land when the same was taken for the purpose of the embankment. If persons who are entitled to the restoration of any land under this section, or any of them, refuse or neglect to pay such price within a reasonable time after demand, the same shall be sold by the Collector as a revenue-free holding for such price as he can obtain for the same. All sums obtained for lands conveyed under the provisions of this section shall, after the payment of all expenses incurred on account of the same, be

applied to the payment of the cost of any new embankment or drainage-works, or of the expenses of maintaining any embankment or drainage works, affecting the said lands and other adjacent lands, in reduction of the amount chargeable upon the zamindars and tenure-holders of the lands benefited, as hereinbefore provided, if any amount be so chargeable.

88. Collector may delegate any of his powers to a Deputy Collector :-

A Collector may delegate any of his powers under this Act to a Deputy Collector; but from any order passed by a Deputy Collector to whom powers have been so delegated an appeal shall lie to the Collector if presented within thirty days of the date of the order. Every such delegation of power shall be reported to the Commissioner of the Division.

89. Jurisdiction :-

All offences created by this Act shall be inquired into and tried by a Magistrate of the first or second class.

90. Power to make, alter and cancel rules :-

The ¹[State Government] may from time to time make rules, consistent with the provisions of 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 business of embankment Committees;

(c) the cases in which, the officers to whom and the conditions subject to which orders and decisions given under any provisions of this Act, and not expressly provided for as regards appeal, shall be appealable;

(d) 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;

(e) the amount of any charge made under this Act; and

(f) generally to carry out the provisions of this Act. The ²[State Government] may from time to time alter or cancel any rules so made. Such rules, alterations and cancellation shall be published in the ³[Official Gazette], and shall thereupon have the force of law :

Provided that no rules shall be made by the ²[State Government] under the powers conferred on ⁵[it] by this section, until a draft of the same shall have been published in the ³[Official Gazette] for one month, after which time the ²[State Government] may pass such rules as originally published or with such alterations, additions and omissions as ⁴ [it] may think fit.

1. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

2. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950, respectively.

3. Words subs, by the Government of India (Adaptation of Indian Laws) Order, 1937.

5. Word subs, by the Government of India (Adaptation of Indian Laws) Order, 1937.

91. Saving of operation of certain Acts :-

Nothing in this Act shall apply to any embankment, land or water-course which is under the operation of any of the following Acts :

¹* * * "the Bengal Irrigation Act, 1876. ² [the Canals Act, 1864.]

1. Words and figures rep. by Ben. Act 1 of 1939.

2. Words and figures subs, by Ben. Act 1 of 1939.

PART 9

Special Provisions for the State⁶⁰ of Orissa

92. Powers conferred on Superintendent of Embankments in Orissa :-

¹ The powers conferred on the Collector by section 25 may, in the State⁶⁰ of Orissa, be exercised by the Superintendent of Embankments with the consent of the Collector previously obtained, and the references in the said section to other parts of this Act shall be deemed to be references to the corresponding portions respectively of Act 32 of 1855 (An Act relating to embankments]. The consequences mentioned in section 26 shall attach to everything done by the Superintendent of embankments under the provisions of this section.

1. Secs. 92 to 94 are inapplicable to West Bengal.

93. Powers to Engineer to act in urgent cases :-

¹ In cases in which the Engineer in charge of any embankment may be of opinion that delay for the purpose of obtaining the orders of the Superintendent of embankments and the Collector would be

attended with grave and imminent danger to life or property, the Engineer may exercise the powers conferred on the said Superintendent with the consent of the Collector in pursuance of the last preceding section. The Engineer shall forthwith report to the said Superintendent any action taken by him under this section, and shall be guided by any instructions which he may receive from htm in respect thereof.]

1. Secs. 92 to 94 are inapplicable to West Bengal.

94. Sections made applicable to Ozissa :-

Sections 4, 5, 6, 34 and 76 shall extend to the ¹ [State] of Orissa, the words "Superintendent of embankments" being substituted for the word "Collector" in clauses (a) and (b) of section 76.

1. Secs. 92 to 94 are inapplicable to West Bengal.

SCHEDULE 1

Portions of Bengal Act 6 of 1873 which are not repealed

SCHEDULE 1

(Referred to in section 2.)

(Portions of Bengal Act 6 of 1873 which are not repealed.)

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SCHEDULE 2
SCHEDULE

<p>SCHEDULE 2</p> <p>(Referred to in section 2.)</p>		
<p>Section of Bengal Act 6 of 1873 hich the reference is made</p>	<p>The reference as it stands</p>	<p>To what portion of the present Act the reference is to be read to apply</p>
Section 12 ...	To "the last preceding ... section."	Section 25
Section 12 ...	To section 18	Section 30
Section 12 ...	To section 25	Section 37
Section 21 ...	To "such proceedings." ...	Section 19
Section 26 ...	To Part III	Part III
Section 26 ...	To "this Part"	Part V
<p><u>SCHEDULE 3</u> SCHEDULE</p>		

SCHEDULE 3

(Referred to in section 8.)
