A Bill to provide for Irrigation and Navigation in the Madras 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 Madras Presidency; It is enacted as follows:—

Preamble.

PART I.—PRELIMINARY.

1. This Act may be called "The Madras Irrigation Act, 1882." It extends to the whole of the Presidency of Madras.

Short title.

Local extent.

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

Interpretation section.

(1) "canal" includes—

"Canal."

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

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

(*c*) all water-courses, drainage-works, and flood-embankments as hereinafter 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 purposes 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 purpose of such canal;

(2) "water-course" means any channel, pipe, or aqueduct, 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, pipe, or aqueduct, except the sluice or outlet through which water is supplied from a canal to such channel or pipe; "Water-course."

(3) "drainage-work" means any 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; "Drainage-work."

(4) "flood-embankment" means any 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; "Flood-embankment."

(5) "Collector" means the head Revenue officer of a 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; "Collector."

(6) "canal officer" means any officer lawfully appointed or invested with powers under Section three; "Canal Officer."

(7) "owner" includes every person having a joint interest in the ownership of 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. "Owner."

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

(*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. Proviso.

PART II.—Of the Construction and Maintenance of Canals.

Application of Water for purposes of Canals.

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

the Governor in Council may, by notification in the *Fort St. George 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 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.

Powers of canal officers for the purpose of so applying a water-supply.

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

Entry for inquiry.

(*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 inquiry and examination.

7. 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 any land, structure, 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.

Power to inspect and regulate water-supply.

8. In case of any accident being apprehended or happening 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

Power to enter for repairs, and to prevent accidents.

which may be necessary for the purpose of preventing such accident, or repairing any damage done.

9. When a canal officer or other person 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.

Notice to occupier of building, &c.

Canal Crossings.

10. Suitable means of crossing canals 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.

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

Removal of Obstructions to Drainage.

11. Whenever it appears to the Governor 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 *Fort St. George 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.

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

12. Any canal officer duly empowered in this behalf may, after such publication, issue an order in writing to any person causing or having control over any such obstruction to remove or modify the same within a reasonable time to be fixed in such order.

Canal officer may issue order to person causing obstruction.

13. If, within the time so fixed, such 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, forthwith pay the expenses of such removal or modification, such expenses shall be recoverable by the Collector as an arrear of land revenue.

Canal officer may cause obstruction to be removed.

Construction of Drainage Works.

14. Whenever it appears to the Governor in Council 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,

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

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.

Construction of new water-courses by private arrangement.

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

Application may be made for construction by a canal officer of a new water-course.

(1) that he is ready to defray all the expenses necessary for the 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,

Procedure when canal officer considers construction of such water-course expedient.

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.

Person wishing to be joint owner must make his application within thirty days.

If any such applicant appears, and his application 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.

If his application is admitted, he will be liable for a share of the cost.

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.

Collector to acquire land.

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.

Procedure after construction of water-course.

Rights and Obligations of Owners of Water-courses.

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

Obligations of owner of water-course.

(*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—

Rights of owners and users of water-courses.

(*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-one.

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.

Person other than owner may arrange with owner to have supply of water through water-course, or may apply to canal officer to authorize supply or declare him a joint owner.

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.

Canal officer after enquiry may authorize supply, or declare applicant to be a joint owner.

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.

Land acquired for a water-course may not be used for other purpose.

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.

If owner fails to execute work, or to repair his water-course, canal officer may execute the same on his behalf.

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 con-

Person who uses the water-course to pay a share of the expenses of repair.

dition 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.

Settlement of disputes as to mutual rights and liabilities of persons interested in a water-course.

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.

Water to be supplied on written application,

26. Every person desiring to have a supply of water from a canal for the first time, or for a renewed supply after relinquishment, shall submit a written application to that effect to a canal officer duly empowered to receive such application in such form as shall from time to time be prescribed by Government in this behalf.

and water may be supplied for purposes other than those of irrigation.

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.

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

Duration of supply.

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.

Agreements for supply of water transferable with the property in respect of which supply is given.

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.

PART V.—Of the Award of Compensation.

Compensation when claimable.

Compensation to be paid in all cases of ascertainable substantial damage.

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 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.

Remission of water-rates when allowable.

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

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

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 by any rule framed under Section sixty-one 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 Sec-

Claims to be preferred to the Collector.

tions thirty-three and thirty-four, must be made before the Collector of the District in which such claim arises.

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

38. The Collector shall enquire into every such claim and determine the amount of compensation, if any, which should in 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 Madras Irrigation and Navigation Act, 1882, 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."

Diminution in market-value to be considered in fixing the amount of compensation.

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.

Compensation when due.

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;

Interest.

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.

Abatement of revenue demand on interruption of water-supply.

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.

Abatement of inferior holder's rent on interruption of water-supply.

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;

Enhancement of inferior holder's rent on restoration of water-supply.

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.

Rates for supply of canal-water to be determined by Government.

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

Provision for cases in which existing water-supply is improved.

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 the owner of the land irrigated, or by any person who uses the water so supplied.

Occasional Rates.

Liability when person using water unauthorizedly cannot be identified.

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,

may be held 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-one.

Liability when water runs to waste.

45. If water supplied through a water-course be suffered to run to waste, to the manifest detriment of cultivators lower down the same water-course, 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, may be held 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-one.

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

Charges recoverable in addition to penalties.

46. All charges for the unauthorized use, or for waste of water may be recovered, as water-rates, in addition to any penalties incurred on account of such use or waste.

Percolation and Leakage Rates.

Land deriving benefit from percolation liable to water-rate.

47. If it shall appear to a canal officer 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,

such land may be charged with 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.

Recovery of Water-rates and other Dues in Arrears.

Water-rates when and to whom to be paid.

48. 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.

Arrears to be recoverable as land revenue.

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 due to owners of water-courses to be recoverable as 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 Navigable Canals.

Rules and bye-laws to be conformed to.

49. Whenever any canal is made available for navigation, all persons so using it shall conform to the rules and bye-laws made by the Gov-

ernor in Council under Section sixty-one of this Act, and for the time being in force; whether these rules relate to the conduct of the navigation, to the charges to be levied for the use of the canal for navigation, or to the regulation of the traffic at particular places.

PART VIII.—Of obtaining Labour for Canals on emergencies.

Procedure for obtaining labour for works or repairs urgently required.

50 Whenever it appears to a canal officer duly empowered to act under this section, that unless some work or repair is immediately executed, such damage will happen to any canal as to cause serious loss of revenue or injury to person or property,

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 in the vicinity of the locality where such repair, clearance, or work has to be executed, or who may be interested directly or indirectly in the maintenance of the work, 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.

Reports to be made by canal officer.

51. All orders made under Section fifty shall be immediately reported to the Collector, and likewise to the Chief Engineer for Irrigation for the information of Government.

PART IX.—Of Penalties.

For damaging canal, &c.

52. 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, bench, 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 seventy, after he has been desired to desist therefrom;

(7) causes or permits cattle to graze upon any canal or flood-embankment, or tethers, or causes, or 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) removes earth without permission from the bed of any canal, or any flood-embankment, or establishes any building, fence, hedge, ditch, or plantation alongside any canal within the limits of the ground taken up for such canal;

(9) neglects, without reasonable cause, to assist in the execution of any repair, clearance, or work, when lawfully bound so to do under Section fifty;

(10) violates any rule made under Section sixty-one for breach whereof the Governor in Council shall, in such rules, direct that a penalty may be incurred; and whoever—

(11) 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.

53. Whoever without proper authority,

(1) pierces or cuts through, or attempts to pierce or cut through, or damages, endangers, or destroys 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 in a river, or canal, 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.

Obstruction to be removed and damage repaired.

54. 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.

Person employed on canal may take offenders into custody.

55. 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.

Saving of prosecution under other laws.

56. 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.

Payment of fine as award to informant.

57. 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 X.—Miscellaneous.

Appeals against orders under this Act.

58. 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 Board of Revenue.

Power to summon and examine witnesses.

59. 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.

Service of notices.

60. 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.

Power to make, alter, and cancel rules.

61. 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 cancelments shall be published in the *Fort St. George Gazette*, and shall thereupon have the force of law.

Publication of Rules.

Saving of Municipal water-works.

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

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following papers:—

G.O., dated 21st May 1881, No. 326 I., Public Works.

Read—the following letter from C. L. TUPPER, Esq., Officiating Under Secretary to the Government of India (Home, Revenue and Agricultural Department—Revenue), to the Secretary to the Government of Madras, dated Simla, the 27th April 1881, No. 245.

I am directed to forward the accompanying extracts from the report * of the Indian Famine Commission on the question of an Irrigation Law for the Madras Presidency, and to request that after duly considering the remarks of the Commission in connection with the report † of the Madras, Orissa and Midnapur Irrigation Committee, the Government of Madras will favor the Governor-General in Council with a full expression of its opinion upon the subject.

* Part II, Chapter V, Section II, paragraphs 58 and 60 to 66.

† *Vide* letter from Government of India, Public Works Department, No. 92-C (Famine), dated the 18th March 1879.

Extract from Report of the Indian Famine Commission (Part II).

CHAPTER V.

Section II—Irrigation Works.

Para. 58. The question of reviving the custom of statute labor, and imposing on the ryots the obligation of doing the ordinary work necessary to maintain their tanks and channels in proper order, has been carefully examined, and its desirability is enforced by a large number of local authorities, and we feel no hesitation in recommending that this reform be at once carried out. In the actual circumstances such a revival would be less burthensome to the people and more effectual than any other system under which the necessary work could be done. If in any case the change were found to throw on the cultivators a burden which was inconsistent with ancient custom, or with the demands which can be equitably made on them under existing assessments, a suitable compensation must be granted, but we apprehend that this would rarely be the case.

* * * * * * * * *

60. There is a general agreement that great inconvenience is occasioned by the absence of any Irrigation Law for Madras. Act VII of 1865 empowers the Government to levy a water-rate, in addition to the land-revenue, wherever water is supplied for irrigation. But, with this exception, no special provision is made by law for the grant of sufficient powers to carry out the various administrative arrangements which the introduction of canal irrigation necessarily involves; and there are, in our opinion, several particulars as to which the absence of express enactment has produced evils of a very serious nature.

61. In the first place, there are at present no means of enforcing on Zemindars the obligation of maintaining their tanks and other irrigation works in proper efficiency, or even of contributing their share of expenses incurred by Government in the improvement of irrigation works by which their estates are benefited. As an instance of this, the case of the Jaghirdar of Arni, the holder of a large Zemindari Estate, may be mentioned, part of whose land has received considerable benefit from a series of tanks constructed in North Arcot, but who declines, and cannot, as the law stands, be compelled to contribute to the outlay involved.

62. The obligation on the part of the Zemindars to keep their tanks in repair is strengthened by the consideration that the land forming the bed of the tank was excluded from consideration when the permanent assessment was fixed. The object of this exemption has been, unfortunately, lost sight of, and the Zemindar often puts the tank bed to what purposes he pleases, and ignores

his obligation to maintain it as a means of irrigation. Every Zemindar should, we think, be bound to keep every tank on his estate in complete repair, under rules similar to those that are made applicable to tanks on Government lands. If he fails to do so, the Government should do it, the outlay thus incurred being made a first charge on the land along with the revenue.

63. An abuse, which requires correction, has arisen by which the Zemindars benefit at the cost of the State. Lands which, on the introduction of canal irrigation, were in the enjoyment of any means of irrigation, however inferior and precarious, are now supplied with canal water without any additional charge. The consequence is that a Zemindar gets a continuous and unlimited supply for the whole of the area which, under the most favorable circumstances, he had ever brought under irrigation. There seems no reason why this benefit should be gratuitously conferred. In those cases in which the supply is enlarged or otherwise improved, a corresponding payment should be enforced, and any difficulty in doing this should be removed at once by proper legislation.

64. Where persons hold land rent free on condition of keeping certain tanks in good repair, the duty is seldom properly performed, and the tanks accordingly are a constant menace to the tanks below, and often, by breaching, cause the Government tanks to breach also. Power should be taken either to carry out the necessary repairs, charging the responsible person with the cost, or to buy up his right at a fair price.

65. There is great difficulty in dealing, under the general criminal law, with various offences which interfere materially with the proper management of a canal. Stopping up other people's channels, improperly opening one's own, tampering with banks, &c., are acts of this nature. The Irrigation Acts of other provinces provide for such cases, and a corresponding enactment is very necessary to secure effective canal administration in Madras.

66. In short, we consider that in the Madras Presidency the subject of irrigation requires a more comprehensive and systematic treatment than it has ever yet experienced.

Order—dated 21st May 1881, No. 326 I., Public Works.

Communicated to the Chief Engineer, Public Works Department, and to the Chief Engineer for Irrigation, who are requested to favor the Government with an expression of their views on the subject of an Irrigation Law.

2. Their replies will subsequently be communicated to the Board of Revenue for such remarks and proposals as they may desire to offer prior to final consideration of the subject by Government.

(True Extract.)

(Signed) J. O. HASTED, Lieut.-Colonel, R.E.,
Ag. Joint Secy. to Govt., P.W.D., Irrigation Branch.

To the Chief Engineer, Public Works Department.
„ Chief Engineer for Irrigation.
„ Revenue Department.
„ Board of Revenue.
„ Legislative Department.

G.O., dated 26th September 1881, No. 2358 W., Public Works.

Read—again Proceedings of the Madras Government in the Public Works Department, dated 21st May 1881, No. 326 I.

Order—dated 26th September 1881, No. 2358 W., Public Works.

On reconsidering the subject of the above paper, the Honorable the Governor in Council is of opinion that the best and most practical way of meeting the demand of the Government of India will be by framing drafts of Acts for regulating Kudimaramut, and prescribing the law and obligations relating to Irrigation, to suit the requirements of the Madras Presidency.

2. The following gentlemen will therefore be requested to form themselves into a Committee to consider the subject, and to draw up the drafts proposed after review of that relating to Kudimaramut, which will be found in the Report of the Irrigation

Famine Committee, dated 27th December 1878, and of the various Canal Acts in operation in other Provinces:—

Members of Committee.

C. G. Master, Esq.
Colonel R. H. Sankey, C.B., R.E.
E. Forster Webster, Esq.
Colonel J. Mullins, R.E.

3. The drafts will, on receipt by Government, be forwarded to the Board of Revenue for their remarks before being dealt with by Government.

(True Extract.)

(Signed) R. H. SANKEY, Col., R.E.,
Secretary to Govt., P.W.D.

To C. G. Master, Esq.
„ Colonel R. H. Sankey, C.B., R.E.
„ E. Forster Webster, Esq.
„ Colonel J. Mullins, R.E.
„ the Board of Revenue.
„ the Revenue Department.
„ the Legislative „

G.O., dated 28th August 1882, No. 2209 W., Public Works.

The Committee appointed in G.O., No. 2358 W., dated 26th September 1881, having now submitted the draft of an Act to provide for Irrigation and Navigation in the Madras Presidency, the draft will in the first instance be forwarded to the Board of Revenue for their remarks.

2. The present draft has been framed in accordance with the Bombay Act, which was based on that in force in the North-West Provinces.

3. The attention of the Board is particularly drawn to—

(1) Part V, Sections 36 to 40—and their opinion is desired as to whether the adjudications should be made by the District Judge instead of the Collector as provided for.

(2) Part VIII.—The Board are requested to state whether they consider this part necessary, or whether Act I of 1858 makes all requisite provision.

4. The draft should be returned with remark as early as possible.

(True Extract.)

(Signed) R. H. SANKEY, Col., R.E.,
Secretary to Govt., P.W.D.

To the Board of Revenue, with Draft.
„ Chief Engineer for Irrigation.
„ Revenue Department.

G.O., dated 14th September 1882, No. 2384 W., Public Works.

Read—Draft of Rules framed under the Madras Irrigation Act, 1882.

Order—dated 14th September 1882, No. 2384 W., Public Works.

The accompanying draft of Rules framed under the Madras Irrigation Act, 1882, is referred to the Board of Revenue for their remarks in continuation of the draft Act forwarded with G.O., No. 2209 W., dated 28th August 1882.

(True Extract.)

(Signed) R. H. SANKEY, Col., R.E.,
Secretary to Govt., P.W.D.

To the Board of Revenue, with copies of draft Rules.
„ Chief Engineer for Irrigation.

In exercise of the power conferred by the Madras Irrigation Act, 1882, the Governor in Council is pleased to make the following Rules for the administration of Canals in the Madras Presidency :—

I.—APPLICATION FOR WATER FOR IRRIGATION.

Applications not required.

1. No application is required for water for land which has been irrigated for wet crop in the preceding year.

Applications under Section 26 how to be made.

2. For the irrigation of land not before irrigated, or for which irrigation has been relinquished, application must be made in duplicate in the form of Appendix No. I to the Executive Engineer of the Division, or to some other canal officer duly empowered to receive such applications. Blank copies of the form will be supplied to intending applicants free of charge.

Similar applications will be required for all second wet crop irrigation, and for all dry crop irrigation.

Both copies of the application will, if the application be granted, be forwarded by the Executive Engineer to the Divisional Revenue Officer after column 8 has been duly filled in, and the Divisional Revenue Officer will, after filling in column 9, transmit the original to the applicant, and return the duplicate to the Executive Engineer.

Applications for water for any purpose other than irrigation may be made in the form of an ordinary letter addressed to the Executive Engineer of the Division, or other officer aforesaid.

Rejection of application.

3. If an application for water be rejected, the cause of rejection will be noted in column 10 of the form.

Causes of rejection.

4. The causes of rejection which are authorized are—

(1) the water not being available;
(2) the means of irrigating the land entered in the application not being available, *i.e.*, there being no Government distribution channel capable of supplying the applicant's water-course;
(3) the land to be irrigated not being levelled and embanked for irrigation.

Priority of right to water when supply proves deficient.

5. If, from any cause, the water-supply from a canal proves insufficient to meet all the accepted applications for water, all questions regarding priority of right to receive the available water, and the quantity and regulation of supply, shall be finally determined by the Executive Engineer of the Division.

Provided always that the claims of those whose lands were irrigated in the preceding year shall have priority over all claims dating from the current year.

II.—CLOSING OF CANALS FOR REPAIRS, &C.

Except in cases of emergency, canal not to be closed without sanction of Chief Engineer for Irrigation.

6. No canal shall be closed for the execution of any repairs, alterations, or additions thereto, except in cases of emergency, without the previous sanction of the Chief Engineer for Irrigation, who shall fix the period, or periods, for which the supply of water may be stopped under Section 27 (*d*) on account of the execution of such repairs, &c., due notification being made in the District Gazette at least one month previous to such closure wherever feasible. In cases of emergency a canal may be closed, and the said period, or periods, may be fixed by the canal officer of highest rank on the spot.

III.—WATER-SUPPLY RATES FOR IRRIGATION.

Rates how to be fixed.

7. The rates leviable for canal water supplied for purposes of irrigation will be fixed at a certain amount per acre, varying according to the kind of crop to be irrigated, and according as the water is obtainable from the canal by lift or flow.

Provisions applicable to supply from escape channels.

8. The same provisions shall apply to irrigation from escape channels as to irrigation from other parts of a canal.

Rate leviable for such supply.

When the supply of water from any such channel lasts continuously throughout the period for which it is required for use, the same rates shall be levied as for a supply from the canal. When the supply is intermittent, such reduced rates shall be charged as may be fixed in each particular case under the orders of Government.

Rate leviable for supply of water obtained without permission.

9. If a supply of water is obtained by any person from a canal for the purpose of irrigation without the previous permission of the Executive Engineer of the Division, the rate chargeable for such water shall be double the rate chargeable for the authorized irrigation of the area irrigated, and this rate shall be leviable in addition to any penalty which may be imposed under the Act.

Water-supply Rates for Non-irrigational purposes.

For non-irrigational purposes rates will be charged for by volume or otherwise.

10. Water supplied from a canal for any purpose other than irrigation will be charged for by volume or otherwise at such rate as Government shall from time to time determine.

IV.—OCCASIONAL RATES.

Charge to be imposed when water supplied through a water-course is unauthorizedly used.

11. The charge to be made under Section 44 on account of water supplied through a water-course used in an unauthorized manner shall be as follows (namely):—

(*a*) if the water so used has flowed on any land, and such land has derived benefit therefrom,	double the highest rate leviable for a single crop;
(*b*) if the water has flowed on any land, but such land has not derived benefit therefrom,	double the lowest rate leviable for a single crop;
(*c*) in any other case	double the rate chargeable under Rule 7 on the volume of water estimated by the Executive Engineer to have been used.

The above charges will be leviable in addition to any penalty which may be imposed under the Act on the person who unauthorizedly used the water.

Charge to be imposed when water supplied through a water-course is suffered to run to waste.

12. The charge to be made under Section 45 on account of water supplied through a water-course which is suffered to run to waste shall be as follows (namely):—

(*a*) if the water has flowed on any land,	double the lowest rate leviable for a single crop;
(*b*) in any other case	double the rate chargeable under Rule 7 on the volume of water estimated by the Executive Engineer to have been wasted.

V.—REMISSIONS.

13. Remissions of water-rate under the last paragraph of Section 30 may be allowed by the Collector, and may extend to the whole or to a part only of the rate, as he shall in each case think fit.

Remissions under last paragraph of Section 30 may be granted by Collector.

14. Claims for such remissions shall be preferred to the Collector, who, before granting such remission, shall in every case take measures to obtain the opinion of the Executive Engineer of the Division.

Claims for such remissions to whom and when to be made.

VI.—MISCELLANEOUS.

15. Applications for free grants of water-supply shall be referred for the orders of Government in the Public Works (Irrigation) Department, and no such grant shall be made without the previous sanction of Government.

Free grants of water-supply.

16. In cases of dispute regarding water-supply, or remission, or abatement of water-rate, the water-gauges and meters set up by the Public Works Department shall, if certified by the Executive Engineer of the Division to have been in good order during the period to which the dispute relates, be held to furnish authoritative data for all calculations of discharge.

Readings of water-gauges and meters set up by Public Works Department to be accepted as authoritative.

17. No canal officer or other officer or subordinate shall—

Certain acts forbidden to canal officers, &c.

(1) acquire, directly or indirectly, any share or interest in the distribution of water from any canal; or

(2) purchase, or bid, either in person or by agent, or in his own name or in the name of another or jointly or in shares with others, for any Government property in, on, or appertaining to any canal.

Breach of this rule shall be punishable with a penalty under Section 52, Clause (10) of the Act.

Returns.

18. The Collector shall furnish the Executive Engineer of the Division with annual returns in the form of Appendix II not later than 20th September each year.

APPENDIX No. I.

Form of Application for Water for Irrigation for the Year 188 .

Name of Village.	Name of Canal.	Name of Distributary.	Survey Number of Field.	Area of Field to be irrigated.	For what Crop required.	Date from which Water is required.	Order of Executive Engineer whether Application is granted, or otherwise.	Water-rate chargeable per Acre.	Remarks.
1	2	3	4	5	6	7	8	9	10
				ACS. CENTS.					

Columns 1 to 7 to be filled in by Applicant.
Column 8 to be filled in by Executive Engineer.
Column 9 to be filled in by Divisional Revenue Officer.

APPENDIX No. II.

Statement of Revenue from Irrigation Works for the Year 188 .

Taluk.	Name of Canal.	Name of Distributary.	Area cultivated.	Assessment.	Water-rate.	Total.	Remissions.	Net Demand.	Remarks.
1	2	3	4	5	6	7	8	9	10
					RS.	RS.	RS.	RS.	

Collector.

Proceedings of the Board of Revenue, dated 26th October 1882, No. 2590.

Read—again the following Proceedings of the Board of Revenue, dated 2nd September 1882, No. 5068 :—

Abstract.—Returning for reference the draft Act to provide for Irrigation and Navigation.

Read—the following papers :—

G.O., dated 28th August 1882, No. 2209 W., Public Works.

The Committee appointed in G.O., No. 2358 W., dated 26th September 1881, having now submitted the draft of an Act to provide for Irrigation and Navigation in the Madras Presidency, the draft will in the first instance be forwarded to the Board of Revenue for their remarks.

2. The present draft has been framed in accordance with the Bombay Act, which was based on that in force in the North-West Provinces.

3. The attention of the Board is particularly drawn to—

(1) Part V, Sections 36 to 40, and their opinion is desired as to whether the adjudications should be made by the District Judge instead of the Collector as provided for.

(2) Part VIII.—The Board are requested to state whether they consider this part necessary, or whether Act I of 1858 makes all requisite provision.

4. The draft should be returned with remarks as early as possible.

(True Extract.)

(Signed) ROSS THOMPSON, Lieut.-Colonel, R.E.,
Acting Under Secy. to Govt., P. W. D.

To the Board of Revenue, with draft.

Enclosure No. 1.—Draft Act.

G.O., dated 14th September 1882, No. 2384 W., Public Works.

Abstract.—Referring to the Board of Revenue, for remarks, draft of rules framed under the Madras Irrigation Act of 1882.

Enclosure No. 1.—Draft Rules.

From the Secretary to Government, Public Works Department, to the Secretary to the Board of Revenue, dated 16th September 1882, No. 1673-C :—

Abstract.—Returning the draft Act to provide for Irrigation and Navigation in the Madras Presidency.

Resolution—dated 26th October 1882, No. 2590.

In forwarding for the Board's remarks the draft of "An Act to provide for Irrigation and Navigation in the Madras Presidency," the Government invite special attention to (*a*) Part V, Sections 36 to 40, inquiring whether, in the Board's opinion, the adjudication of compensation should be made by the District Judge instead of the Collector, and (*b*) whether Part VIII is necessary, or whether Madras Act I of 1858 contains all requisite provision for obtaining labor on emergency. In reply, the Board beg leave to offer the following observations and suggestions :—

2. *Part II, Sections* 4, 5, 6 *and* 7.—The Board think that these sections may with advantage be modified and considerably shortened by the adoption of the following suggestions :—

Section 4.—To the first clause of this section they would add "or that any inquiry as to the propriety or desirability of such application or use should be made." After the word "used" in the fourth line of the second clause, they would insert "in such villages to be specified by name, taluk and district, as are likely to be affected by the application or use of the said water," and would add as a third clause to the section :—"This notification shall be deemed to be a notification under Section 4, Act X of 1870 (Land Acquisition), so far as regards any land included within the limits of any of the villages specified as aforesaid; and thereupon any canal officer, duly empowered in that behalf, may in respect of such lands exercise for the purposes aforesaid all the powers conferred by Section 4 of the Land Acquisition Act, and shall in addition have power to—

(1.) Close any existing channel.
(2.) Remove any obstruction.
(3.) Do any other thing necessary for such application or use of the said water or for the purposes of the said inquiry."

This addition would embrace everything provided for by Sections 5, 6 and 7 of the draft : the last sentence (3) of the proposed clause would include the setting up of gauges, and also the inspection and measurement of lands irrigated and the regulation of water-supply contemplated by Section 7.

3. *Section* 9.—The alterations suggested above would render necessary the substitution of the word "two" for "three" in the fourth line of this section, and the Board would further propose that the following clause be added to the section :—"Provided that when the entry on such premises is made only in the course of an inquiry as aforesaid, the notice to be given to the owner or occupier shall be in writing and shall be served not less than seven days before entry." (Ex. Proviso to Section 4, Act X of 1870.) The Board would lay stress upon the need for some such restriction as this, believing that the section as at present worded might be so used as to cause great and unnecessary annoyance to householders.

4. *Section* 14.—If the suggestions regarding Sections 4 to 7 be adopted, some verbal alteration of the second clause of this section would be required.

5. *Part III, Sections* 15 *to* 19.—The policy indicated in these sections appears to the Board to be a wide departure from the principles and procedure prescribed by Act X of 1870 for the acquisition of land on behalf of Companies. Under Part VII of that Act, the notification of Section 4 is required in the case of Companies as in the case of Government; the provisions of Sections 6 to 45 cannot be put in force unless with the previous consent of the local Government, and unless the Company have executed the agreement prescribed by Section 49. Moreover, the consent of the local Government cannot be given unless it is satisfied, after special inquiry, that the conditions prescribed by Section 48 are satisfied. But by the Bill now proposed to be enacted, no prior notification, either under Section 4 of the Land Acquisition Act or under Section 4 of the Bill itself, is required for the sanction of preliminary dealings with land in connection with the construction of water-courses by Government officers at the suggestion and cost of private speculators; and a canal officer can of his own motive in such cases use powers that no officer could in any other case exercise except under the authority of a preceding notification of Government. By Section 18 of the Bill again, a Collector is authorized to acquire all land needed for a private water-course on receipt of the canal officer's notification referred to in Section 17, just as if a declaration had been made by Government under Section 6 of the Land Acquisition Act. The preceding part of the Bill contains no such provision regarding the acquisition of lands wanted for works of irrigation to be constructed by Government; in that case the land is acquired under the ordinary procedure of the Land Acquisition Act, and the Board fail to understand what reason there can be for the exceptional procedure laid down in the Bill for the acquisition of lands required for private water-courses. Section 17 directs that the canal officer, when issuing the notification prescribed by the section, shall "call upon any person who wishes to share in the ownership of the water-course to make his application in that respect" within a given time. Now, it would appear from Section 16, that the person at whose

suggestion the construction of a private water-course is undertaken need not have any interest in the land to be irrigated from it, apart from such interest as attaches to the work as a speculation. And it would seem to be clear from Section 17, that the only interest which the person invited to claim a share in the ownership need have is "a wish to share." Neither of these persons is required to have any separate interest in the land affected by the speculation. This being so, it appears to the Board that the necessary effect of these provisions will be to constitute the canal officer a promoter of Joint Stock Companies; and they do not understand why a general invitation to share should be issued to the public, when, by the supposition of Section 16, the speculator, on whose suggestion the canal officer is acting, has already undertaken to defray all expenses, and must, under Section 17, deposit any sum which the canal officer may deem necessary.

6. This provision of the Bill may be due to the idea that, as the water supplied to the water-course comes from a Government source, it is only proper that the canal officer should have the power of regulating its distribution. If there were any limitation on the qualification for ownership in the work—if, that is to say, the invitation to become joint owners of the water-course were limited to persons having a beneficiary interest in the lands irrigated from it—the Board would have no objection to offer to the issue of the contemplated invitation; but as it stands at present, the effect of such notification might be to deprive a projector with brains, energy and money of his legitimate reward, which might, by the decision of the canal officer, who is entirely unrestrained, be snatched from him in anarbitrary manner.

7. Section 19 of the Bill contemplates the possibility of a balance being found against the speculator on the completion of the work, but it does not appear from what source are to be provided the funds which the fact of such a balance would show to have been expended in excess of receipts from the applicant. No provision is made for the protection of Government against loss. The Bill allows works of a perhaps costly nature to be undertaken on the mere application of a person who expresses his willingness to bear all costs and his wish that Government should carry out the work, but notwithstanding the provisions regarding the "rights and obligations of owners" (Sections 20 to 24), Government does not seem to be adequately secured against possible loss, nor is the promoter sufficiently protected by securing to him the legitimate reward of his enterprise.

8. The proposed enactment has reference only to works and water-courses which may be hereafter constructed, and has no application to works which may be in existence when the Bill becomes law. The Board think that an irrigation law should embrace all irrigation under the control of Government, but the question arises whether the possibilities of future irrigation in this Presidency justify or demand special legislation of this kind. It may be taken for granted that all schemes of any magnitude will be undertaken by Government, and that only works of very minor importance will be constructed as contemplated in the Bill. This being the case, it may be doubted whether special legislation is called for, and it might be sufficient to modify the Land Acquisition Act (Part VII) in such manner as to meet all requirements in this direction. "The rights and obligations of owners of water-courses" which the Bill proposes to define and control would in that case be embodied in agreements to be executed under Section 49 of the Land Acquisition Act, the sub-heads of which might be further modified as follows:—

To (1) add "of the land and of the construction of the water-course and necessary works."
(2) *For* "land to the Company" *read* "land and water-course to the party."
(3) *For* "land shall be held by the Company" *read* "land and water-course shall be held by the party."
(4) Should be omitted, the work being constructed by Government.

Thus by a slight modification of the existing law, it would seem to be quite possible to provide in regard to private water-courses all that the Bill contemplates; and the Board submit the point for the consideration of Government.

9. *Part IV.*—The Board do not think that rules relating to the supply of water should form part of the text of the Bill; these fall more properly within the domain of the administrative orders of the executive Government, and if it be thought necessary to give to such orders the sanction of law, it would be better to frame them under Section 61. Such rules need modification from time to time as circumstances change, and it is well to be able to do this without recourse to legislation.

10. *Part V, Section* 35.—The Collector's decision should be final on the question of compensation due for the entry referred to at Section 33, as it is in the parallel case provided for in Section 5, Land Acquisition Act.

11. *Sections* 36 *to* 40.—In the award of compensation for which this section provides, the Board would follow strictly the procedure laid down by the Land Acquisition Act; indeed, they see no ground for providing a special course of procedure in regard to compensation for land taken up for irrigation, and are disposed to regard these sections as superfluous.

12. *Part VI.*—For the reasons given at paragraph 9 above, the Board would relegate the whole of the provisions contained in Sections 43 to 47 to the Code of Rules to be framed under Section 61.

13. *Part VIII.*—In the opinion of the Board, there is nothing in this part which cannot be effected under Madras Act I of 1858. The Bill, indeed, gives to the canal officer power to do himself what the present Act requires him to do by requisition on the village headman, but in practice the canal officer's power is not restricted by this provision. The Bill differs from the present Act in the following respects:—

(1) In permitting the impressment of *all able-bodied persons* resident in the vicinity. This will include *women* and all *men*, whether of the laboring classes or not, whereas Act I of 1858 limits impressment to *males of the laboring classes*. This latter provision, if it should be thought desirable, might reasonably be extended by further imposing the obligation of labor in person or by substitute on all males interested in the lands supplied with water by the work.

14. *Section* 51 contains a mere administrative direction, the insertion of which in the body of the Act seems to be unnecessary.

15. *Part IX, Sections* 52 *and* 53.—Several of the provisions of these sections, for instance (4) and (5), Section 52, appear without doubt to fall within the definition of mischief in the Indian Penal Code, and would seem to be opposed to the provisions of Section 42 of 24 and 25 Vic., Cap. 67. In clause (7), the Board would insert after "cattle" the words "of which he is the owner or in charge;" otherwise a stranger who failed to interfere would be responsible. It is further observed that, for damaging or obstructing a canal, a person is liable under Section 52 (1) to a less penalty than for damaging or obstructing it under Section 53 (1) and 53 (3), and that for opening or attempting to open a sluice, a person is liable to a much heavier penalty under Section 53 (2) than under Section 52 (5) for destroying it.

16. *Sections* 55 *to* 57.—The powers proposed to be conferred upon every—even the lowest—canal officers are, in the Board's opinion, far too great, and would place a powerful weapon of oppression in the hands of petty subordinates, who are to be authorized to arrest without warrant any persons whom they think fit to accuse of an offence; and Section 57 supplies a distinct incentive to action by holding out the promise of reward to the informer.

17. Turning to the *Rules*, the Board observe regarding Nos. 11 and 12, that the charge is greater for water profitably used without authority than for water allowed to run to waste. So far as the owner of the water is concerned, there has been the diversion of it from its legitimate use, and if a penalty is to be levied, there would seem to be no good ground for making a difference in the mode of calculating it. *Rule* 11 (*c*), Rule 13 quoted in this paragraph, appears to be a misprint, as that rule refers to remissions.

18. With these remarks, the Board remit to Government the draft Bill and the Rules framed under it received with the Orders read at the head of this Resolution.

(A true Copy and Extract.)

(Signed) E. GIBSON,
Acting Secretary.

To the Secretary to Government, Public Works Department,
with draft Bill and Rules returned.

G.O., dated 4th May 1883, No. 1310 W., Public Works.

Read—the following Report of the Committee appointed in G.O., No. 2358 W., dated 26th September 1881.

Remarks on Proceedings of Board of Revenue, No. 2590, dated 26th October 1882.

The proposed addition to the first clause of Section 4, Part II, viz., "or that any inquiry as to the propriety or desirability of such application or use should be made," is not considered necessary, as under Section 6 "entry for inquiry" is fully provided for.

It does not seem possible to specify the names of the villages likely to be affected by the application or use of the water, as the river or stream might flow through more than one district, several taluks, and a large number of villages which could not be named without a survey.

It may, however, be a question whether the greater part of Part II may not, as suggested by the Board of Revenue, be omitted, and whether Act X of 1870 may not be sufficient for the purpose. This point should, it is considered, be referred to the Advocate-General for opinion. It is to be noticed that the present draft Act agrees very closely with the Irrigation Act in the Bombay Presidency, which was based on the North-West Provinces Act, and that it has been considered necessary in these places to retain Part II.

Paragraph 3.—If it is decided that the draft Act should stand, the proposed addition to Section 9 is agreed to.

Paragraphs 5 *to* 8.—It seems doubtful whether the circumstances of this Presidency are such as to require Sections 15 to 19. The opinion of the Advocate-General will be requested on the suggestion made by the Board of Revenue that "it might be sufficient to modify the Land Acquisition Act (Part VII) in such manner as to meet all requirements in this direction."

Paragraph 9.—Part II should, it is considered, stand as it is; it does not contain rules relating to the supply of water which will need modification from time to time.

Paragraph 11.—It would appear that the Board of Revenue are of opinion that the adjudication of compensation should be made by the District Judge; this is considered most objectionable. One of the main objects of this Act is to prevent litigation, which hitherto has caused much vexation and trouble.

Paragraph 12.—Part VI, Sections 43 to 47, should stand; it is intended to give power to fix the rates to be charged under different circumstances. The rules state how the rates are determined.

Paragraph 13.—It is contemplated that when the Kudimaramut Bill and Irrigation Act are passed, Act I of 1858 will be superseded. To meet the objection in the second clause, it is proposed to add to the words all "able-bodied persons" the following: "of the working classes."

Paragraph 14.—Section 51 should, it is considered, stand; it really forms part of the directions for procedure.

Paragraph 15.—The opinion of the Advocate-General will be asked on the first clause. The insertion of the words "of which he is the owner or in charge" in (7), paragraph 52, suggested by the Board is approved. In regard to the observations in the latter part of the paragraph, it is observed that the Board seem to have omitted to notice the reference to the Indian Penal Code in the latter part of each section; the penalties are provided only "when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code."

Paragraph 16.—To meet the objection here urged by the Board, it is proposed to omit the words "or employed upon" in the first and second lines of Section 55, and to add after "any canal" in the second line the words "or section of a canal."

Paragraph 17.—The charge for water profitably used is purposely made greater than the charge for water allowed to run to waste, as when it is profitably used the person diverting the water profits thereby.

Rule 13 referred to in the latter part of the paragraph is a misprint as supposed; it should be Rule 7.

(Signed) R. H. SANKEY.
(„) C. G. MASTER.
OOTACAMUND, („) E. F. WEBSTER.
27th April 1883. („) J. O. HASTED.

Order—dated 4th May 1883, No. 1310 W., Public Works.

The draft Act, as amended by the Committee, will, with previous correspondence, now be referred to the Advocate-General for an expression of his opinion.

(True Extract.)

(Signed) R. H. SANKEY, Col., R.E.,
Secretary to Govt., P.W.D.

To the Government Solicitor, with copies of the undermentioned papers:—
G.O., No. 326 I., dated 21st May 1881.
„ „ 2358 W., dated 26th September 1881.
„ „ 2209 W., dated 28th August 1882, with draft Act.
Board's Proceedings, No. 2590, dated 26th October 1882.
G.O., No. 3003 W., dated 13th November 1882.
„ Members of the Committee.
„ Board of Revenue.
„ Revenue Department.
„ Legislative do.

G.O., dated 16th July 1883, No. 1974 W., Public Works.

Read—again—
G.O., dated 21st May 1881, No. 326 I., Public Works.
„ „ 26th September 1881, No. 2358 W., Public Works.
„ „ 28th August 1882, No. 2209 W., Public Works.
„ „ 14th September 1882, No. 2384 W., Public Works.
Board's Proceedings, dated 26th October 1882, No. 2590.
G.O., dated 13th November 1882, No. 3003 W., Public Works.
„ „ 4th May 1883, No. 1310 W., Public Works.

Read—also the following papers:—

From E. BARCLAY, Esq., Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 5th June 1883, No. 296, forwarding the following Opinion of the Advocate-General with reference to G.O., dated 4th May 1883, No. 1310 W., Public Works:—

OPINION.

With reference to the Order of Government, Public Works Department, dated the 4th May 1883, No. 1310 W., I have read the draft Bill referred to me to provide for Irrigation and Navigation in the Madras Presidency. The Bill as drawn follows the law now in force in Bengal (Bengal Act III of 1876), in Bombay (Bombay Act VII of 1879), and in the North-West Provinces (Act VIII of 1873) on all important details, and I think it should be generally accepted, and that it is more advisable to follow the course which legislation has taken in the other Presidencies than to modify and apply the Land Acquisition Act as suggested by the Board of Revenue. I think the penalty sections are properly framed, but I concur with the Board in deprecating the power to arrest offenders without warrant, which is given in Section 55 of the Bill.

With reference to the construction of new water-courses, provided for in Sections 15 to 19 of the Bill, and the objection taken thereto by the Board of Revenue, it may be well to ascertain how these provisions have worked in the other Provinces. The corresponding sections in Bengal Act III of 1873 are Sections 49 to 53, where they are called village channels; in Bombay Act VII of 1879, Sections 16 to 20; and in Act VIII of 1873, North-West Provinces, Sections 21 to 29. If necessary, an alteration could be made in Section 17 prohibiting the exercise of the powers conferred on the canal officer, unless the previous sanction of the Government has been obtained.

The Bill will, I think, have to be submitted to the Government of India; its provision would be in conflict with Act V of 1882 (The Easements Act), and a confirmatory Act by the Governor-General's Council would probably be required in the same way that Act XXI of 1882 was required to give effect to the Madras Forest Act (V of) 1882.

4th June 1883. (Signed) P. O'SULLIVAN,
Advocate-General.

Remarks on the Opinion of the Advocate-General, dated 4th June 1883.

The remarks above quoted have reference to certain points submitted for the Advocate-General's opinion with the Committee's Proceedings, dated 27th April 1883, disposing of the remarks of the Board of Revenue, No. 2590, dated 26th October 1882, on the proposed draft of the Madras Irrigation Act.

2. As the Advocate-General considers it advisable to follow the course which legislation has taken in Bengal, Bombay, and North-West Provinces in regard to irrigation, the Committee are of opinion that the Bill as modified by the previous Proceedings might, with the approval of Government under Rule 25 for the conduct of business in the Local Council, be published in the *Fort St. George Gazette* so soon as it can be translated into the vernaculars of the Presidency. This course they consider desirable, as the Bill is directly connected with that for regulating Kudimaramut, which has already been introduced, and with Act I of 1858.

3. The Committee would further suggest that the correspondence be referred to the Governments of Bengal, Bombay, and North-West Provinces, to ascertain whether the objections urged in regard to Sections 15 to 19 and 55, as also to other matters which have been dwelt on by the Board of Revenue and the Advocate-General, have been felt in practically working the Acts which have been for some time in force in those Provinces; and again that the Government of India be addressed in reference to the concluding paragraph of the Advocate-General's Opinion.

OOTACAMUND, (Signed) R. H. SANKEY.
2nd July 1883. (,,) E. F. WEBSTER.
(,,) J. O. HASTED.

To the Secretary to Government, Public Works Department.

Order—dated 16th July 1883, No. 1974 W., Public Works.

The draft Bill to provide for Irrigation and Navigation in the Madras Presidency with the draft Rules for the administration of Canals to be framed under the Act will, with the Advocate-General's Opinion and the Remarks of the Committee thereon, be transferred to the Legislative Department for such further action as may be necessary, and with an expression of the concurrence of the Government in the Public Works Department in the recommendations now made by the Committee.

(True Extract.)

(Signed) A. S. RUSSELL,
Under Secy. to Govt., P.W.D.

To the Legislative Department, with draft Act and Rules.
,, Board of Revenue.
,, Revenue Department.

ORDER—dated 25th July 1883, No. 131, Legislative.

Ordered that the following letter be despatched to the Government of India:—

(Here enter No. 132, dated 25th July 1883.)

(True Extract.)

C. Thomas Major R.E
for *Acting Asst. Secy. to Govt.*

Copy to the Public Works Dept.

Exd. J. Henricus and T. O'Connor.

No 2167 Wa/7 dtd 7th Aug/83

B

Communicated to the Chief Engineer for Irrigation

Cy

4/8

D.O.C.N. 6602

Govt. of {1883} Madras.

LEGISLATIVE.

3 Sc

Issued

Recd. 4/8/83 Encl. 1

2 Sc

G.O., 25th July 1883, No. 131.

No 2167 Wa/7-8-83

JULY.

Read 8/8

Draft Irrigation and Navigation Bill.

Ordering that a letter be despatched to the Government of India soliciting sanction of the Governor-General in Council for the introduction of this Bill into the Madras Legislative Council.

Ch. Sy. for Irrign.

Ch. Sy. for Revn.

1 copy to Govt

with order

Dated

Sntd. to the Secretary Revn

8/8/83