GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—again the following papers:—

G.O., dated 25th July 1883, No. 131, Legislative.
Letter to Government of India, dated 25th July 1883, No. 132, Legislative.

READ—also the following papers:—

From H. C. LEVINGE, Esq., Secretary to the Government of Bengal, Public Works department, to the Chief Secretary to Government, dated Yacht "Rholás," 5th September 1883, No. 8. R.T.I.

I am directed to acknowledge the receipt of your letter, No. 136, dated the 25th of July 1883, inquiring whether any difficulties had been found in this province in working sections 48—52, and 96, of Act III B. C. of 1876, the Board of Revenue, Madras, having suggested certain objections to the enactment of similar provisions in an Irrigation Act, which it is proposed to pass for the Madras Presidency.

2. I am, in reply, to offer the following observations on the questions raised for the information of His Excellency the Governor in Council.

3. With respect to sections 48—52 of the Bengal Act, it was anticipated that applications for village channels (called water-courses in the Madras Bill) would generally be received when there was an urgent demand for water, and the procedure was framed with the view of allowing the land required for channels being acquired with the least possible delay. Even with all the advantages the Act affords in this respect, the necessary formalities do not admit of the land being obtained with the celerity which is indispensable if the growing crop is to be irrigated. It is found in Bengal that, except under the compulsion consequent on a season of drought, there is no general desire to construct channels, the difficulty in fact is to induce the people to make them. The only benefit the owner of a village channel can derive is the rent, which, under section 56 of the Act, is payable by persons taking advantage of it. This rent is fixed by the canal officer, and is never in itself sufficient to induce a person, not having a beneficial interest in the land commanded, to construct a channel as a matter of speculation. It is not at all likely that a canal officer, and the canal officer is in no way bound to accede to an application, would permit any person to construct a channel except for the irrigation of land in which he had an interest as landlord or tenant, and so far as experience in Bengal applies, no one would desire to do so. An appeal lies to the Collector if either party is dissatisfied with the canal officer's orders, so that ample precaution has been taken against hasty or ill-considered action on his part. Objections have been raised to the invitation to the general public to become joint owners of channels (section 51 of the Bengal Act). The original application may be made by a person interested in a part of a village situated at a distance from a distributary; in such cases it is obviously desirable to give the owners and occupiers of the remaining lands an opportunity of joining in the application, so that the channel may, in the first instance, be made of sufficient section to convey the quantity of water required for the whole village. In some cases one channel may suffice for two villages, and there is the further consideration that the proprietors of the land to be acquired are entitled to ask Government to take precautions against land being acquired for more channels than, under the best arrangements possible, will suffice. Some discretion is of course necessary in admitting shareholders in channels where the supply of

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4. As regards the penal section (55 of the Madras Bill corresponding to section 96 of the Bengal Act) no complaints regarding it have been brought forward in this province. If some such power is not conferred, the alternative would appear to be that a canal servant should have no power to prevent evil-disposed persons from damaging a canal or distributary or tampering with the water-supply, an act which might lead to the loss of crops in the villages deprived of it. In times of drought the regulation of the water-supply is at all times difficult, and unless very summary powers of arresting persons interfering therewith are possessed by the canal subordinates, it is almost certain that no water will reach the tail of a distributary, as the villagers in the upper part will appropriate the whole supply, a considerable portion of which will be wasted.

From Lieutenant-Colonel J. G. FORBES, R.E., Joint Secretary to Government, North-Western Provinces and Oudh, Public Works department, Irrigation Branch, to the Chief Secretary to Government, dated Naini Tal, 6th September 1883, No. C. 541 I.

With reference to your Legislative department letter, No. 135, dated 25th July 1883, inquiring whether the difficulties suggested by the Madras Board of Revenue in paragraphs 5 and 16 of their Resolution, No. 2590, dated 26th October 1882, have been felt in this province in the working of Act VIII of 1873 (the Northern India Canal and Drainage Act), I am directed to offer the following remarks.

2. The question on which a reply is desired is whether difficulties have arisen in working sections 21—29 and section 73 of Act VIII of 1873, which are very similar to sections 15—19 and 55 of the draft bill.

3. There is, I am to observe, one important difference between sections 15—19 of the draft bill and the corresponding sections of the Northern Indian Act VIII of 1873, which apparently has not been noticed, viz., the omission of a section similar to section 24 of Act VIII of 1873, in accordance with which any party interested in the matter might, within 30 days of the issue of the canal officer's notice, petition the Collector stating his objection to the proposed water-course.

In the draft Act (see penultimate clause, section 17) the period of 30 days is mentioned, not as the time within which objections will be heard, but as that within which application may be made for a share in the new water-course.

4. Apparently such objections have not been contemplated in the case of new water-courses, and hence sections similar to sections 26 and 27 of Act VIII of 1873 have not been provided. But in the case of existing water-courses, from which an applicant may wish to irrigate, the owners may lodge objections which are to be decided by the Collector (see section 22), so apparently there has been an oversight as regards new water-courses where objections may be, and usually are, of more importance than in cases of old ones.

5. I am also to observe that there is another point of difference between Act VIII of 1873 and the draft Act. In sections 21—29 of the former it is the "divisional canal officer" who arranges the business, whereas in the corresponding sections of the draft Act it is the "canal officer."

Now, according to section 2 (6) of the draft Act, the "canal officer" may be an assistant engineer or upper subordinate, whereas the "divisional canal officer," as defined in section 3 of Act VIII of 1873, is an officer of experience and standing.

6. So far as is known sections 21—29 of Act VIII of 1873 have led to no practical inconvenience in these provinces. It will be seen that the first condition of section 22 of that Act is, that the construction of the new water-course must be considered "*expedient.*" It is therefore unlikely that an experienced officer like a "divisional canal officer" would promote the formation of joint stock companies for the construction of village water-courses. If he even favored such a course, the people would object under section 24, and it is very improbable that the Collector would permit such an abuse of power. At all events a difference of opinion between the "divisional canal officer" would be referred to the Commissioner under section 27.

7. It is quite true, however, that neither in Act VIII of 1873 or in the draft Act, now sent for opinion, is it prescribed that the applicant for a new water-course must own or cultivate land in the village for which he asks water. But by referring to No. 5 of the rules issued by this Government under Act VIII of 1873 (copy enclosed), it will be seen that applications for a new channel are to be made, as nearly as may be, in the form prescribed in Appendix I. Under heading 14 of this appendix, the applicant must show the culturable area in his holding, and it is highly probable that if he possesses or cultivates no land in the village, the divisional canal officer would *not* consider it expedient to entertain his application; not to speak of the objections that would be raised under section 24 if the application was likely to be prejudicial to the general interests of the village concerned.

Also, as a rule, the local interest in canal irrigation is far too intense to admit of outsiders intervening. When irrigation channels discharge over 3 cubic feet of water per second, or exceed about a mile in length, or irrigate 2 or more villages held under different interests, they are taken over by Government; and hence joint stock companies have no scope. If it was otherwise, it might be right, as regards these provisions, to insist on the procedure of the Land Act X of 1870 being carried out in all details. But as noted above, village water-courses are very small and, as a rule, affect but one local community, so that it is found unnecessary to issue notifications under sections 4 and 6 of the Land Acquisition Act.

8. The practical difference between the procedure under the Land Act and under the Canal Act is, that in one case the divisional canal officer issues the notice, and in the other case, the Collector—in both cases the Collector knows what is being done, as the divisional canal officer sends him a copy of the notice issued in the Irrigation department.

9. In conclusion, I am to remark that section 73 of Act VIII of 1873 differs from section 55 of the draft, in that no reward is offered to informers, and it is found that the powers given by section 73 of the Act are not abused in practice.

From Major-General C. J. MERRIMAN, R.E., Secretary to the Government of Bombay, Public Works department (Irrigation), to the Chief Secretary to Government, dated Bombay Castle, 29th October 1883, No. 634 I.

I am directed to acknowledge the receipt of your Legislative department letter, No. 134, dated 25th July 1883, and to state that the difficulties suggested by the Madras Board of Revenue have not been experienced in working the sections of the Bombay Irrigation Act referred to in your letter under reply.

From T. W. HOLDERNESS, Esq., C.S., Officiating Secretary to the Government of India, Revenue and Agricultural department (Revenue), to the Secretary to the Government of Madras, Legislative department, dated Calcutta, 2nd January 1884, No. 1 R.

I am directed to acknowledge the receipt of Mr. Hammick's letter, No. 132, dated the 25th July last, forwarding a draft bill to provide for irrigation and navigation in the Madras Presidency, and soliciting the sanction of the Governor-General in Council to its being proceeded with in the Council for making laws in that Presidency.

2. In reply, I am directed to state, with reference to the last paragraph of the letter, that if there is any reason to believe that the provisions of the Act, when passed, will conflict with the provisions of the Easement Act or of any other Act of the Governor-General in Council, the Government of India is prepared to introduce a confirming bill, or to take such other steps as may be necessary to remove the difficulty.

3. Turning now to the bill itself, I am to communicate the following observations :—

Section 17.—It may be thought advisable to insert a provision for appeal by any person objecting to the procedure under this section, similar to that made in sections 24 to 27 of the Northern India Canal and Drainage Act VIII of 1873.

Section 45.—The words "to the manifest detriment of cultivators lower down the same water-course" might possibly be omitted with advantage. Water may be wasted to the very serious detriment of cultivators lower down the canal or distributary from which the water-course is drawn, although no one on "the same water-course" may suffer any injury.

Section 47.—The words beginning with "any cultivated land" and ending with "for irrigation, or that" should, perhaps also be omitted. The Government of India thinks that a charge for apparent benefit by percolation from a canal channel may be open to much abuse, and is on that account objectionable. It is the less needed in the Madras Presidency, as the canals in general already yield good financial results. There is not the same objection, however, to the proposed charge for surface flow, as the existence of this is readily capable of proof, and the charge may tend to check the practice of boring holes in a distributary bank, in order to obtain water surreptitiously. The charge on irrigation from wells sunk *after the construction of a canal*, in close proximity to it, is also unobjectionable.

Section 53.—The Government of India thinks that this section should either be omitted or modified. Two hundred rupees fine, or 6 months' imprisonment, appears an excessively severe penalty for the offence of opening, or attempting to open, a sluice in any canal, and section 52 would seem to sufficiently meet the case.

Section 58.—The reference to orders passed under section 29 is apparently an error.

4. With these remarks, I am to say that the Governor-General in Council fully approves the principle of the bill, and sanctions it being proceeded with in the Madras Legislative Council.

ORDER—dated 2nd February 1884, No. 54, Legislative.

Resolved that the foregoing papers containing replies with reference to certain suggestions and criticisms made by the Board of Revenue and the Advocate-General on the draft Irrigation Bill, be forwarded to the Public Works department with a request that this department may be informed if the bill, as now drafted, may be proceeded with in the Council, or whether it is desired that any further amendment be made. It will of course be open to the Select Committee, to which the bill will be referred, to make further amendments in it.

(True Extract.)

M. HAMMICK,
Acting Asst. Secy. to Govt.

To the Public Works department,
„ Board of Revenue,
„ Advocate-General.
} with draft bill.

Exd. J. Wright.

P. W. Dept.

Govt. of {1884} Madras.

LEGISLATIVE.

Issued

Recd. Encl.

G.O., 2nd February 1884, No. 54.

No. 391 Wdf 13th Feby/84

FEBRUARY.

Draft Irrigation Bill.

Forwarding to the Public Works department, certain papers on the working of the Irrigation law in other Presidencies, and requesting whether the — for this Presidency may be proceeded with.

With disposal

No. 391 Wdf 13th Feby/84

Copy of the above forwarded to the Chief Engineer for Irrigation for remarks.

(Signed) J. S.

C. E. for I.

1270

These papers, re draft Irrigation Bill, should I think be sent in the first instance to E I for remarks.

Ll.

11-2-84

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Exd. J. Wright.

P. W. Deptt.

No 391 Wdf 13th Feby /84

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(Signed) J. S.

Govt. of {1884} Madras.

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water is limited; it is frequently preferable to have separate channels for each village, or otherwise the one most remote from the canal will probably not get its fair share of the supply available. If sections similar to those discussed in this paragraph do not find a place in the Act, a village not contiguous to, or traversed by, a Government distributary would probably be entirely deprived of the benefits of irrigation. Private arrangements of the nature of toleration with the owners of land through which a channel must pass are objectionable, as disputes may arise; and unless there is a legal title to the land occupied by the channel, the supply will not unlikely be cut off just when most required.

4. As regards the penal section (55 of the Madras Bill corresponding to section 96 of the Bengal Act) no complaints regarding it have been brought forward in this province. If some such power is not conferred, the alternative would appear to be that a canal servant should have no power to prevent evil-disposed persons from damaging a canal or distributary or tampering with the water-supply, an act which might lead to the loss of crops in the villages deprived of it. In times of drought the regulation of the water-supply is at all times difficult, and unless very summary powers of arresting persons interfering therewith are possessed by the canal subordinates, it is almost certain that no water will reach the tail of a distributary, as the villagers in the upper part will appropriate the whole supply, a considerable portion of which will be wasted.

From Lieutenant-Colonel J. G. FORBES, R.E., Joint Secretary to Government, North-Western Provinces and Oudh, Public Works department, Irrigation Branch, to the Chief Secretary to Government, dated Naini Tal, 6th September 1883, No. C. 541 I.

With reference to your Legislative department letter, No. 135, dated 25th July 1883, inquiring whether the difficulties suggested by the Madras Board of Revenue in paragraphs 5 and 16 of their Resolution, No. 2590, dated 26th October 1882, have been felt in this province in the working of Act VIII of 1873 (the Northern India Canal and Drainage Act), I am directed to offer the following remarks.

2. The question on which a reply is desired is whether difficulties have arisen in working sections 21—29 and section 73 of Act VIII of 1873, which are very similar to sections 15—19 and 55 of the draft bill.

3. There is, I am to observe, one important difference between sections 15—19 of the draft bill and the corresponding sections of the Northern Indian Act VIII of 1873, which apparently has not been noticed, viz., the omission of a section similar to section 24 of Act VIII of 1873, in accordance with which any party interested in the matter might, within 30 days of the issue of the canal officer's notice, petition the Collector stating his objection to the proposed water-course.

In the draft Act (see penultimate clause, section 17) the period of 30 days is mentioned, not as the time within which objections will be heard, but as that within which application may be made for a share in the new water-course.

4. Apparently such objections have not been contemplated in the case of new water-courses, and hence sections similar to sections 26 and 27 of Act VIII of 1873 have not been provided. But in the case of existing water-courses, from which an applicant may wish to irrigate, the owners may lodge objections which are to be decided by the Collector (see section 22), so apparently there has been an oversight as regards new water-courses where objections may be, and usually are, of more importance than in cases of old ones.

5. I am also to observe that there is another point of difference between Act VIII of 1873 and the draft Act. In sections 21—29 of the former it is the "divisional canal officer" who arranges the business, whereas in the corresponding sections of the draft Act it is the "canal officer."

Now, according to section 2 (6) of the draft Act, the "canal officer" may be an assistant engineer or upper subordinate, whereas the "divisional canal officer," as defined in section 3 of Act VIII of 1873, is an officer of experience and standing.

6. So far as is known sections 21—29 of Act VIII of 1873 have led to no practical inconvenience in these provinces. It will be seen that the first condition of section 22 of that Act is, that the construction of the new water-course must be considered "*expedient.*" It is therefore unlikely that an experienced officer like a "divisional canal officer" would promote the formation of joint stock companies for the construction of village water-courses. If he even favored such a course, the people would object under section 24, and it is very improbable that the Collector would permit such an abuse of power. At all events a difference of opinion between the "divisional canal officer" would be referred to the Commissioner under section 27.

7. It is quite true, however, that neither in Act VIII of 1873 or in the draft Act, now sent for opinion, is it prescribed that the applicant for a new water-course must own or cultivate land in the village for which he asks water. But by referring to No. 5 of the rules issued by this Government under Act VIII of 1873 (copy enclosed), it will be seen that applications for a new channel are to be made, as nearly as may be, in the form prescribed in Appendix I. Under heading 14 of this appendix, the applicant must show the culturable area in his holding, and it is highly probable that if he possesses or cultivates no land in the village, the divisional canal officer would *not* consider it expedient to entertain his application; not to speak of the objections that would be raised under section 24 if the application was likely to be prejudicial to the general interests of the village concerned.

Also, as a rule, the local interest in canal irrigation is far too intense to admit of outsiders intervening. When irrigation channels discharge over 3 cubic feet of water per second, or exceed about a mile in length, or irrigate 2 or more villages held under different interests, they are taken over by Government; and hence joint stock companies have no scope. If it was otherwise, it might be right, as regards these provisions, to insist on the procedure of the Land Act X of 1870 being carried out in all details. But as noted above, village water-courses are very small and, as a rule, affect but one local community, so that it is found unnecessary to issue notifications under sections 4 and 6 of the Land Acquisition Act.

8. The practical difference between the procedure under the Land Act and under the Canal Act is, that in one case the divisional canal officer issues the notice, and in the other case, the Collector—in both cases the Collector knows what is being done, as the divisional canal officer sends him a copy of the notice issued in the Irrigation department.

9. In conclusion, I am to remark that section 73 of Act VIII of 1873 differs from section 55 of the draft, in that no reward is offered to informers, and it is found that the powers given by section 73 of the Act are not abused in practice.

From Major-General C. J. MERRIMAN, R.E., Secretary to the Government of Bombay, Public Works department (Irrigation), to the Chief Secretary to Government, dated Bombay Castle, 29th October 1883, No. 634 I.

I am directed to acknowledge the receipt of your Legislative department letter, No. 134, dated 25th July 1883, and to state that the difficulties suggested by the Madras Board of Revenue have not been experienced in working the sections of the Bombay Irrigation Act referred to in your letter under reply.

From T. W. HOLDERNESS, Esq., C.S., Officiating Secretary to the Government of India, Revenue and Agricultural department (Revenue), to the Secretary to the Government of Madras, Legislative department, dated Calcutta, 2nd January 1884, No. 1 R.

I am directed to acknowledge the receipt of Mr. Hammick's letter, No. 132, dated the 25th July last, forwarding a draft bill to provide for irrigation and navigation in the Madras Presidency, and soliciting the sanction of the Governor-General in Council to its being proceeded with in the Council for making laws in that Presidency.

2. In reply, I am directed to state, with reference to the last paragraph of the letter, that if there is any reason to believe that the provisions of the Act, when passed, will conflict with the provisions of the Easement Act or of any other Act of the Governor-General in Council, the Government of India is prepared to introduce a confirming bill, or to take such other steps as may be necessary to remove the difficulty.

3. Turning now to the bill itself, I am to communicate the following observations :—

Section 17.—It may be thought advisable to insert a provision for appeal by any person objecting to the procedure under this section, similar to that made in sections 24 to 27 of the Northern India Canal and Drainage Act VIII of 1873.

Section 45.—The words "to the manifest detriment of cultivators lower down the same water-course" might possibly be omitted with advantage. Water may be wasted to the very serious detriment of cultivators lower down the canal or distributary from which the water-course is drawn, although no one on "the same water-course" may suffer any injury.

Section 47.—The words beginning with "any cultivated land" and ending with "for irrigation, or that" should, perhaps also be omitted. The Government of India thinks that a charge for apparent benefit by percolation from a canal channel may be open to much abuse, and is on that account objectionable. It is the less needed in the Madras Presidency, as the canals in general already yield good financial results. There is not the same objection, however, to the proposed charge for surface flow, as the existence of this is readily capable of proof, and the charge may tend to check the practice of boring holes in a distributary bank, in order to obtain water surreptitiously. The charge on irrigation from wells sunk *after the construction of a canal*, in close proximity to it, is also unobjectionable.

Section 53.—The Government of India thinks that this section should either be omitted or modified. Two hundred rupees fine, or 6 months' imprisonment, appears an excessively severe penalty for the offence of opening, or attempting to open, a sluice in any canal, and section 52 would seem to sufficiently meet the case.

Section 58.—The reference to orders passed under section 29 is apparently an error.

4. With these remarks, I am to say that the Governor-General in Council fully approves the principle of the bill, and sanctions it being proceeded with in the Madras Legislative Council.

ORDER—dated 2nd February 1884, No. 54, Legislative.

Resolved that the foregoing papers containing replies with reference to certain suggestions and criticisms made by the Board of Revenue and the Advocate-General on the draft Irrigation Bill, be forwarded to the Public Works department with a request that this department may be informed if the bill, as now drafted, may be proceeded with in the Council, or whether it is desired that any further amendment be made. It will of course be open to the Select Committee, to which the bill will be referred, to make further amendments in it.

(True Extract.)

Acting Asst. Secy. to Govt.

To the Public Works department,
„ Board of Revenue,
„ Advocate-General.
} with draft bill.

Exd. J. Wright.

No 391 W dated 13th Feby/84

Copy of the above forwarded to the Chief Engineer for Irrigation for remarks.

11-2-84

S.C.

S.No. 2167 W. 7-2-83.

MCh 1270

Govt. of {1884} Madras.

LEGISLATIVE.

10.2.C.

Issued

Recd. 11/2/84. *Encl.* 1

G.O., 2nd February 1884, No. 54.

No 391 W dated 13th Feby/84

FEBRUARY.

Draft Irrigation Bill.

Forwarding to the Public Works department, certain papers on the working of the Irrigation law in other Presidencies, and requesting whether the — for this Presidency may be proceeded with.

C.E for I.V with draft Bill

dated 13/2/84.

14/2. 21/2

with despatch

Submitted Draft Bill