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MADRAS RECORD OFFICE.

Government of Madras.

Public DEPARTMENT

G.O. No.	740	Press Mis.
Dated	2-6-	19/867

Not to be folded or roughly handled

14.

No. 20. Read the following letter from the Secretary to the Council of the Governor General for making Laws and Regulations, to the Chief Secretary to Government, Fort Saint George; dated Simla, 1st May 1869, No. 1-122.

I am directed to enclose copy of the Bill to amend the law for the acquisition of land for public purposes, together with the Statement of Objects and Reasons, and to request that you will, at your earliest convenience, favour the Governor General in Council with the opinion of His Excellency the Governor in Council as to the provisions of the Bill.

2. I am also to enclose copy of a note which has been prepared in the Legislative Department, and to request that it may be regarded as an appendix to the Statement of Objects and Reasons accompanying the Bill.

No 21. ORDER THEREON, 2nd June 1869, No. 740.

The Governor in Council directs that copies of the "Bill to amend the law for the acquisition of land needed for public purposes," which is now under the consideration of the Council of His Excellency the Governor General for making Laws

The Hon. Justice C. Collet.
 D. F. Carmichael.
 J. B. Kennerley, Esq.
 The Hon. Sir J. B. Norton, Advocate General.
 G. H. Murray, Esq.
 H. S. Thomas, Esq.
 The Hon. Sir A. Ramsingar.
 F. Mathewson Aiyar.
 J. K. Ramiah Nair.
 The Chamber of Commerce.
 „ Agent and Manager of the Madras Railway C.
 „ Agent and Manager of the Great Southern
 Railway Company.
 „ Agent of the Canal and Irrigation Company

and Regulations, and of the "Statement of Objects and Reasons," and note accompanying it, be forwarded to the Board of Revenue and the gentlemen named in the margin, with a request that they will favour the Government, at an early date, with any observations which they may desire to offer with reference to the provisions of the proposed measure.

(True Extract).

R. S. ELLIS,
Chief Secretary.

To the Board of Revenue.
 „ Advocate General.

EXPROPRIATION BILL.

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Govt. of Madras.

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to amend the law for the acquisition of land for public purposes in the Madras Presidency and to amend the law for the acquisition of land for public purposes in the Madras Presidency.

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23rd February 1869.

A
BILL

TO

*Amend the law for the acquisition of land needed
for public purposes.*

Whereas it is expedient to amend the law for the acquisition of immovable property needed for public purposes or for works of public utility, and for determining the amount of compensation to be made for such property; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called "The Indian Expropriation Act, 1869".

Short title.

Extent. It extends to the whole of British India;

Commencement. And it shall come into operation on the first day of June 1869.

2. From such day Act No. VI of 1857 (*for the acquisition of land for public purposes*), and Act

No. II of 1861 (*to amend Act No. VI of 1857*), shall be repealed.

All references made to either of the said Acts in subsequent Acts, orders or contracts shall be read as if made to this Act.

3. In this Act:—

The expression "person interested in the property" includes all persons interested in immovable property:

The expressions "Collector of the District" and "Collector" include any officer specially appointed by the Local Government to perform the functions of a Collector under this Act;

And in every case under this Act:—

The expression "Court" means the Court of any judicial officer whom the Local Government may appoint, either specially for such case or generally within any specified local limits, to perform the functions of a Judge under this Act.

And the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided, (that is to say):—

Trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

A married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

The guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted.

PART II.

PROCEDURE BEFORE ACQUISITION.

4. Whenever it appears to the Local Government that any immovable property is likely to be needed for public purposes or for a work of public utility, it shall be lawful for any Officer either generally or specially authorised by such Government in this behalf, and his servants and workmen, to enter upon and survey and take levels of such property and to probe or bore to ascertain the nature of the soil;

Power to enter and survey. and to set out the boundaries of any such property and the intended line of any such work, and to mark such boundaries and line by cutting trenches or placing land-marks; and where otherwise the survey cannot be completed and the boundaries and line marked,

Power to mark out line. to cut down and clear away any part of any standing crop, jungle or tops of trees in the direction of the intended boundaries and line:

Power to clear land. Provided that no person shall enter into any building or upon any enclosed garden (unless with the consent of the occupier thereof) without previously giving such occupier twenty-four hours' notice of his intention to do so.

Previous notice of entry. 5. The officer so authorised shall take account of all necessary damage done as aforesaid to immovable property, and shall forthwith offer payment for such damage to the persons interested.

Account of damage. Offer of payment. In case the offer is not accepted, the damage shall be allowed for in the compensation awarded for such property under the provisions hereinafter contained.

6. Whoever wilfully obstructs any person in lawfully setting out such boundaries or line, or wilfully destroys, damages, or dis-

Obstruction to setting out line of works. Destroying land-marks. Placing trenches. places any land-mark, or effaces or fills any trench intended to mark such boundaries or line, shall,

on conviction before a Magistrate, be liable to be imprisoned for any term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

7. Whenever it appears to the Local Government that any immovable property is needed for a public purpose or for a work of public utility, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its contents.

The declaration shall state the District or other territorial division in which the property is situated, the object for which it is needed, its approximate area, and, where a plan shall have been made of the property by any such officer as aforesaid, the place where such plan may be inspected.

Works of public utility shall, for the purposes of this section, include the following:

- (1).—Bridges, roads, railways, tramways:
- (2).—Canals:
- (3).—Works for the storage or for the supply of water:
- (4).—Improvements of rivers or harbours:
- (5).—Docks, quays, jetties:
- (6).—Drainage works:
- (7).—Works for the protection of land from floods or erosion by rivers:
- (8).—Electric telegraphs, and all works subsidiary thereto.

The said declaration shall be conclusive evidence that the purpose for which the immovable property is needed is public or (as the case may be) that the work for which it is needed is of public utility; and after making such declaration the Local Government may acquire the property in manner hereinafter appearing.

The acquisition of the whole or any part of a work is to be executed by, or directly for the benefit of, private persons or companies or municipal bodies shall not prevent its being deemed a work of public utility within the meaning of this section.

8. Whenever any immovable property shall have been declared to be so needed for a public purpose or for a work of public utility, the Local Government shall direct the Collector of the District to take order for the acquisition of the property. Provided that nothing in this Act shall be taken to compel the Government to complete the acquisition unless it shall have been made a reference to the Collector of the District after contained.

9. The Collector shall thereupon cause the land to be marked property (if it be land and not a building) and if it have not been already marked out under section four) to be marked out and also to be measured, and a plan to be made of the same.

10. The Collector shall then cause a notice to be affixed in some conspicuous place upon the property, and published by proclamation in the neighbouring hamlets and villages, to the effect that the property is about to be taken by Government under this Act.

He shall also serve notice to the same effect on the occupier (if any) of such property and on all such persons, known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the Revenue District in which the property is situate.

Such notice shall state the particulars of the property so required and shall require all persons interested in the property to appear personally or by agent before the Collector at a time and place therein mentioned, such time not being less than fifteen days after the date of publication of the notice; and to state the nature of their interests in the property and the amount and particulars of their claims to compensation for such interests.

11. The Collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person claiming any interest in the property, or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

12. On the day so fixed, the Collector shall proceed to enquire summarily into the value of the property and to determine the amount of compensation which in his opinion should be allowed therefor, and shall tender such amount to the persons interested who have attended in pursuance of the notice.

In determining such amount the Collector shall take into consideration the matters mentioned in section forty-six and shall not take into consideration any of the matters mentioned in section forty-seven.

PART III.

ACQUISITION.

13. If the Collector and the person or persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same; and (where there are several persons interested) if such persons agree also in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award.

The award shall be filed in the Collector's Office and shall be conclusive evidence of the value of the property and the amount of compensation allowed for the same; and also of the particulars of the apportionment (if any) of the compensation among the persons who have agreed thereto.

14. The Collector may, if no claimant attends pursuant to the notice, or if for any other cause he thinks fit, postpone the enquiry to a day to be fixed by him and notified in the manner provided in section ten.

15. When the Collector proceeds to make the enquiry as aforesaid, whether on the day originally fixed for the enquiry or on the day to which it may have been postponed, if no claimant attends, or if the Collector is unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed, the matter shall be referred to the determination of the Court in manner hereinafter appearing.

16. If upon the said enquiry any question arise respecting the title to the property or any rights or interests therein between two or more persons making conflicting claims in respect thereof, the person deemed by the Collector to be in possession as owner or in receipt of the rents as being entitled thereto, shall, for the purpose only of taking such measures as may be necessary for fixing the value of the property and the amount of compensation to be allowed for the same, be held, as between such persons, to be the person interested in the property.

17. When the Collector has made an award or directed a reference to the Court, he may take possession of the property, which shall thenceforward be vested absolutely in the Government.

And in cases of urgency whenever the Local Government so directs, the Collector (though no such award has been made or reference directed) may, on the expiration of fifteen days from the publication of the notice mentioned in section ten, take possession of any waste or arable land needed for public purposes. Such land shall thenceforward be vested absolutely in the Government. The Collector shall offer to the persons interested compensation for the standing crops and trees (if any) on such land; and in case such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions herein contained.

The provisions contained in sections ten to sixteen (both inclusive) shall *mutatis mutandis* apply when land is taken under the second clause of this section.

18. If the Collector is opposed or impeded in taking possession of immovable property needed

for a work of public utility, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police; and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the property to the Collector.

PART IV.

APPORTIONMENT OF COMPENSATION AWARDED BY COLLECTOR.

19. When the Collector and the persons interested in the property agree as to the amount of compensation, if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall call on them to state in writing on or before such day as he shall fix, whether they wish

- (1)—that he shall himself decide the dispute, or
- (2)—that he shall refer it to the decision of the Court, or
- (3)—that he shall refer it to arbitration.

20. If the persons interested fail to make the said statement on or before the day so fixed, or if they state that they wish that the Collector shall himself decide the dispute, he shall decide it accordingly and his decision shall be final.

21. If such persons state that they wish that the Collector shall refer the dispute to the decision of the Court, the Collector shall refer it accordingly, and the Court shall decide the same under section fifty-two.

22. If they state that they wish that the Collector shall refer the dispute to arbitration, the Collector shall refer it accordingly.

23. And if the parties cannot agree with respect to the nomination of the arbitrators, or if the persons nominated by them refuse to accept the arbitration, or, having accepted it, die, or desire to be discharged, or refuse, or become incapable to act, and the parties are desirous that the nomination shall be made by the Collector, he shall appoint some proper persons to arbitrate the matter.

24. After the arbitrators have accepted the appointment, the Collector may exercise towards them such powers and authority for securing their attendance and the due completion of their award, as he may legally exercise towards witnesses summoned before him when acting judicially for the purpose of compelling them to attend and give evidence.

25. If no award be made within a period to be fixed for that purpose by the Collector, he may order that the matter shall be referred to other arbitrators to be chosen in the same manner and subject to the same powers as the first.

26. The Collector shall furnish the arbitrators, or, so far as may be in his power, procure for them, any information connected with the subject of enquiry which the records of his office or those of any public department may afford.

He shall also, on the application of the arbitrators, summon any witnesses whom the arbitrators may call for and whom the parties may not be able to produce before them without such process, and require the persons so summoned to bring and produce before them all such books, papers, maps and plans as the arbitrators shall require.

Persons so summoned shall be subject to all the provisions of the laws for the time being in force regarding persons summoned as witnesses before a Collector of Land-Revenue or a Deputy Commissioner when acting judicially.

27. Every witness examined before the arbitrators shall be examined upon oath to be administered by or made before the said arbitrators.

28. On the close of the enquiry, the arbitrators, or a majority of them, shall deliver a full and complete award in respect of the matter referred to them, and shall therein specify the persons entitled to compensation, and the proportions in which they are so entitled.

29. The arbitrators on making their award shall be entitled to reasonable fees for their services, the amount of which shall be fixed by the Collector subject to the orders of the Commissioner or other superior revenue authority.

30. The award shall declare the costs of the arbitration and by whom and in what proportion they shall be paid.

31. The proceedings of the arbitration shall be deposited in the office of the Collector, and every person interested therein shall be entitled to a copy of the award, under the seal and signature of the Collector. Such copy shall be *prima facie* evidence of the matters therein stated.

32. No award of arbitrators made in accordance with the provisions of this Act, shall be liable to be reversed or altered, except by the decision of a Civil Court on the ground of corruption or misconduct of the arbitrators.

In case the award shall be so reversed, the matter shall be referred to other arbitrators to be appointed in the same manner as the first.

All suits to set aside an award under section twenty-eight shall be instituted within three months from the date of the award.

PART V.

REFERENCE TO COURT AND PROCEEDING THEREON.

33. In making a reference under section fifteen, the Collector shall cause a statement to be made for the information of the Court, in writing under his hand, (a) the situation and extent of the property needed, (b) the names of the persons interested in such property, and (c) the amount of compensation tendered for the same under section twelve, or, if no claimant has attended pursuant to the notice mentioned in section ten, the amount of compensation which the Collector is willing to give to the persons so interested.

34. The Court shall thereupon cause to be served on each of the persons so interested a notice requiring him (if he has not made a claim under section ten) to state to the Court, on or before a day to be therein mentioned, the sum which he is willing to accept as compensation for the property so needed.

The Court shall also cause a notice to be served on the Collector and each of such persons requiring them to state to the Court, on or before a day to be therein mentioned, whether they wish the amount of the compensation to be determined by the Judge alone or by the Judge with assessors.

If no claimant has attended pursuant to the notice mentioned in section ten, the Court shall cause a notice to be affixed in conspicuous place in the property in dispute, and, if the persons interested therein do not appear in Court on or before a day to be therein mentioned and state whether they wish the amount to be determined by the Judge alone or by the Judge with assessors, the Court shall proceed to determine such amount as aforesaid.

35. On receiving such statements the Judge, after consulting with the parties, with the Collector, and with the assessors, if any, shall proceed to determine such amount, and his decision thereon shall be final.

In like manner, if the Collector has made a statement pursuant to the notice last aforesaid, the Judge shall proceed to decide the amount of compensation, and his decision thereon shall be final.

36. If the parties or any of them wish that the amount be determined by the Judge with assessors, they shall appoint, on or before a day to be specified by the Court, two qualified persons (one to be appointed by the Collector and the other by the parties) to be assessors for the purpose of assisting the Judge in determining the amount of the compensation.

In case of failure to appoint either of such persons within the time so specified, the Court shall appoint an assessor in his stead.

37. On or after the day last referred to, the Judge shall require the assessors so appointed to appoint by writing under their hands, on or before a day to be fixed by the Court, a qualified person to be a third assessor for the purpose aforesaid.

In case of failure to make such appointment within the time so specified, the Judge shall himself appoint the third assessor.

38. The Judge and the assessors shall thereupon proceed to determine the amount of the compensation.

39. If before such amount is determined, any of the assessors dies or desires to be discharged, or refuses or becomes incapable to act, the party by whom he was appointed, or, if he were appointed by the Judge, the Judge may appoint some other qualified person to act in his place; and, in the case of an assessor appointed by a party, the Court may, upon notice from the Court, require the party who appointed such assessor to appoint another, the Judge and the other assessors may proceed as aforesaid.

Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying or desiring to be discharged, or refusing or becoming incapable.

40. Every assessor appointed under this Act, not being an officer of Government, shall be entitled to receive such fees for his services as the Judge shall direct, not exceeding the sum of fifty rupees for each full day employed.

Such fees shall be deemed to be costs in the proceeding.

41. The following provisions of the Code of Civil Procedure shall be applicable:

- (a) as to adding parties,
- (b) as to adjournment,
- (c) as to death, marriage and bankruptcy or insolvency of parties,
- (d) as to summoning witnesses and their attendance,
- (e) as to examination of parties and witnesses,
- (f) as to production of documents, and
- (g) as to commissions to examine absent witnesses and to make local enquiries,

shall apply, so far as may be, to proceedings under this Part.

42. Every such proceeding shall take place in open Court, and any legal practitioner entitled to practice in the Court in which any such proceeding takes place, shall be entitled to appear, plead and act, or to appear and act (as the case may be) in such proceeding.

43. The opinion of each assessor shall be given orally and shall be recorded in writing by the Judge.

44. In case of a difference of opinion between the Judge and the assessors or any of them upon a question of law or practice or usage having the force of law, the opinion of the Judge shall prevail and his decision thereon shall be final.

45. In case of any such difference of opinion upon any question of fact, or as to the amount of the compensation to be awarded, the decision of the Judge shall be final, provided he agree with the majority of the assessors or with one of the assessors if there be but two.

But if the Judge differs from all or from the majority of the assessors, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the High Court within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

46. In determining the amount of compensation to be awarded for property acquired under this Act, the Judge alone or the Judge and assessors (as the case may be) shall take into consideration—

First, the price which the property would be likely to fetch if sold then and there by public auction :

Secondly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such property from his other property ; and

Thirdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immovable, in any other manner, or his earnings.

47. But the Judge or assessors shall not take into consideration—

First, the degree of urgency which has led to the acquisition :

Secondly, any disinclination of the person interested to part with the property acquired :

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit :

Fourthly, any damage which, after the time of awarding compensation, is likely to be caused by or in consequence of the execution of the proposed work :

Fifthly, any increase to the value of the property acquired likely to accrue from the execution of the proposed work thereon or which would be likely to accrue to such value if the work were executed on any other property, or

Sixthly, any outlay or improvements on the property acquired, made, commenced or effected with the intention of enhancing the compensation to be awarded therefor under this Act.

48. Where the person interested has made a claim to compensation, pursuant to the notice mentioned in section ten, the amount awarded shall not in his case exceed the amount so claimed, or be less than the amount tendered by the Collector under section twelve.

Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded shall not be less than, and may exceed, the amount so tendered.

49. Subject to the provisions contained in section fifty, the Judge shall in all cases determine by whom the costs of any proceeding under this Part are to be borne.

50. (a). When the amount awarded is the sum claimed by the person interested, the costs of the proceeding shall be paid by the Government.

(b). Where the amount awarded is equal to or less than the sum tendered by the Collector, the costs of the proceeding shall be paid by the person interested.

(c). Where the amount awarded exceeds the sum tendered by the Collector, but is less than the sum claimed by the person interested, the costs of the proceeding shall be paid by the parties in such proportions as the Judge shall determine.

51. Every award made under this Part shall be in writing signed by the Judge and the assessors or by the Judge alone (as the case may be) and shall specify the amount awarded under the first clause of section forty-six and also the amounts (if any) respectively awarded under the second and third clauses of the same section, together with the grounds of awarding such last mentioned amounts.

52. When the amount of compensation has been settled, or when a reference to the Court has been made under section twenty-one, the Judge shall determine the proportions in which the persons interested are entitled to share in such amount.

PART VI.

MISCELLANEOUS.

53. When any immovable property taken under this Act forms part of an estate paying revenue to Government, the award shall specify the nett rent of the land including the Government revenue, and the computed value of such rent.

The revenue authorities may in their discretion either pay over the whole of such value to the owner of the estate on the condition of his continuing to pay the Government revenue thereof without abatement; or determine what proportion of the nett rent shall be allowed as a remission of revenue, in which case a deduction shall be made from the said value proportionate to the value of such remission.

54. Subject to the provisions contained in section fifty-three, when the compensation to be paid for immovable property taken under this Act is decided by the award of the Collector under section thirteen, and possession is then taken of the property on account of Government, he shall pay the amount awarded at the time of so taking possession.

When the compensation is decided by the award of the Collector under section thirteen, or of the Judge and assessors, or of the Judge alone, the Collector shall pay the amount awarded with interest at the rate of six per centum per annum from the time of so taking possession:

Provided that, in cases where the Judge has differed with the assessors upon a question of fact or on the amount of compensation, the Collector shall not pay such amount and interest until the time for appealing against the Judge's decision has expired and no appeal shall have been presented against such decision, or until any such appeal shall have been dismissed, or until in the result of any such appeal the decision appealed against shall have been upheld.

55. Subject to the provisions contained in sections thirty-two and forty-five, payment of the compensation shall be made according to the award to the persons named therein:

Provided that nothing in this Act shall affect the liability of any person who may receive the compensation awarded for any property, or any portion of such compensation, to pay the same to the person lawfully entitled thereto.

56. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or

other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired and if he be able to convey the same.

57. The powers of this Act shall extend to authorize the occupation and use by Government for any time not exceeding three years of any waste or arable land.

The Collector shall pay to the owners and occupiers of such land such compensation for the occupation and use thereof, either in a gross sum of money or by monthly or other periodical payments, as shall be agreed upon between him and such owners and occupiers respectively; and in case they differ about the compensation, the same shall be settled by a single arbitrator to be appointed by the Collector and such owners or occupiers, or when they cannot agree in the choice of an arbitrator, then by an arbitrator to be appointed by the Local Government.

58. For any permanent damage done by such occupation and use of the land, compensation shall be paid to and among all persons interested therein, to be ascertained, in case of disagreement, in the same manner as compensation for land taken under section fifty-seven.

59. The Local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made. All such rules, alterations and additions shall be published in the local official Gazette.

Government of India.

LEGISLATIVE DEPARTMENT.

A
BILL

TO

Amend the law for the acquisition of
land needed for public purposes.

(Mr. Strachey.)

Five six annas.

Calcutta: Govt. Printing—No. 1025 C. L.—25-5-02.—121.

STATEMENT OF OBJECTS AND REASONS.

For several years past, since the extension of railways has forced the Government of India to take land in the larger towns or in their vicinity, frequent complaints have been made in the Public Works Department as to the serious abuses which have, in many cases, arisen in applying Act VI of 1857—the law which now regulates the taking land for public purposes.

The Government of India has made various efforts to protect the public interests by calling on the local authorities to take increased care in the appointment of the arbitrator who represents the Government and by the adoption of other measures. But no effectual relief has been thus obtained.

On taking a general view of the circumstances under which these abuses have occurred, it becomes apparent that the evil is chiefly owing to the absence in the existing law of any statement of the principles which are to regulate the determination of the price to be paid for the property taken by Government. The primary object of the present Bill is to supply a concise and intelligible statement of those principles. They are contained in sections 46, 47, 48:—

"46. In determining the amount of compensation to be awarded for property acquired under this Act, the Judge alone or the Judge and assessors (as the case may be) shall take into consideration—

First, the price which the property would be likely to fetch if sold then and there by public auction:

Secondly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of covering such property from his other property; and

Thirdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immovable, in any other manner, or his earnings.

"47. But he or they shall not take into consideration—

First, the degree of urgency which has led to the acquisition:

Secondly, any disinclination of the person interested to part with the property acquired:

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

Fourthly, any damage which, after the time of awarding compensation, is likely to be caused by or in consequence of the execution of the proposed work:

Fifthly, any increase to the value of the property acquired likely to accrue from the execution of the proposed work thereon or which would be likely to accrue to such value if the work were executed on any other property; or

Sixthly, any outlay or improvements made, commenced or effected on such property with the intention of enhancing the compensation to be awarded therefor under this Act.

"48. Where the person interested has made a claim to compensation, pursuant to the notice mentioned in section ten, the amount awarded shall not in his case exceed the amount so claimed, or be less than the amount tendered by the Collector under section twelve.

Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded shall not be less than, and may exceed, the amount so tendered."

The Bill then attempts to secure the application of those principles in actual practice.

The present system of procedure under Act VI of 1837 is as follows:—The Collector makes an offer of the sum which he thinks suitable; if it is not accepted, the proprietor appoints one arbitrator and the Collector another, and these two name a third. The decision of the three arbitrators is final. Experience has shown that this system has not led to satisfactory results. Although the mere declaration of the principles which ought to guide the arbitrators would doubtless help to remove many of the objections to the present procedure, it would not be safe to trust entirely to that check, and it is necessary to make direct provision against inequitable awards, and for setting such awards aside when made.

The procedure proposed by the present Bill may be shortly stated as follows:—

The Collector will cause the land required to be marked out and measured (sec. 9). He will then give notice to all persons interested in the property to appear before him and state the nature of their interests and the particulars of their claims to compensation (sec. 10). He will then enquire summarily into the value of the property and estimate the amount of the compensation according to the principles above stated (sec. 12). If the Collector and the persons interested agree as to the amount, he will make an award which will be final (sec. 13). If, however, they cannot agree, the matter will be referred to the determination of the Court.

The Court will then cause notice to be served on all persons interested requiring them (a) to state the sum which they are willing to accept, and (b) to state whether they prefer the amount to be determined by the Judge alone or by the Judge with assessors.

If the parties (i. e., the Collector and the persons interested) prefer a determination by the Judge alone, he will decide the amount and his decision will be final.

If, however, they prefer a determination by the Judge with assessors, the parties will nominate two assessors, who again will nominate a third, and the Judge and the three assessors will proceed in open Court to determine the amount. Should the Judge and assessors differ on a point of law, the Judge's opinion will prevail. Should they differ on a question of fact or on the amount of the compensation, the Judge's decision will prevail, and, provided he agree with the majority of the assessors, will be final. But where the Judge differs from such majority, an appeal to the High Court will lie against his decision.

The Bill provides for the payment of reasonable fees to the assessors (sec. 40), and gives rules as to costs of the parties (sec. 50), and as to the time at which the compensation is to be paid (sec. 51).

When the persons interested differ as to the apportionment of the compensation, provision is made (secs. 19 to 32) for settling the difference (a) by the Collector, or (b) by the Court, or (c) by arbitrators chosen by the persons interested.

These are the leading provisions of the Bill. Its other clauses requiring special notice are the power to enter and survey whenever it seems to the Local Government that any land is likely to be needed for a public purpose or a work of public utility (sec. 4); the definition of works of public utility (sec. 7), the clause in the same section providing that the circumstance that the whole or any part of a work is to be executed by or directly for the benefit of private persons or companies or municipal bodies shall not prevent it being deemed a work of public utility within the meaning of the proposed Act; and, lastly, the clause (sec. 17) authorising the Collector in cases of exceptional urgency to enter and take possession, though no award has been made or reference directed. The necessity for this clause has been suggested by past experience, and it is analogous to article 19 of the French law of the 8th March 1810. It will only operate under the special orders of the Local Government when extreme public inconvenience is likely to arise from the delay that must occur under the ordinary procedure; and the provisions of the Bill as to ascertaining and paying the compensation will, *mutatis mutandis*, apply in all such cases.

J. STRACHEY.

CALCUTTA.
The 15th February 1869. }

Government of India.

LEGISLATIVE DEPARTMENT.

ANNEXURE

TO

Bill to amend the law for the acquisition
of land needed for public purposes.

(Statement of Objects and Reasons.)

Price one anna.

NEW YORK: G. P. Putnam's Sons, 1891. L. C. 1891: 100-101

LEGISLATIVE DEPARTMENT.

The following Note on Sections 46 and 47 of the Bill to amend the law for the acquisition of land needed for public purposes, has been drawn up at the request of the Hon'ble Member in charge of the Bill:—

2. Those sections contain the principles which, it is proposed, shall regulate the determination (so far as the statutory valuers are concerned) of the price to be paid for property taken by Government. The sections in question have been objected to as novel, harsh, unjust and retrogressive. The object of this Note is to shew that they are little but a statement, in a clear and compendious form, of the law prescribed by the English legislature, or laid down by the English Judges; and that so far as they differ from English law, the difference may be said to be in favour of the person interested in the property. It should, moreover, be remembered that the present Bill, if it become an Act, will be liberally expounded by the Courts in favour of the public, and strictly as against the Government, or the Company or Municipality, taking land under its provisions (*East and West India Dock Railway Co. v. Gatliffe*, 3 Macnaghten & Gordon, 155, per Lord Truro).

3. Section 46 declares that in determining the amount of compensation, the Judge, or the Judge and Assessors, shall take into consideration the market-price of the property and the damage (if any) sustained by the person interested by reason of severing such property from his other property, or by reason of the acquisition injuriously affecting his other property.

4. The foregoing provision is founded on the English Lands Clauses Consolidation Act (8 & 9 Vic., cap. 18), section 63, which prescribes as a general rule that in estimating the compensation for land taken by a public company, regard shall be had, not only to the value of the land, but also to the damage, if any, to be sustained by the owner of the land by reason of the severing of the land taken from his other lands, or otherwise injuriously affecting such other lands by the exercise of the statutory powers.

5. The Bill also expressly provides for considering the damage, if any, sustained by the person interested by reason of the acquisition injuriously affecting his earnings. This provision appears to have been suggested by the decision of the Court of Exchequer in *Senior v. Metropolitan Railway Company*, 32 Law Journal (Exch.), 225, that the lessee for three years of a house and shop which had sustained no structural damage was entitled to compensation for loss of trade caused by the temporary stoppage of a highway. But this case has lately been over-ruled by the House of Lords in *Ricket v. The Metropolitan Railway Company*, Law Reports, 2 H. L. 175: mere obstruction or inconvenience to trade is not now regarded by the English courts as supporting a claim under the Lands Clauses Act; so that, as regards compensation

for injury to business, the Bill distinctly surpasses the English law in the favour which it shows to the person interested.

6. Section 47 then enumerates the matters which are to be neglected in determining the compensation.

7. Of these, the first is the degree of urgency which has led to the acquisition. The valuers have only to consider the general market-value of the land. They have nothing to do with determining the money-value to the Government of a specified property. In fact, they have not, and cannot have, any satisfactory means of determining such value. The rule that the valuers are not to regard the urgency with which the property is needed, is so obviously consistent with common sense, that its enunciation has not been found necessary either by Parliament or by the Judges: its express mention may, however, be desirable in an Indian enactment.

8. The second is "any disinclination of the person interested to part with the property acquired." This is the correlative of the first. If the valuers are not to consider the desire of the Government to obtain the property, they should of course disregard the unwillingness of the owner to part with it. Besides, it is obvious that to allow so vague and inappreciable an element as personal feeling or unwillingness to be taken into consideration in fixing the value would render it impossible to come to any satisfactory conclusion. One of the critics of the Bill puts the case of a Christian or Mussulman being compelled to part with the tombs of his people, and asks "shall property hallowed to the owner by similarly sacred associations be valued at so many annas and pie per square foot like ordinary arable land?" The question as to the proper mode of assessing a churchyard has actually arisen in England in *Hillcoat v. Archbishops of Canterbury and York*, 10 Common Bench, 527, and the case, though not quite in point, may be referred to for the sake of the dictum of Chief Justice Lord Truro: "that the value was to be ascertained in relation to the situation of the property generally, and its applicability to ordinary purposes discharged of any prescribed appropriation." In England, again, the question has been raised as to whether compensation should be given for destroying a picturesque effect, or interfering with a sentimental association, such as that attached to a ruin. The Companies have always refused to recognise claims on such grounds, and it is scarcely necessary to say that no one has ever ventured to bring such a claim into Court. No compensation is obtainable in England for annoyance to the amenities of a claimant's property, or for mere personal inconvenience (*Penny v. South Eastern Railway Company*, 26 Law Journal (Q. B.), 225; *Calcutta Railway Company v. Ogilvy*, 2 Macqueen, 229).

It must, moreover, be observed that there is nothing in the Bill to preclude the Executive Government from giving, by way of percentage on the purchase-price or otherwise, compensation

for the compulsion to which the person interested is forced to submit. The object of the sections under consideration is, as before remarked, merely to supply principles for the guidance of persons officially employed in valuing land needed for public purposes.

9. The third is "any damage sustained by him which, if caused by a private person, would not render such person liable to a suit." The object of this provision is to exclude the vexatious claims otherwise likely to be made on account of trifling inconveniences sustained during the progress of the works. It is in accordance with the ruling of Chief Justice Cockburn in *The New River Company v. Johnson*, 29 Law Journal (M. C.), 98: "unless something is done which would be actionable, if it were not for the compulsory powers given by the Act, there is no right to claim compensation." So in the case of *Penny v. South Eastern Railway Company*, above cited, Lord Campbell says, "the test is whether, before the Railway Act passed authorising the Company to do what has been done here, an action would have lain at common law for what has been done, and for which compensation has been claimed. If it would, and that act is authorized by the Railway Act, compensation may be claimed in respect of it. If the land is not taken, and nothing is done which would have afforded a cause of action before the Act is passed, then, although it may produce deterioration of the property, it does not injuriously affect the land and constitute a ground for compensation."

10. The fourth is "any damage which, after the time of awarding compensation, is likely to be caused by or in consequence of the execution of the proposed work." This also is in accordance with the ruling of three distinguished Judges (Lord Abinger, Lord Wensleydale, and Baron Alderson) who held in *Lee v. Milner* (2 Meeson & Welsby, 524) that a jury has no right to assess prospective or future damages caused by a work, since the extent of damages cannot be ascertained till after the damage has been actually inflicted. There is nothing, it may be observed, in the Bill to forbid future suits against the Government for subsequent damage as soon as such damage has actually occurred; and it is probable that the plaintiffs in such suits will recover far more than the amounts which the official valuers would award if they were allowed to take speculative or imaginary damage into consideration.

11. The fifth is any increase to the value of the property acquired likely to accrue from the execution of the proposed work thereon. This provision is taken from the French law, and appears to be obviously equitable. Questions as to the value of a given property should be decided at the time of taking it, and not by the light of subsequent events, which, perhaps, may never occur.

12. The sixth is any outlay or improvement on the property made or effected with the intention of enhancing the compensation. This provision, directed against a fraud not unlikely to be attempted in India, is also borrowed from the French law.

(4)

13. It has been suggested that another clause should be inserted between clauses 5 and 6 in section 47 to the following effect: "any increase to the value of the other property of the person interested, accruing or likely to accrue from the execution of the proposed work." The introduction of such a clause would be in exact accordance with the ruling of the English Courts in several cases, of which one is the above-cited case of *Senior v. Metropolitan Railway Company*. There it was held, by Barons Bramwell and Wille, that the Company had no right to set-off an ultimate possible benefit to the premises of the person interested against the present pecuniary loss caused by the execution of the work; and in this respect the case has not been overruled. The French law is, it must be admitted, directly contrary, and, from the purely abstract point of view, the French law in this respect would seem more in accordance with equity. The practical difficulties, however, in determining, with any reasonable amount of certainty, to what extent the value of a property will be increased by a given projected work, appear to be so great as to render it desirable to adopt the English rule, which of course is in favour of the person interested. In India, moreover, where holdings are small and numerous, whenever part of A's property is taken and the rest increases in value owing to the execution of a public work, the adjacent properties of B, C, and D, (no part of which, we assume, is taken) will, as a consequence, be benefited. If, as a set-off when enforced to pay compensation, A is allowed to deduct the benefit which he is likely to derive from the work, he will, as a result, be relieved of having to pay for a benefit which, as a hypothesis, is conferred gratis on his fellows. The point, however, is quite arguable.

Sir,
The 24th April 1869. }

W. S.

No. 122.

LEGISLATIVE DEPARTMENT.

FROM

WHITLEY STOKES, Esq.,

Secretary to the Council of the Govr. Genl.
for making Laws and Regulations.

TO

My Secretary to the Govt. of Madras.

SIR, THE 1ST MAY 1869.

SIR,

I AM directed to enclose copy of the Bill to amend the law for the acquisition of land for public purposes, together with the Statement of Objects and Reasons, and to request that you will, at your earliest convenience, favour the Governor General in Council with the opinion of the Secretary to the Govt. of Madras as to the provisions of the Bill.

2. I am also to enclose copy of a Note which has been presented in the Legislative Department, and to request that you will, at your earliest convenience, forward the same to the Secretary to the Govt. of Madras for his opinion as to the provisions of the Bill.

I have the honour to be,

SIR,

Your most obedient Servant,

Whitley Stokes

Sery. to the Council of the
Govr. Genl. for making Laws and Regulations.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the
Secretary to the Council of the
Governor General for making
Laws and Regulations.
(Here Enter, date 15 May 1869, p. 122.)

Order thereon, ^{740.} ~~1447~~ 927

The Governor in Council directs that copies of the Bill to amend the Law for the acquisition of land needed for public purposes," which is now under the consideration of the Council of His Excellency the Governor General formulating Laws and Regulations, and of the Statement of objects and reasons," and

11. 10. 1869 Wed
 Dear Mr. May,
 I beg to thank you for
 your kind letter of the
 10th inst.
 and to inform you that
 I have received it.
 I am, Sir, very respectfully,
 Yours,
 Wm. May

Cost of 1186 1/2 Mads.

1866

is Bond of Revenue.

see

Dated June 2. 1869.
Recd.

G. O. 2 June 1869.
No 240.
1747.

Nov. 20.

Somebody for private citizen
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for the acquisition of land
as well for private business.
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