

# Bengal Act II of 1882

## [THE BENGAL EMBANKMENT ACT, 1882.]<sup>1</sup>

EXTENDED	..	Ben. Act IV of 1915.
REPEALED IN PART	..	<div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;">                     Act IX of 1890.                      Act I of 1903.                      Ben. Act IV of 1915.                 </div>
AMENDED	..	<div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;">                     Ben. Act I of 1931.                      Ben. Act VIII of 1933.                      Ben. Act VI of 1945.                      West Ben. Act XI of 1948.                      West Ben. Act XXXIII of 1980.                      West Ben. Act XLVI of 1981.                 </div>
REPEALED IN PART AND AMENDED	..	<div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;">                     Ben. Act V of 1915.                      Ben. Act I of 1939.                 </div>
ADAPTED	..	<div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;">                     (a) The Government of India                      (Adaptation of Indian Laws)                      Order, 1937.                       (b) The Indian Independence                      (Adaptation of Bengal and                      Punjab Acts) Order, 1948.                       (c) The Adaptation of Laws                      Order, 1950.                 </div>

[21st June, 1882.]

*An Act to amend the law relating to Embankments and Water-courses.*

WHEREAS it is expedient to make better provision for the construction, maintenance and management of embankments and water-courses in the territories subject to the Lieutenant-Governor of Bengal<sup>2</sup>;

Preamble.

It is enacted as follows:—

### PART I

#### Preliminary.

1. This Act may be called the Bengal Embankment Act, 1882.

Short title.

<sup>3</sup>[It extends to the States<sup>4</sup> of West Bengal and Bihar, and also to that part of the State<sup>5</sup> of Orissa which on the twenty-first day of June, 1882, was subject to the Lieutenant-Governor of Bengal, but only as provided in Part IX.]

Local extent.

*(Commencement.)—Rep. by s. 4 and the Third Sch. of the Amending Act, 1903 (1 of 1903).*

<sup>1</sup>LOCAL EXTENT.—This Act originally extended to the whole of the Presidency of Fort William in Bengal except the Sundarbans, but it has since been extended to the Sundarbans by the Embankment (Sundarbans) Act, 1915 (Ben. Act IV of 1915).

<sup>2</sup>This includes the present State of West Bengal and other territory.

<sup>3</sup>Substituted for the original second para. of s. 1 by para. 3(1) and the Schedule of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

<sup>4</sup>The word "States" was substituted for the word "Provinces" by para. 4(1) of the Adaptation of Laws Order, 1950.

<sup>5</sup>The word "State" was substituted for the word "Province" *ibid*

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(Part I.—Preliminary.—Sections 2, 3.)

Repeal of  
former Acts.

2. \* \* \* \* \*<sup>1</sup>[the Bengal Embankment Act, 1873], with the exception of the sections set out and schedules specified in Schedule I to this Act annexed, shall be repealed.

Ben. Act VI  
of 1873.

The references in the said sections, which are mentioned in Schedule II to this Act annexed, shall be read as if the references were made to the portions of this Act mentioned against such references respectively in the third column of such schedule.

Sections 80 and 81 of this Act shall be applicable respectively to the proclamation and notice mentioned in sections 26 and 28, Bengal Act VI of 1873.

Interpreta-  
tion.

3. The following words shall, for the purposes of this Act, have the meanings hereby declared, save where, from the context, a contrary intention appears:—

"Collector".

"Collector" means any Revenue-officer in independent charge of a district or portion of a district, or specially appointed by the<sup>2</sup>[State] Government of<sup>4</sup>[West Bengal] to perform the functions of a Collector under this Act:

"district".

"district" means the local area throughout which a Collector is authorised to exercise his ordinary functions:

"embankment".

"embankment" includes—

every bank, dam, wall and dyke made or used for excluding water from, or for retaining water upon, any land;

every sluice, spur, groyne, training-wall, <sup>5</sup>[berm] or other work annexed to, or portion of, any such embankment;

every bank, dam, dyke, wall, groyne or spur made or erected for the protection of any such embankment or of any land from erosion or overflow by or of rivers, tides, waves or waters;

and also all buildings intended for purposes of inspection and supervision:

"estate".

"estate" means any land or share in land included under one entry on the general register of revenue-paying lands and of revenue-

<sup>1</sup>The words "From such day" were repealed by s. 4 and the Third Sch. of the Amending Act, 1903 (I of 1903).

<sup>2</sup>These words and figure were substituted for the words, figures and brackets "Bengal Act VI of 1873 (to amend the law relating to embankments and water-courses" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

<sup>3</sup>Substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

<sup>4</sup>Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

<sup>5</sup>This word was inserted by s. 2 of the Bengal Embankment (Amendment) Act, 1931 (Ben. Act I of 1931).

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*(Part II.—Preliminary.—Section 3.)*

Ben. Act :  
VII of 1876.

free land prepared and maintained by the Collector of a district under the Land Registration Act, 1876, or any similar law for the time being in force:

"land" includes interests in land and benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth:

"land".

"public embankment" means an embankment maintained by the <sup>1</sup>[servants of the Government]:

"public embankment".

"public water-course" means a water-course under the charge of the <sup>1</sup>[servants of the Government]:

"public water-course".

"section" means a section of this Act:

"section".

"tenure" includes all interest in land which are held permanently at a fixed rental, or which are held rent-free, other than estates as above defined:

"tenure".

"the Engineer" means the Engineer in charge of the public embankments of the district or any part thereof, or any Engineer specially appointed by the <sup>2</sup>[State Government] to perform the function of an Engineer under this Act in respect of any tract of country or any works:

"the Engineer".

"water-course" includes a line of drainage, weir, culvert, pipe or other channel, whether natural or artificial, for the passage of water:

"water-course".

"zamindar" means all or any of the holders of an estate: and, where two or more zamindars are jointly holders thereof, they shall be jointly and severally liable under this Act.

"zamindar".

*Explanation.*—For the purposes of Part VI <sup>3</sup>[the State Government] shall be deemed to be zamindar—

- (a) of every estate of which the zamindari title is not vested elsewhere than in the <sup>4</sup>[Government];
- (b) of every estate which is let in farm or held *khas* under the provisions of section 43 of Regulation VIII of 1793<sup>5</sup> in consequence of the proprietor refusing or omitting to engage for the settlement thereof.

<sup>1</sup>The words "servants of the Crown" were first substituted for the words "officers of Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "Government" was substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

<sup>2</sup>The words "Provincial Government" were first substituted for the word "Lieutenant-Governor" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

<sup>3</sup>The words "Provincial Government" were first substituted for the word "Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

<sup>4</sup>The word "Crown" was first substituted for the word "Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "Government" was substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

<sup>5</sup>The Bengal Decennial Settlement Regulation, 1793.

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(Part I.—Preliminary.—Sections 4-6.)

Public  
embank-  
ments, etc.,  
to vest in  
Government.

4. Every public embankment and every public water-course, and all land, earth, pathways, gates, berms and hedges belonging to, or forming part of, or standing on, any such embankment, or water-course and every embanked tow-path maintained <sup>1</sup>[by the State Government], shall vest in <sup>2</sup>[the State Government].

The embankments mentioned in Schedule D annexed to Bengal Act VI of 1873<sup>3</sup> and every embankment and water-course which may be included in such schedule under section 43 of this Act, and every embanked tow-path as aforesaid, shall be held on behalf <sup>4</sup>[of the State Government]; and all other public embankments and water-courses shall be held <sup>4</sup>[by the State Government] on behalf of the persons interested in the lands to be protected or benefited by such embankments or water-courses, subject to the provisions of section 87; and all moneys received on account of such lands shall be credited to the cost of the construction and maintenance of such embankments and water-courses respectively.

Survey of  
lands  
hitherto used  
for obtaining  
earth for  
repairs.

5. All plots or parcels of land which, before the commencement of this Act, have been used for the purpose of obtaining earth or other materials for the repair of any public embankment, water-course or embanked tow-path as aforesaid, or which by agreement have been substituted for such lands, shall be deemed to be at the disposal of <sup>5</sup>[the State Government] for such purpose, without payment of compensation for the use or removal of such earth or other materials.

The Collector may cause all such plots or parcels to be ascertained, surveyed and demarcated.

Notification.

6. The <sup>6</sup>[State Government] may, from time to time, by notification in the <sup>7</sup>[*Official Gazette*] declare the limits of any tract within which the provisions of clause (b), section 76, shall take effect;

and the said provisions shall take effect one month after the publication of such notification.

As soon as possible after the said publication, the Collector shall cause a translation of the notification in the vernacular to be published in the manner prescribed in section 80.

<sup>1</sup>The words "by the Provincial Government" were first substituted for the words "by Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

<sup>2</sup>The words "in the Crown for the purposes of the Province" were originally substituted for the words "in the Government", by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the words "the State Government" were substituted for the said words by para. 3 and the Eleventh Sch. of the Adaptation of Laws Order, 1950.

<sup>3</sup>The Bengal Embankment Act, 1873.

<sup>4</sup>The words "of the Provincial Government" were first substituted for the words "of the Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

<sup>5</sup>See foot-note 3 on page -3, ante.

<sup>6</sup>See foot-note 2 on page -3, ante.

<sup>7</sup>These words were substituted for the words "*Calcutta Gazette*" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

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(Part II.—Powers of Collector and Procedure thereon;  
Embankment Committees.—Section 7.)

PART II.

**Powers of Collector and Procedure thereon;  
Embankment Committees.**

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

- |   |   |
|---|---|
| <p>(1) that any embankment which connects public embankments, or forms by junction with them part of a line of embankments, or that any embankment or water-course which is necessary for the protection or drainage of the neighbouring country, should be taken charge of and maintained by the officers of Government;</p>   | <p>Powers of Collector.</p> <p>Taking charge of embankment by Government.</p> |
| <p><sup>2</sup>(1a) that any embankment which connects public embankments or forms by junction with them part of a line of embankments or is necessary for the protection of the neighbouring country should be repaired;</p>   | <p>Repair of embankments.</p>   |
| <p>(2) that any embankment, or any obstruction of any kind, which endangers the stability of a public embankment or the safety of any town or village, or which is likely to cause loss of property by interfering with the general drainage or the flood drainage of any tract of land, should be removed or altered;</p>  | <p>Removal of embankment or obstruction.</p>                                  |
| <p>(3) that the line of any public embankment should be changed or lengthened, or that any public embankment should be renewed, or that a new embankment should be constructed instead of any public embankment, or that any embankment should be constructed for the protection of any lands or for the improvement of any water-course, or that a sluice in any public embankment should be made;</p> | <p>Changing line of embankment.</p>   |
| <p>(4) that any sluice or water-course should be made, or that any public water-course should be altered for the improvement of the public health, or for the protection of any village or cultivable land;</p>   | <p>Improvement of drainage.</p>   |
| <p>(5) that any road which interferes with the drainage of any tract of land should be altered, or that any water-course under or through such road should be constructed;</p>  | <p>Alteration of roads and construction of water-courses.</p>                 |

he shall cause to be prepared estimates of the cost of such works, including such proportion of the establishment charges as may be chargeable to the works in accordance with the rules for the time

<sup>1</sup>Substituted by s. 2 of the Bengal Embankment (West Bengal Amendment) Act, 1948 (West Ben. Act XI of 1948), for the words "or works executed".

<sup>2</sup>Inserted, *ibid.*

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*(Part II.—Powers of Collector and Procedure thereon;  
Embankment Committees.—Sections 8-12.)*

being in force under this Act, or as may be especially ordered by the [State Government] together with such plans and specifications of the same as may be required. He shall also cause to be prepared from the survey map of the district a map showing the boundaries of the lands likely to be affected by the said acts and works, and he shall cause a general notice to be given of his intention to cause such works to be executed.

Form of  
notice.

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

Proclama-  
tion to be  
published  
for thirty  
days.

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

Hearing of  
objections to  
works.

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

Order after  
inquiry.

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

- (a) if he considers that the proposed act or work, or any modification of the same, should not be done or executed, he shall record his opinion to that effect;
- (b) if he considers that the proposed act or work, or any modification of it, should be done or executed, he shall submit a report to the Commissioner of the Division.

Order of  
Commis-  
sioner.

12. On receipt of a report submitted under section 11, the Commissioner, after making any further inquiry which he may deem necessary, may record an order refusing to support the proposal made in the report of such Collector for the execution of such work;

or may forward the report submitted by such Collector, together with any remarks he may think proper, for the consideration of the [State Government.]

<sup>1</sup>See foot-note 2 on page 3, *ante*.

<sup>2</sup>The words "Provincial Government" were first substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

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*(Part II.—Powers of Collector and Procedure thereon;  
Embankment Committees.—Sections 13-17.)*

13. [Order of Board.]—Rep. by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

14. On receipt of <sup>1</sup>[the report forwarded by the Commissioner] the <sup>2</sup>[State Government] shall proceed to consider the same and may order that the proposed act or the proposed work, or any modification thereof, be done or executed.

Order of  
State  
Government.

Every such order shall be notified in the <sup>3</sup>[Official Gazette].

15. Notwithstanding anything contained in this part, the <sup>2</sup>[State Government] may by a special order passed in respect of any act or work specified in section 7, or by a general order in respect of any class of such acts or works, authorize the Collector, after holding such inquiry as is prescribed in section 10, without previous reference to any superior authority, to pass an order that such act or work or any modification thereof may be done or executed; or the <sup>2</sup>[State Government] may authorize the Commissioner <sup>4</sup>\* \* \* \* to pass such order without previous reference to any superior authority:

Special  
powers  
which may  
be conferred  
by State  
Government.

Provided that every order passed under the authorization of the <sup>2</sup>[State Government], given under this section shall be subject to the provisions of section 85.

16. [Alteration of railroads and construction of water-courses.]—Rep. by the Indian Railways Act, 1890 (IX of 1890).

17. Whenever an order shall have been passed in cases falling under section 7, clause (5), <sup>5</sup>\* \* \* \* directing that any road <sup>6</sup>\* \* \* \* which interferes with the drainage of any tract of land be altered, or that any water-course be constructed under or through such road <sup>6</sup>\* \* \* \* the Collector may require the person in charge of such road <sup>6</sup>\* \* \* \* to make such alteration or construct such water-course, and in the event of such person failing to comply with such requisition in such manner and within such time as the Collector shall prescribe, the Collector may cause the road <sup>6</sup>\* \* \* \* to be altered or the water-course to be constructed by the officers of Government.

Procedure  
of Collector.

<sup>7</sup>\* \* \* \*

<sup>1</sup>These words were substituted for the words "such report from the Board" by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

<sup>2</sup>See foot-note 2 on page 3, ante.

<sup>3</sup>See foot-note 7 on page 3, ante.

<sup>4</sup>The words "or the Board of Revenue" were omitted by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

<sup>5</sup>The words "or under the section last preceding" were repealed by the Indian Railways Act, 1890 (Ben. Act IX of 1890).

<sup>6</sup>The words "or railroad" were repealed, *ibid.*

<sup>7</sup>The proviso to the first paragraph of s. 17 was repealed, *ibid.*

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(Part II.—Powers of Collector and Procedure thereon; Embankment Committees.—Sections 18, 19.)

Expenses of alteration or construction.

The expenses of such alteration or construction shall be borne by the person in charge of the said road \* \* \* \* so far as the same shall have been incurred on account of insufficient provisions having been made at the time of the construction of the said road \* \* \* \* for the natural drainage then existing, and the remainder of the expense, if any, shall be charged upon, and recovered from, the proprietors of the lands benefited in accordance with the provisions of this Act. If any dispute arises as to the apportionment of expenses under this clause between the person in charge of a road \* \* \* and the proprietors of the lands benefited, the dispute shall be decided by the <sup>2</sup>[State Government], whose decision shall be final.

Application for new sluices, embankments or drainage.

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

(b) or, if within any tract of country which has been included within a notification under section 6, any person desires that any new embankment be created, that any existing embankment be lengthened, enlarged, repaired or removed, or that the line of any embankment be altered, or that any new water-course be made, or that any water-course be obstructed or diverted,

he may make an application in writing to the Collector.

The application shall contain such particulars of the land likely to be affected by the work as may enable the Collector to judge of the advantage which may be derived from the project.

If it should appear to the Collector that the work applied for is one which may probably be executed with advantage the procedure mentioned in the 7th and following sections of this Act shall be followed in respect of the proposed work.

Power to remove houses, etc.

19. Whenever the Collector, after considering any report of the Engineer or otherwise, shall be of opinion that the removal of any trees, houses, huts or other buildings, situated between a public embankment and the river, is necessary,

or that land is required for widening an existing embanked tow-path, or for constructing a new embanked tow-path,

he shall make a report to that effect to the Commissioner, accompanied by a detailed statement of the trees, houses, huts or other buildings to be removed, or of the land required.

Such report shall be submitted <sup>3</sup>[to the State Government] in order that proceedings may be taken for obtaining possession of such trees,

<sup>1</sup>See foot-note 6 on page 7, ante.

<sup>2</sup>See foot-note 2 on page 3, ante.

<sup>3</sup>The words "to the Provincial Government" were first substituted for the words "in the usual manner through the Board of Revenue to the Lieutenant-Governor" by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915). Thereafter, the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.



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houses, huts, and buildings or land in accordance with the provisions of the Land Acquisition Act, <sup>1</sup>[1894], or other law for the time being in force for the acquisition of land for public purposes.

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

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

21. The <sup>2</sup>[State Government] may, if <sup>3</sup>[it] think fit, appoint an Embankment Committee for any district, and may from time to time appoint and accept the resignation of the members of such Committee, and direct that any person shall cease to be a member thereof.

State Government may appoint Embankment Committee.

22. The <sup>2</sup>[State Government] may from time to time direct that any such Committee shall be consulted by the Collector in the discharge of any function or the performance of any duty imposed on him by this Act; and by a notification published in the <sup>4</sup>[Official Gazette] may from time to time direct that any such function or duty shall be performed or discharged by such Committee.

Consultation of Committee by Collector.

23. The business of every such Committee shall be conducted under such rules as the <sup>2</sup>[State Government] may from time to time make in that behalf.

Business of Committee.

24. Whenever, in any matter on which the <sup>2</sup>[State Government] has directed that the Collector shall consult the Committee, the Collector may differ from the Committee, he shall, if so required by the Committee, submit the question to the Commissioner of the Division for decision, with copies of any remarks which may have been recorded by the Committee or any members thereof.

Reference to Commissioner.

<sup>1</sup>This figure was substituted for the figures and word "X of 1870" by s. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

<sup>2</sup>See foot-note 2 on page 3, *ante*.

<sup>3</sup>This word was substituted for the word "he" by para. 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>4</sup>See foot-note 7 on page 4, *ante*.

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*(Part III.—Procedure in Cases of Imminent Danger to Life or Property.—Sections 25-27.—Part IV.—Powers of the Engineer.—Section 28.)*

## PART III.

**Procedure in Cases of Imminent Danger to Life or Property.**Proceedings  
in emer-  
gencies.

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

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

Restoration  
of embank-  
ments, etc.

26. Whenever it may have been determined in the final order to be passed on any such inquiry that anything done by the Collector or by the Engineer under the last preceding section was unnecessary, any person who shall have sustained damage by the execution of such works shall receive compensation from the <sup>1</sup>[State Government] to be assessed according to the provisions contained in Part V of this Act; and, on receipt of any application to that effect by the Collector from any such person affected the land or the embankments or drainage shall, so far as any alteration thereof shall appear to have been unnecessary, be, at the expense of the <sup>1</sup>[State Government], restored as nearly as possible to the state in which they were when the Collector commenced to act under the provisions of this Part.

Authority to  
take  
proceedings  
where lands  
in different  
districts.

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

## PART IV.

**Powers of the Engineer.**Engineer  
subject to  
control of  
Collector.

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

<sup>1</sup>See foot-note 3 on page 3 . ante.

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*(Part IV.—Powers of the Engineer.—Sections 29-32.)*

29. In cases in which the Engineer may be of opinion that delay for the purpose of obtaining the orders of the Collector would be attended with grave and imminent danger to life or property, the Engineer may exercise the powers conferred on the Collector by section 25.

Power to Engineer to act in urgent cases.

The Engineer shall forthwith report to the Collector any action taken by him under this section and shall be guided by any instructions which he may receive from the Collector in respect thereof.

30. The Engineer may make any repairs in, and may do all acts necessary and proper for the maintenance of, any public embankment, public water-course or any other work executed or taken charge of under the provisions of this Act or of any previous similar Act.

Power to make repairs.

31. Whenever any person desires that a temporary roadway should be made over, or that a temporary water-course should be made through, any public embankment, or that a temporary dam should be constructed in any embanked river or public water-course, he shall apply to the Engineer, or to any person who has been appointed in that behalf by the Engineer.

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

Such Engineer or person shall communicate the application with his opinion to the Collector, and shall await the Collector's order in respect thereof, unless he thinks that there is special reason for the immediate execution of the work, in which case he may execute the same without waiting for the orders of the Collector.

If the proposed work is to be executed by an officer of [the Government], the applicant, before the commencement of the work, shall deposit the amount estimated by the Engineer to be necessary to defray the expenses of, and incidental to, making and removing such roadway, or of, and incidental to, making, closing or removing such water-course or dam.

If the amount deposited is found afterwards to exceed the amount required, such excess shall be returned to the said applicant.

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

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

<sup>1</sup>The words "the Crown" were first substituted for the word "Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "Government" was substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

*The Bengal Embankment Act, 1882.*

[Ben. Act II

*(Part IV.—Powers of the Engineer.—Sections 32A-34.)*

Power to remove, dismantle or demolish embankment, fishery, etc.

<sup>1</sup>32A. Notwithstanding anything contained elsewhere in this Act, the Engineer or any other person duly authorised by him in this behalf may remove, dismantle or demolish any embankment, fishery, hut, building, sluice, obstruction, encroachment or any other construction which in the opinion of the Engineer is likely to interfere with, counteract or impede any public embankment or any public water-course.

Protection of action taken under this Act.

<sup>1</sup>32B. No suit, prosecution or other legal proceeding shall lie against the Engineer or any person duly authorised by him for anything which is in good faith done or intended to be done under this Act.

Powers to enter and survey land, etc.

33. It shall be lawful for the Engineer, or any person whom he may authorize in that behalf, in order to carry out any of the purposes of this Act,—

to enter upon, and survey, and take levels of any land;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adopted to the purpose projected by such Engineer or by the Collector;

Power to mark out line.

to set out the boundaries of the land proposed to be taken and the intended line of the work proposed to be made thereon;

to mark such levels, boundaries and line, by placing marks and cutting trenches;

Power to clear land.

and, where otherwise the survey cannot be completed or the levels taken, to cut down and clear away any part of any standing crop, fence or jungle:

Previous notice of entry.

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

Payment for damage.

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

Power to take earth from lands.

34. Whenever it is deemed requisite to repair any embankment or water-course, or embanked tow-path maintained by <sup>2</sup>[State Government], it shall be lawful for the Engineer, or any person authorized in that behalf, to enter in and upon the lands mentioned in section 5, and take possession of, appropriate and remove any earth or other material therefrom, and use the same for the purposes of such repairs.

<sup>1</sup>Sections 32A and 32B were inserted by s. 3 of the Bengal Embankment (West Bengal Amendment) Act, 1981 (West Ben. Act XLVI of 1981).

<sup>2</sup>See foot-note 3 on page 3, ante.

*The Bengal Embankment Act, 1882.*

of 1882.]

(Part IV.—Powers of the Engineer.—Sections 35,36.—Part V.—Acquisition of Lands and Compensation.—Sections 37-40.)

35. The Collector shall proceed in respect of any crops standing on such land as provided in section 13, Bengal Act VI of 1873<sup>1</sup>; and the provisions of that section shall be applicable to claims for the payment of compensation for damage done to such crops.

Procedure where crops on such lands.

36. When any such land is rendered permanently unfit for cultivation by any such act as aforesaid, the <sup>2</sup>[State Government] shall, upon application for that purpose made by the owner thereof, acquire such lands under the provisions of the Land Acquisition Act, 1870<sup>3</sup>, or other law for the time being in force for the acquisition of land for public purposes.

X of 1870.

Acquisition of land made permanently unfit for cultivation.

PART V.

**Acquisition of Lands and Compensation.**

37. Whenever, in the course of proceedings under this Act, save in those cases in which the Collector has proceeded under the provisions of sections 12 and 13, Bengal Act VI of 1873<sup>1</sup>, it appears that land is required for any of the purposes thereof, proceedings shall be forthwith taken for the acquisition of such land in accordance with the provisions of the Land Acquisition Act, <sup>4</sup>[1894], or other law for the time being in force for the acquisition of lands for public purposes.

1 of 1894.

Acquisition of land.

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

Compensation for consequential damage.

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

39. No claim under the last preceding section shall be entertained which shall be made later than two years next after the completion of the work by which such right is injuriously affected.

Limitation to claim for compensation.

40. When any such claim is made, proceedings shall be taken in view to determine the amount of compensation, if any, which should be made and the person to whom the same should be payable, as far as possible, in accordance with the provisions of the Land Acquisition Act, <sup>4</sup>[1894], or other law for the time being in force for the acquisition of land for public purposes.

Procedure for determining compensation.

<sup>1</sup>The Bengal Embankment Act, 1873.

<sup>2</sup>See foot-note 2 on page 3. *ante*.

<sup>3</sup>See now the Land Acquisition Act, 1894 (1 of 1894), which repeals and re-enacts Act X of 1870.

<sup>4</sup>This figure was substituted for the word and figures "X of 1870" by s. 2 and First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act 1 of 1939).

*The Bengal Embankment Act, 1882.*

[Ben. Act II

(Part V.—Acquisition of Lands and Compensation.—Section 41.—  
Part VI.—Cost of Works, Proceedings, etc.—Section 42.)

Matters to be considered in determining compensation.

41. In any such case which is referred to the Judge and assessors for the purpose of determining whether any, and, if so, what amount of compensation should be awarded, the Judge and assessors shall take into consideration—

*First*, the market-value of the property or right injuriously affected at the time when the act was done or the work executed;

*Secondly*, the damage sustained by the claimant by reason of such act or work injuriously affecting the property or right;

*Thirdly*, the consequent diminution of the market-value of the property or right injuriously affected when the act was done or the work executed;

*Fourthly*, whether any person has derived, or will derive, benefit from the act or work in respect of which the compensation is claimed, or from any work connected therewith, in which case they shall set off the estimated value of such benefit, if any, against the compensation which would otherwise be decreed to such person.

But the Judge or assessors shall not take into consideration—

*First*, the decree of urgency which has led to the act or work being done or executed;

*Secondly*, any damage sustained by the claimant, which if caused by a private person, would not in any suit instituted against such person justify a decree for damages.

Matters not to be considered in determining compensation.

PART VI.

Cost of Works, Proceedings, etc.

1.—Ascertainment thereof.

Embankments in Schedule D.

42. The provisions of section 47 and the following sections in this Part contained shall not apply to any of the embankments mentioned in Schedule D to Bengal Act VI of 1873<sup>1</sup> annexed, or which may be hereafter included therein, save so far as any works or repairs are executed therein, or in relation thereto under the provisions of section 18 or of section 31; or to any of such embankments as may hereafter be erected for the protection of lands which at the commencement of this Act are protected by the embankments mentioned in the aforesaid schedule, save so far as the erection of such embankments may protect lands not protected by the embankments mentioned in the aforesaid schedule.

<sup>1</sup>The Bengal Embankment Act, 1873.

*The Bengal Embankment Act, 1882.*

of 1882.]

(Part VI.—Cost of Works, Proceedings, etc.—Sections 43-45.)

All sums payable in respect of any works or repairs executed in or in relation to the embankments mentioned in the aforesaid Schedule, except under the provisions of section 18 or of section 31, shall be paid by the <sup>1</sup>[State Government].

43. If at any time after the commencement of this Act, on inquiry made by the Collector as far as possible in accordance with the provisions of Part II of this Act, it shall be found that it is unnecessary for the public interests to retain any embankment mentioned in the said Schedule D, or any embankment or water-course which may have been included in the said Schedule D under the clause next following of this section, the <sup>2</sup>[State Government] may direct that the same shall be no longer included in the said Schedule:

Exclusion from Schedule D.

Provided that the <sup>2</sup>[State Government] may restore the same to the said Schedule if on any subsequent inquiry similarly conducted it shall appear to the <sup>2</sup>[State Government] that it is necessary so to do.

The <sup>2</sup>[State Government] may, at any time after the passing of this Act, by a notification published in the <sup>3</sup>[*Official Gazette*], direct that any embankment not mentioned in the said Schedule D or any water-course, be included therein and the provisions of this section shall apply to such embankment or water-course.

Addition to Schedule D.

44. In accordance with the custom heretofore in force in respect of the *parganas* entered in Schedule E annexed to Bengal Act VI of 1873<sup>4</sup>, the <sup>1</sup>[State Government] shall continue to contribute annually the sum noted therein for each *pargana* respectively towards the maintenance of the embankments thereof.

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

45. If the embankments maintained in either of the said *parganas* shall at any time be declared to be public embankments under the provisions of section 7, the Collector shall, from the date of such declaration, keep a separate account for such *parganas*, in which the aforesaid sum shall be credited at the commencement of each financial year.

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

<sup>1</sup>See foot-note 3 on page 3, ante.

<sup>2</sup>See foot-note 2 on page 3, ante.

<sup>3</sup>See foot-note 7 on page 4, ante.

<sup>4</sup>The Bengal Embankment Act, 1873.

The Bengal Embankment Act, 1882.

[Ben. Act II

(Part VI.—Cost of Works, Proceedings, etc.—Sections 46-50.)

The unexpended balance at the close of each year shall be carried on to the credit of the account in the next succeeding year, and shall be available for the cost of repairing or erecting all the embankments which it may be deemed necessary to maintain in such *pargana*.

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

46. If at any time \* \* \* on an inquiry made by the Collector as far as possible in accordance with the provisions of Part II, it shall be found that it is unnecessary for the public interests to retain any embankment in either of the said *parganas*, the <sup>2</sup>[State Government] may direct that such contribution shall cease in respect of such *pargana*:

Provided that such contribution shall again be made in accordance with the provisions hereinbefore contained, if it shall appear to the <sup>2</sup>[State Government] on the report of an inquiry similarly conducted, that the maintenance of any embankment in such *pargana* has again become necessary for the public interest.

Estimates and specification to be prepared.

47. Subject to the provisions of Part III of this Act, before the Collector or the Engineer undertakes, under the provisions of this Act, the execution of any repairs or of any work other than any new work of which the estimates, specifications and plans have been prepared and deposited in the Collector's office for public inspection as provided in section 7, specifications and estimates of the expenses to be incurred in respect of the repairs or works, including such proportion of establishment charges as the <sup>2</sup>[State Government] shall direct, shall be prepared by the Engineer.

Preparation of further estimates and specifications.

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

Estimates and specifications to be open to inspection.

49. Copies of all specifications and estimates prepared under the two last preceding sections shall be transmitted to the office of the Collector, together with vernacular translations thereof, or such abstracts thereof as the <sup>2</sup>[State Government] may from time to time direct, and may be examined by any person interested in such works and repairs.

Notice of receipt of estimates and specifications.

50. A general notice of the receipt of any such specifications and estimates shall be published in the manner prescribed in section 80, and in such general notice shall be specified all estates chargeable for,

<sup>1</sup>The words "after the commencement of this Act" were repealed by s. 4 and the Third Sch. of the Amending Act, 1903 (I of 1903).

<sup>2</sup>See foot-note 2 on page 3, ante.



*The Bengal Embankment Act, 1882.*

of 1882.]

*(Part VI.—Cost of Works, Proceedings, etc.—Sections 51, 52.)*

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

51. The accounts of the actual expenses incurred in executing any works or repairs, or of any portion of the actual expenses with which the Collector may determine to deal separately under this and the following sections, shall be prepared as soon as possible after the completion thereof.

Preparation of accounts and Engineer's certificate of expenses.

The Engineer shall sign a certificate stating the amount of all such expenses, and specifying the boundaries of the lands which are benefited or affected by the said works or repairs, and stating generally how and to what extent the lands so specified or any parts of them, are effected.

Any such certificate may be amended at any time before the Collector has made an order charging or apportioning the amount under section 58.

On receipt of such certificate or amended certificate, the Collector shall cause a statement to be prepared of the villages of which any lands are benefited or protected by such works and repairs, and of the estates to which they belong, and, except as otherwise in this Act provided, the *zamindars* of such estates and villages shall be liable to pay the said amount.

Copies of the said account, certificates and statements shall be deposited in the office of the Collector, and may there be examined by any person interested.

52. General notice of the receipt and deposit of such accounts, certificates and statements in the office of the Collector shall be given.

Notices and inquiry into objections.

Special notices thereof shall also be served in respect of every estate in which the area liable to assessment of the apportioned charges exceeds one hundred acres; or, instead of causing a general notice to be published, the Collector may cause special notice to the same effect to be served in respect of every estate and tenure on or among the *zamindars* or tenure-holders of which any sum is charged or apportioned; and if, within one month of such general notice being given, or of such special notice (if any) being served on him, any interested person shall object to the accounts on the ground either that the work charged has not been performed, or that the whole sum charged has not been expended, or that

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[Ben. Act II

*(Part VI.—Cost of Works, Proceedings, etc.—Sections 53-55.)*

the rates of charge are higher than those mentioned in estimates, the Collector shall inquire into such objection, and pass orders thereon.

Total sum payable.

53. The Collector shall add to the amount appearing in the said certificate all sums which have been paid or have become payable in respect of the said works and repairs whether as compensation, costs and expenses under, and incidental to, any proceedings taken or directed to be taken under Part II or Part V of this Act, or under sections 26 to 29 of Bengal Act VI of 1873<sup>1</sup>, as cost of making of surveys and plans, as cost of preparing the estimates, accounts, certificates and statements, as cost of the issuing and service of notices up to date, or on any other account, and shall then make an order specifying the total sum found payable, and in respect of works done under section 17 and section 31 the persons by whom, or in respect of other works, estates in respect of which, the same is payable to him. If the order is made in respect of work done under section 17 or section 31, the same shall forthwith be served upon the party or parties liable to pay; otherwise the Collector shall proceed under the provisions in the next chapter contained.

Interest.

Interest may be charged upon any sum paid as compensation from the date of payment thereof at five *per centum*, or as such rate, not exceeding five *per centum per annum*, as the <sup>2</sup>[State Government] may from time to time determine.

*2.—Liability for the Costs, and Apportionment thereof.*

Parties liable to pay.

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

Proviso in respect of the *pargana* in Schedule E.

Provided that the sum standing to the credit of a *pargana* in Schedule E to Bengal Act VI of 1873<sup>1</sup> annexed in the account kept by the Collector, at the time when the total amount payable is fixed under the provisions of section 53, shall be deducted from the total amount payable in respect of such portion of any embankment as is situated in such *pargana*, and that the *zamindars* of the estates situated in such *pargana* shall be charged only with the balance of the amount (if any) which may remain payable.

Recovery from undertenants.

55. Every *zamindar*, who is liable under the last preceding section for the payment of the whole or a portion of such total sum, shall be entitled to recover from the holder of every tenure held immediately under

<sup>1</sup>The Bengal Embankment Act, 1873.

<sup>2</sup>See foot-note 2 on page 3 *ante*.

*The Bengal Embankment Act, 1882.*

of 1882.]

(Part VI.—*Cost of Works, Proceedings, etc.—Sections 56-58.*)

him, and from the holder of any land which is declared under the provisions of section 60 to form part of his estate, the sum apportioned to such tenure or land by the Collector under the provisions of section 59.

And, similarly, every tenure-holder shall be entitled to recover from the holder of any tenure subordinate to his own and from the holder of any land declared under section 60 to form part of his tenure, the sum apportioned to such subordinate tenure or land by the Collector, under the said provisions.

56. So soon as the total sum payable as aforesaid has been ascertained, the Collector shall cause general notice to be given specifying the estates in respect of which any portion of such total sum will be chargeable, and special notices to be served in respect of every estate in which the area chargeable exceeds one hundred acres; or, instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served in respect of every estate and tenure on or among the *zamindars* or tenure-holders of which any sum is charged or apportioned.

Notice to be given before apportionment.

Such notices shall make it known that an inquiry will be held at a day and place therein named for the purpose of apportioning amongst the *zamindars* and tenure-holders the said total sum, with interest and the cost of apportionment.

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

Names of tenure-holders.

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

Apportionment amongst *zamindars*.

- (a) rateably in proportion to the respective benefits derived by such estates from such works or repairs; or
- (b) in proportion to the areas of the lands benefited or protected thereby, and comprised within such estates respectively; or

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(Part VI.—Cost of Works, Proceedings, etc.—Sections 59, 60.)

- (c) with the sanction of the <sup>1</sup>[State Government], in proportion to the amount of revenue payable for such estates respectively:

<sup>2</sup>*Provided that the said amount payable in respect of the embankments on the right bank of the river Gandak shall be chargeable, in accordance with the custom in force for such estates, to the zamindars of all the estates situated in the district of Saran, in proportion to the amount of revenue respectively payable for such estates:*

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

Apportionment amongst tenure-holders.

59. The Collector shall in like manner <sup>2</sup>*[except in respect of the said embankments on the right bank and left bank of the river Gandak,]* charge or apportion the amount payable in respect of each estate upon or amongst the holders of the tenure therein rateable in the proportion of benefits so received or of area so benefited or protected, first deducting therefrom such sum as, on the like principle of proportion, is payable in respect of such portion of the estate as is not included within any tenure.

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

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

<sup>1</sup>See foot-note 2 on page 6, ante.

<sup>2</sup>These words in italics and enclosed within square brackets are inapplicable to West Bengal, but have not been formally repealed therein.

*The Bengal Embankment Act, 1882.*

of 1882.]

(Part VI.—Cost of Works, Proceedings, etc.—Sections 61-63.)

61. The amount charged to or apportioned on any estate or tenure shall be payable in equal instalments on such days as the <sup>1</sup>[Commissioner of the Division] shall direct: Provided that no instalment shall exceed four annas for every acre of land in respect of which the same is payable, and that not more than four instalments shall be payable in any one year.

Amount apportioned payable by instalments.

\* \* \* \* \*

<sup>2</sup>61A. Interest shall be charged from the date of apportionment on the amount charged to or apportioned on any estate or tenure, less any instalment of such amount paid from time to time. The interest shall be at the rate of five *per centum* or at such rate, not exceeding five *per centum per annum* as the <sup>4</sup>[State Government] may from time to time determine.

Interest payable on amount apportioned.

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

Apportionment of further expenses.

63. Instead of the procedure prescribed above for charging upon, and recovering from *zamindars*, the expenses actually incurred in the repairs and maintenance of public embankments and water-courses and the works connected therewith, the <sup>5</sup>[State Government] may, by an order to be published in the <sup>6</sup>[*Official Gazette*], direct that an estimate be made of the expenses to be incurred in respect of such repairs, maintenance and works during any number of years, not exceeding thirty, which <sup>7</sup>[it] may think fit.

Alternative power of apportioning estimated expenditure for a series of years.

and may by a subsequent order fix the total sum payable during such number of years by the *zamindars* of the estates benefited by such repairs, maintenance and works:

Provided that no order fixing such total sum shall be passed by the <sup>8</sup>[State Government] until three months after the amount of such estimate shall have been published in the <sup>6</sup>[*Official Gazette*], and by a general notice calling on all persons interested to prefer to the Collector any objection they may think proper against such amount being fixed as the total sum. Every such objection shall be submitted to the <sup>9</sup>[State Government] for <sup>8</sup>[its] consideration.

<sup>1</sup>These words were substituted for the words "Lieutenant Governor" by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

<sup>2</sup>The second paragraph was omitted by s. 3 of the Bengal Embankment (Amendment) Act, 1931 (Ben. Act 1 of 1931).

<sup>3</sup>Section 61A was inserted by s. 4, *ibid.*

<sup>4</sup>See foot-note 2 on page 6, *ante.*

<sup>5</sup>See foot-note 2 on page 3, *ante.*

<sup>6</sup>See foot-note 7 on page 4, *ante.*

<sup>7</sup>This word was substituted for the word "he" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>8</sup>This word was substituted for the word "his", *ibid.*

*The Bengal Embankment Act, 1882.*

[Ben. Act II

*(Part VI.—Cost of Works, Proceedings, etc.—Sections 64-66.)*

Period included in the last section, what to include.

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

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

Works in respect of which such estimate may be made.

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

- (a) of any protective works which may be specified in such orders;
- (b) of all the public embankments and water-courses in any district; or
- (c) of all the public embankments and water-courses within any tract of country specified in the order of the <sup>1</sup>[State Government] and any such tract may contain the whole or portions of any one or more districts;

and no further sum shall be recoverable during such period in respect of the expenses of such repairs, maintenance and works connected therewith save so far as any such works or repairs are executed under the provisions of section 18 or of section 31.

But such total sum shall not include the expenses of executing any new works which may be undertaken under the provisions of this Act within any district or tract as aforesaid.

Recovery of cost of new works.

Whenever the <sup>1</sup>[State Government] shall declare that any work executed or to be executed within such district or tract is a new work within the meaning of this section, the cost of executing such work and of maintaining the same shall be payable by the *zamindars* to the Collector under the provisions of this Act, in addition to any total sum fixed under section 63 or section 64 as payable by them.

Mode of apportionment.

66. On publication of any order of the <sup>1</sup>[State Government] under section 63, the Collector shall proceed to charge or apportion the said total sum upon or among the *zamindars* and <sup>2</sup>*{except in respect of the embankments on the right and left banks of the river Gandak as provided in section 58}* among the tenure-holders who are liable to pay the same, as above provided.

<sup>1</sup>See foot-note 2 on page 6, *ante*.

<sup>2</sup>These words in italics and enclosed within square brackets are inapplicable to West Bengal, but have not been formally repealed therein.

*The Bengal Embankment Act, 1882.*

of 1882.]

(Part VI.—Cost of Works, Proceedings, etc.—Sections 67-71.)

67. The sum so apportioned in respect of any estate or tenure on account of any such period as is mentioned in section 63 shall be payable in equal portions in each of the years included in such period, and each such portion if unpaid shall carry interest at five *per centum*, or at such rate, not exceeding five *per centum per annum* as the <sup>1</sup>[State Government] may from time to time determine from the end of the year in which it is payable.

Payment of sum apportioned.

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

Final order of apportionment.

3.—*Recovery thereof.*

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

Publication of final order of apportionment.

70. If any such sum payable to the Collector, or any instalment thereof, be not pursuant to the said order, paid, the same with interest may be recovered as arrears of a demand under the provisions of <sup>2</sup>[the Bengal Public Demands Recovery Act, 1913], or, any similar Act for the time being in force.

Recovery of sums apportioned.

Ben. Act III of 1913.

71. When a recorded sharer of a joint revenue-paying estate has opened a separate account under Act XI of 1859<sup>3</sup>, or under section 70 of Bengal Act VII of 1876<sup>4</sup> or any similar law for the time being in force for the regulation of the opening and maintaining of such separate accounts, he shall be entitled, in regard to the payment and realization of all sums due under this Act, to all the advantages of separate liability enjoyed by him under the said Act XI of 1859<sup>3</sup>, and Bengal Act VII of 1876<sup>4</sup>

Effect of opening separate account under Act XI of 1859 or Ben. Act VIII of 1876.

<sup>1</sup>See foot-note 2 on page 3, *ante*.

<sup>2</sup>These words and figures were substituted for the words and figures "the Public Demands Recovery Act, 1880" by s. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

<sup>3</sup>The Bengal Land Revenue Sales Act, 1859.

<sup>4</sup>The Land Registration Act, 1876.

*The Bengal Embankment Act, 1882.*

[Ben. Act II

(Part VI.—Cost of Works, Proceedings, etc.—Sections 72-74.)

respectively in regard to the payment and realization of revenue, and shall be entitled to separate assessment and to the issue of a separate notice in every case in which special notice is, by this Act, required to be served, from the date on which such advantages shall take effect in respect of the demand of Government revenue.

Similar privileges shall attach to every recorded holder of a revenue-free estate who has opened a separate account under section 46 of Bengal Act IX of 1880<sup>1</sup> in respect of the amount of cesses payable by him.

Liability of estate for sum apportioned.

72. Notwithstanding anything contained in section 70, any such sum shall be a first charge on the estate in respect of which it is apportioned and shall be deemed to be a demand debited to the estate in the public accounts of the district within the meaning of section 31 of Act XI of 1859<sup>2</sup>, and such charge shall not be avoided by any sale, nor shall the joint liability of the entire estate for such sum be affected by any partition of the said estate which may subsequently take place.

Amount apportioned may be raised by leasing or mortgaging estate.

73. If the Collector thinks it inexpedient to proceed for the recovery of such sum or any part thereof under the provisions of section 70, or having so proceeded shall have failed to realize the sum due, he may, with the sanction of the <sup>3</sup>[Commissioner of the Division], raise the amount necessary to discharge the sum or instalment remaining unpaid—

- (a) by mortgaging the whole or any part of such estate;
- (b) by letting in farm or managing by himself or another the whole or any part of such estate;
- (c) partly by one of such modes and partly by another or others of them.

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

Recovery by zamindars and tenure-holders.

74. Every *zamindar* or tenure-holder to whom any sum or instalment thereof is payable under an order made in pursuance of section 68 may recover the same with interest as aforesaid in the manner provided for the recovery of arrears of rent in respect of *patni* tenures by the provisions of clauses 2 and 3 of section 8, sections 9, 10, 14, 15, and clauses 1, 2 and 3 of section 17 of Regulation VIII of 1819<sup>4</sup>, as amended by Bengal Act VIII of 1865<sup>5</sup>, or by the provisions of any similar Act for the time being in force:

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

<sup>1</sup>The Cess Act, 1880.

<sup>2</sup>The Bengal Land Revenue Sales Act, 1859.

<sup>3</sup>These words were substituted for the words "Board of Revenue" by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

<sup>4</sup>The Bengal Patni Taluks Regulation, 1819.

<sup>5</sup>The Bengal Rent Recovery (Under-tenures) Act, 1865.



*The Bengal Embankment Act, 1882.*

of 1882.]

*(Part VII.—Penalties.—Sections 75, 76.)*

## PART VII.

## Penalties.

Act XLV of  
1860.

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

Penalty for obstructing persons in exercise of powers conferred by Act.

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

Penalty for unauthorized interference with embankments or drainage.

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

Penalty for unauthorized interference with embankments or drainage in prohibited tract.

(c) every person who shall abet any such act as is mentioned in clauses (a) and (b),

Penalty for abetment of such acts.

shall be liable on conviction, <sup>2</sup>[to a fine not exceeding one thousand rupees, or to imprisonment of either description for a period not exceeding three years or to both.]

<sup>3</sup>*Exception.*—This section shall not render unlawful the repair of a breach or cut in an embankment so as to restore the embankment to the same dimensions as it had immediately before such breach occurred or cut was made; provided that—

- (a) such cut was not made under the orders of the Collector;
- (b) such repair is made within one year after such breach occurred or cut was made; if, however, the repair cannot be completed within this period, the sanction of the Collector shall be obtained to the completion of the work;

<sup>1</sup>The words within square brackets were substituted for the words "be liable to imprisonment of either description for any period not exceeding six months, at the discretion of the Magistrate, or to fine not exceeding two hundred rupees." by s. 3 of the Bengal Embankment (West Bengal Amendment) Act, 1980 (West Ben. Act XXXIII of 1980).

<sup>2</sup>The words within square brackets were substituted for the words "to a fine not exceeding five hundred rupees or in default of payment to imprisonment of either description for a period not exceeding six months," by s. 4, *ibid.*

<sup>3</sup>This *Exception* was added by s. 2 of the Bengal Embankment (Amendment) Act, 1933 (Ben. Act VIII of 1933).

*The Bengal Embankment Act, 1882.*

[Ben. Act II

(Part VII.—Penalties.—Sections 77-79.)

- (c) such breach or cut forms a gap or, if unrepaired, may form a gap between two portions of an existing embankment which were continuous before the breach occurred or cut was made;
- (d) the part of the embankment in which the breach occurred or cut was made was not erected or added to in contravention of this section or of any other provision of law for the time being in force.]

Penalties for  
injuring  
embank-  
ments, etc.

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

Act XLV of  
1860.

Penalties for  
diverting  
rivers or  
permitting  
cattle to  
graze on  
embank-  
ments, etc.

78. Every person who shall make any dam or other obstruction for the purpose of diverting or opposing the current of a river or water-course wherein or whereon there are public embankments, without the permission of the officer in immediate charge of the embankments,

or shall refuse or neglect to remove any such dam or obstruction so made by him when required to remove it by the Engineer, or without the permission of the Engineer previously obtained shall cut or otherwise alter the banks of any embanked river or water-course, or remove the earth from any public embankment, or drive stakes into it, or by any other wilful act destroy or diminish the efficiency of such embankment;

and every person who without such permission shall cause or knowingly and wilfully permit any cattle to graze upon any such embankment or tether or cause or wilfully permit any cattle to be tethered upon any such embankment, or root up any grass or other vegetation growing on any such embankment,

<sup>2</sup>[shall be liable to imprisonment of either description for a term not exceeding three years, or to a fine not exceeding one thousand rupees or to both.]

Obstructions  
to be  
removed  
and damage  
repaired.

79. Whenever any person is convicted of an offence under either of the three last preceding sections the convicting Magistrate may order that he shall remove the embankment or obstruction, or repair the damage, in respect of which the conviction is held, within a period to be fixed in such order.

<sup>1</sup>The words within square brackets were substituted for the words "be liable to imprisonment of either description for a term not exceeding one month, or to a fine not exceeding two hundred rupees." by s. 5 of the Bengal Embankment (West Bengal Amendment) Act, 1980 (West Ben. Act XXXIII of 1980).

<sup>2</sup>The words within square brackets were substituted for the words "shall be liable to imprisonment of either description for a term not exceeding six months, or to a fine not exceeding two hundred rupees." by s. 6, *ibid.*

*The Bengal Embankment Act, 1882.*

of 1882.]

(Part VII.—Penalties.—Section 79A.—Part VIII.—Miscellaneous.—Sections 80, 81.)

[2 of 1974.] If such person neglects or refuses to obey such order within the fixed period the Engineer may remove such embankment or obstruction or repair such damage, and the cost of such removal or repair shall be levied from such person in addition to any other penalty in the manner provided in <sup>2</sup>[sections 421, 422 and 425 of the Code of Criminal Procedure, 1973.]

<sup>1</sup>79A. Notwithstanding anything contained in any other law for the time being in force, an offence punishable under this Act shall be cognizable and non-bailable.

Offences to be cognizable and non-bailable.

PART VIII.

Miscellaneous.

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

Mode of publishing proclamation and issuing notices.

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

Service of special notices.

- (1) by delivering a copy of the same to the person to whom it is directed, or, on failure of such service, by posting a copy on some conspicuous part of the house in which the said person resides, or by delivering a copy to any agent authorized to appear generally for the person to whom such notice or order is directed; or
- (2) by sending a registered letter containing a copy of such notice or order directed to the said person at his usual place of abode, or at the place where he may be known to reside; or
- (3) by posting a copy of the notice or order at the *mal-cutcherry* of the estate, village or tenure to which the same relates; or, if no such *mal-cutcherry* be found, on some conspicuous place on the said estate, village or tenure; or

<sup>2</sup>The figures and word within square brackets were substituted for the words and figures "Act V of 1898." by s. 7(a) of the Bengal Embankment (West Bengal Amendment) Act, 1980 (West Ben. Act XXXII of 1980).

<sup>1</sup>Firstly these words and figures were substituted for the words and figures "section 307 of the Code of Criminal Procedure" by s. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939). Thereafter the words and figures within square brackets were substituted for the words and figures "sections 386, 387 and 389 of the Code of Criminal Procedure, 1898." by s. 7(b) of the Bengal Embankment (West Bengal Amendment) Act, 1980 (West Ben. Act XXXIII of 1980).

<sup>1</sup>This section along with its marginal notes was inserted by s. 8, *ibid.*

*The Bengal Embankment Act, 1882.*

[Ben. Act II

(Part VIII.—Miscellaneous.—Sections 82-86.)

- (4) if the person on whom the notice or order is to be served is a *zamindar*, by delivering a copy thereof to the agent who shall have paid an instalment of revenue next before or who may pay the instalment next after the preparation of such notice or order, on behalf of such *zamindar*.

In all cases where two or more persons are holders of an estate or tenure, service under the last two clauses shall be deemed to be good and sufficient service on each and all of such persons.

Powers of Collector and Commissioner on inquiry and appeal.

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

Act V of 1908.

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

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

Appeal from orders.

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

General control of Commissioner and Government.

85. All the powers of a Collector under this Act shall be exercised under the general control and orders of the Commissioner of the Division, and all the powers of Collectors and Commissioners shall be exercised subject to the general control and orders of the Board of Revenue and of the <sup>2</sup>[State Government].

Every order passed by any of the said authorities shall be subject at any time to be varied or set aside by the controlling authority.

Orders to be final.

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

<sup>1</sup>This figure was inserted by s. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

<sup>2</sup>See foot-note 3 on page 3, *ante*.

The Bengal Embankment Act, 1882.

of 1882.]

(Part VIII.—Miscellaneous.—Sections 87-90.)

87. Whenever the maintenance of any public embankment, or the retention of any land appropriated to the purposes thereof, may no longer be required, and the permanent relinquishment of the same may be deemed expedient, such land shall be restored by the Collector to the estate or tenure from which such land was originally taken on repayment of the compensation, if any, which was paid for such land when the same was taken for the purpose of the embankment.

Disposal of  
Lands no  
longer  
required for  
embank-  
ments.

If persons who are entitled to the restoration of any land under this section shall, or any of them, refuse or neglect to pay such price within a reasonable time after demand, the same shall be sold by the Collector as a revenue-free holding for such price as he can obtain for the same.

All sums obtained for lands conveyed under the provisions of this section shall, after the payment of all expenses incurred on account of the same, be applied to the payment of the cost of any new embankment or drainage-works, or of the expenses of maintaining any embankment or drainage-works, affecting the said lands and other adjacent lands, in reduction of the amount chargeable upon the *zamindars* and tenure-holders of the lands benefited, as hereinbefore provided, if any amount be so chargeable.

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

Collector  
may delegate  
any of his  
powers to a  
Deputy  
Collector.

Every such delegation of power shall be reported to the Commissioner of the Division.

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

Jurisdiction.

90. The [State Government] may from time to time make rules, consistent with the provisions of this Act, to regulate the following matters:—

Power to  
make, alter  
and cancel  
rules.

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

<sup>1</sup>See foot-note 2 on page 3, ante.

*The Bengal Embankment Act, 1882.*

[Ben. Act II

(Part VIII.—Miscellaneous.—Section 91.—Part IX.—Special Provisions for the State of Orissa.—Section 92.)

- (e) the amount of any charge made under this Act; and  
(f) generally to carry out the provisions of this Act.

The <sup>1</sup>[State Government] may from time to time alter or cancel any rules so made.

Publication of rules.

Such rules, alterations and cancelment shall be published in the <sup>2</sup>[Official Gazette], and shall thereupon have the force of law:

Provided that no rules shall be made by the <sup>1</sup>[State Government] under the powers conferred on <sup>3</sup>[it] by this section, until a draft of the same shall have been published in the <sup>2</sup>[Official Gazette] for one month, after which time the <sup>1</sup>[State Government] may pass such rules as originally published or with such alterations, additions and omissions as <sup>4</sup>[it] may think fit.

Saving of operation of certain Acts.

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

<sup>5</sup>\* \* \* the Bengal Irrigation Act, 1876,

Ben. Act III of 1876.

<sup>6</sup>[the Canals Act, 1864.]

Ben. Act V of 1864.

PART IX.

Special Provisions for the State<sup>7</sup> of Orissa.

[Powers conferred on Superintendent of Embankments in Orissa].

<sup>8</sup>[92. The powers conferred on the Collector by section 25 may, in the State<sup>7</sup> of Orissa, be exercised by the Superintendent of Embankments with the consent of the Collector previously obtained, and the references in the said section to other parts of this Act shall be deemed to be references to the corresponding portions respectively of Act XXXII of 1855<sup>9</sup> (An Act relating to embankments).]

<sup>1</sup>See foot-note 2 on page 3, ante.

<sup>2</sup>See foot-note 7 on page 4, ante.

<sup>3</sup>This word was substituted for the word "him" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>4</sup>This word was substituted for the word "he", *ibid.*

<sup>5</sup>The words and figure "the Bengal Drainage Act, 1880" were repealed by s. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I 1939).

<sup>6</sup>These words and figures were substituted for the words, figures and brackets "Bengal Act V of 1864 (an Act to amend and consolidate the law relating to the collection of tolls on canals and other lines of navigation, and for the construction and improvement of lines of navigation, within the Provinces under the control of the Lieutenant-Governor of Bengal)" by s. 2 and the First Sch., *ibid.*

<sup>7</sup>See foot-note 5 on page 1, ante.

<sup>8</sup>Sections 92 to 94 are inapplicable to West Bengal, but have not been formally repealed therein.

<sup>9</sup>The Bengal Embankment Act, 1855.

*The Bengal Embankment Act, 1882.*

of 1882.]

(Part IX.—Special Provisions for the State of Orissa.—  
Sections 93, 94 and Schedule I.)

*The consequences mentioned in section 26 shall attach to everything done by the Superintendent of embankments under the provisions of this section.*

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

[Powers to Engineer to act in urgent cases.]

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

[Sections made applicable to Orissa.]

SCHEDULE I.

(Referred to in section 2.)

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

12. Whenever any land or earth from any land the property of any person, is required for the purposes of any works commenced in pursuance of the provisions of <sup>2</sup>{the last preceding section}, or for the purposes of <sup>3</sup>{section 18} in cases where the Collector shall be of opinion that proceedings for the acquisition of such land according to the provisions hereinafter contained in <sup>4</sup>{section 25}, would cause delay as aforesaid, the Collector shall cause a proclamation to be issued in form in Schedule B annexed to the Act, giving notice thereof at convenient places in the locality in which such land is situated, and he may at the same time take possession of the same for the said purposes.

Power to take possession of land.

13. The Collector shall ascertain and record the nature and estimated value of the crops and trees (if any) standing on such land, and shall offer adequate compensation to the persons interested.

Compensation for standing crops and trees.

<sup>1</sup>See foot-note 5 on page 1, ante.

<sup>2</sup>This reference is now to be read as a reference to section 25 of the Bengal Embankment Act, 1882 (Ben. Act II of 1882).—see s. 2 and Sch. II to this Act.

<sup>3</sup>This reference is now to be read as a reference to s. 30 of Ben. Act II of 1882—see Sch. II to this Act.

<sup>4</sup>This reference is now to be read as a reference to s. 37 of Ben. Act II of 1882—see Sch. II to this Act.

*The Bengal Embankment Act, 1882.*

[Ben. Act II

*(Schedule I.)*

If 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 of section 29.

21. (Proviso).—Provided always that in case the Collector be of opinion that the delay required by <sup>1</sup>[such proceedings] is likely to be attended with grave and imminent danger to life or property, it shall be lawful for him forthwith to cause such trees, houses, or buildings to be removed and in such case the compensation due therefor shall be ascertained and paid in the manner hereinafter provided.

When land taken, proclamation to be published.

26. Whenever any land shall have been taken or used under the provisions of <sup>2</sup>[Part III], the Collector shall cause a proclamation to be issued in form in Schedule C annexed to this Act at convenient places on or near the land so taken, stating that Government has taken possession of the land, and that claims to compensation for all interests in such land shall be made to him. Thereupon the land shall vest absolutely in the Government free from all incumbrances, subject however, to the claims for compensation to be ascertained in manner as in <sup>3</sup>[this part] is provided.

Contents of proclamation.

27. Such proclamation shall state the particulars of the land so taken, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of issuing the proclamation), and to state the nature of their respective interests in the land, and the amount and particulars of their claim to compensation for such interest.

Further notice to be served on certain parties.

28. The Collector shall also serve notice to the same effect on the occupier (if any) of such land, 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 districts in which the land is situate.

Proceedings after notice.

29. After service of such notice proceedings shall be had and taken to determine the amount of compensation to be payable in respect of such land, in accordance with the provisions of the Land Acquisition Act, <sup>4</sup>[1894], or other law for the time being in force for the acquisition of land for public purposes.

1 of 1894.

## Schedules B, C, D and E.

<sup>1</sup>This reference is now to be read as a reference to section 19 of the Bengal Embankment Act, 1882 (Ben. Act II of 1882).—see s. 2 and Sch. II to this Act.

<sup>2</sup>This reference is now to be read as a reference to Part III of Ben. Act II of 1882—see Sch. II to this Act.

<sup>3</sup>This reference is now to be read as a reference to Part V of Ben. Act II of 1882—see Sch. II to this Act.

<sup>4</sup>See foot-note 1 on page 4, ante.



*The Bengal Embankment Act, 1882.*

of 1882.]

*(Schedules II, III.)*

SCHEDULE II.

*(Referred to in section 2.)*

Section of Bengal Act VI of 1873 in which the reference is made.	The reference as it stands.	To what portion of the present Act the reference is to be read to apply.
Section 12 ..	To "the last preceding section."	Section 25.
Section 12 ..	To section 18 ..	Section 30.
Section 12 ..	To section 25 ..	Section 37.
Section 21 ..	To "such proceedings."	Section 19.
Section 26 ..	To Part III ..	Part III.
Section 26 ..	To "this Part" ..	Part V.

SCHEDULE III.

*(Referred to in section 8.)*

Notice is hereby given, as required by section 8, Bengal Act II of 1882, to all persons interested, that it appears to the Collector that the following work should be done; that is to say [here state the nature of the work and the purpose for which it is to be undertaken]. *\*For the execution of this work the undermentioned land will be required to be taken up:—*

1	2	3
<i>Pargana</i> in which land is situated.	Village in which land is situated.	Area of land.

Estimates of the proposed work, with the necessary specifications and plans, together with a copy of the survey map showing the lands likely to be affected by the said work, are open for inspection at this office by any interested person, who is allowed to take copies thereof.

*\*The words in italics and the tabular form to be omitted if no land is to be acquired.*

*The Bengal Embankment Act, 1882.*

[Ben. Act II of 1882.]

*(Schedule III.)*

\*The total probable cost of such work will be the sum of Rs.                      and the rate per acre of the area benefited or protected by the said work is estimated at Rs.

The following estates and villages will probably be affected by the work proposed (*here set out a list of the estates and villages*).

Any person interested and wishing to show cause against the execution of the works specified is hereby required to appear before the Collector for the purpose on the                      day of

The

day of

A. B.,

*Collector of*


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\*These words may be omitted, unless it is proposed to recover the cost of the work from the *zamindars* and tenure-holders.