

THE PUNJAB MINOR CANALS ACT, 1905.

PUNJAB ACT III OF 1905

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SCHEDULE-II

THE PUNJAB MINOR CANALS ACT, 1905.

¹PUNJAB ACT III OF 1905.

1st June, 1905.

An Act to make better provision for the control, and management of minor canals in the ²Khyber Pakhtunkhwa.

whereas it is desirable to make better provision for the exercise of control over and for the regulation of the management of certain minor canals in the ³[Khyber Pakhtunkhwa]

It is hereby enacted as follows:—

**CHAPTER-I.
PRELIMINARY.**

1. (1) This Act may be called the Punjab Minor Canals Act of 1905. Short title and local extent.

(2) It shall extend to the whole of the ⁴[Province of the Khyber Pakhtunkhwa].

2. (1) The provisions of this Act shall apply to the extent and in the manner hereinafter provided to every canal specified in either Schedule I or Schedule II as the case may be. Operation of Act.

(2) At any time after the commencement of this Act, the ⁵[Provincial Government] may, from time to time, by notification—

(a) Include any canal under either Schedule I or Schedule II, as the case may be, or transfer a canal from one Schedule to the other Schedule, and thereupon the provisions of this Act applicable to canals included under such Schedule, or such of the said provisions as the ⁶[Provincial Government] may direct, shall apply to such canal; or

(b) exclude from the operation of this Act, any canal which now is, or hereafter may be, included under either Schedule I or Schedule-II:

Provided that no canal shall be included under Schedule I, unless.

¹. The Act has been extended with modifications to Khyber Pakhtunkhwa by notification under section 5 and 5-A, of the Scheduled Districts Act, 1874, see Khyber Pakhtunkhwa Gazette notification No. 1296-G/IX-B-2, dated the 1st July 1926 Khyber Pakhtunkhwa Gazette, dated 23rd July 1920, Part I-A.. pages 745-750.

². Subs vide the Khyber Pakhtunkhwa Act. IV of 2011.

³. Subs vide the Khyber Pakhtunkhwa Act. IV of 2011.

⁴. Subs vide the Khyber Pakhtunkhwa Act. IV of 2011.

⁵. Subs, for the words "Local Government" by A. O. 1937.

⁶. Subs, for the words "Local Government" by A. O. 1937.

- (a) It is owned in whole or in part by the ¹[Provincial Government,] or
- (b) is, at the commencement of this Act, managed by ²[servants of the state] or by any local authority, or
- (c) is situate partly within and partly without the territories to which this Act extend, or
- (d) has been included under Schedule II and is transferred to Schedule I ³[by direction of the Provincial Government].

(3) ⁴The Northern India Canal and Drainage Act, 1873, shall not apply to any canal which is for the time being included under either Schedule I or Schedule 11.

3. In this Act, unless there is something repugnant in the subject or context— Definition

- (i) “Record-of-Rights” and “Revenue Officer” have the meanings assigned to them respectively in the ⁵Punjab Land Revenue Act, 1887;
- (ii) “Canal” means any canal, natural or artificial channel or line of natural drainage or any reservoir, dam or embankment constructed, maintained or, controlled for the supply or storage of water or the protection of land from flood or sand, and includes any watercourse or subsidiary works as defined in this section;
- (iii) “Collector” means the head revenue-officer of a district, and includes any officer appointed under this Act, to exercise all or any of the powers of a Collector;
- (iv) “⁶Commissioner” means a ⁷[Commissioner] and includes any officer appointed under the Act to exercise all or any of the powers of a Commissioner;
- (v) “Construction” and “construct” include any alteration which would materially extend the area irrigable by a canal or any other alteration of material importance or the renewal of a canal after disuse for six years, but do

¹. Subs, for the words "His Majesty" for the purposes of the Province by the W. P. Laws, (Adaptation) Order. 1964, which idere previously subs, for the word "Government" by A.O., 1937.

². Subs, for the words “Servant of the Crown” by W. P. Laws (Adaptation) Order. 1964, which were previously subs, for the words “Government officers” by A. O., 1937.

³. Subs, for the words "by direction of Government" by A. O., 1937.

⁴. Now the Canal and Drainage Act, 1873.

⁵. Rep. by the W. P. Act. XVII of 1967, s, 184 (1) Sch. Pt. I.

⁶. Subs, by W. P. Act., XVI of 1957, s. (2) and Sch. II, for the words “Revenue Commission” which were to be read for the word “Commissioner” *vide* Notification No. 1896-Ci -IX-B-2 (Revenue) dated 1st July, 1926, Khyber Pakhtunkhwa Gazette, dated 23rd July, 1926, Pt. 1-A, Pp.745 to 750.

⁷. Subs, by W. P. Act XVI of 1957, s. 3 (2) and Sch. II, for the word "Revenue Commissioner" which was to be read for the original words "Commissioner of a division" *vide* notification *ibid*.

not include the re-excavation of a canal head which has been temporarily abandoned owing to a change in the river, the excavation of a new head necessitated by a change in the river or a change of water-courses to render existing irrigation more efficient;

- (vi) “Creek” means any channel of a river other than the main channel through which the water of the river would, unless obstructed by deposit of silt, naturally flow at some period of the year;
- (vii) “District” means a district as fixed for revenue purposes;
- (viii) “irrigator” means in respect of any land which is irrigated from a canal any person for the time being directly deriving benefit by such irrigation, and includes a land-owner or occupancy tenant of such land;
- (ix) “Labour” includes labourers, cattle and appliances necessary for the execution of the work for which labour is to be supplied;
- (x) “Mill” means any contrivance whereby the water power of any canal is used for grinding, sawing or pressing, or for driving or working machinery or for any other similar purpose, and includes all subsidiary works and structures connected with any such contrivance except the canal itself;
- (xi) “Subsidiary works” means all works required for the control or maintenance of the supply to a canal or for the maintenance of a canal in proper condition or for the regulation of the irrigation therefrom or for the prevention of floods or for the provision of proper drainage, in connection with such irrigation, and include also the land required for such works;
- (xii) “Water-course” means any channel which is supplied with water from a canal and which is maintained at the cost of the irrigators, and includes all subsidiary works connected with such channel except the sluice or outlet through which water is supplied to such channel;
- (xiii) “Water-due” means whatever is payable to Government in cash or kind by the owner of a canal for the diversion by such owner for the purposes of such canal of the water or any river, creek or stream flowing in a natural channel or of any lake or other natural collection of water;

- (xiv) "Water-rate" means the charge made for canal water, other than a water-due or canal advantage land-revenue rate.

CHAPTER-II.

CONSTRUCTION OF CANALS AND WATER DUES.

4. When the ¹[Provincial Government] has notified in this behalf any natural channel, lake or other collection of water, no person shall, without permission previously obtained in the manner prescribed in the section next following construct a canal intended to be fed from any such channel, lake or other collection of water:

Prohibition against construction of canals without permission

Provided that nothing in this section shall apply to The construction of a water-course from an existing canal.

5. (1) Any person desiring to construct a canal intended to be fed from any source of supply which has been notified by the ²[Provincial Government] under section 4, may apply, in writing, to the Collector, for the permission prescribed in that section.

Application for permission and procedure thereon

(2) Every application under sub-section (1).shall be in such form and shall contain such particulars as the ³[Provincial Government] may prescribe in that behalf.

6. (1) When a source of supply has been notified by the ⁴[Provincial Government] under section 4 and the Collector considers that the construction of a canal to be fed therefrom will be advantageous, he shall give notice by general proclamation to all persons interested of his intention to construct such canal.

Power of Collector to construct canal from notified source of supply.

(2) If no objection to the construction of such canal shall have been preferred within a period to be specified in the notice under sub-section (1), or if any such objection has been preferred within the said period, but has been finally overruled, the Collector may proceed to construct such canal.

(3) The provisions of sections 50 and 63 shall apply to all proceedings of the Collector under sub-section (1) of this section and under the preceding section, and the powers conferred upon the Collector by this and the preceding section shall be exercised subject to such sanction as the ⁵[Provincial Government] may prescribe and in accordance with the rules made by such Government.

7. (1) If any person, without the permission necessary under

Power to prohibit the unauthorised

¹. Subs, for the words "Government" by A. O. 1937.

². Subs, for the words "Government" by A. O. 1937.

³. Subs, for the words "Local Government" by A. O. 1937.

⁴. Subs, for the words "Local Government" by A. O. 1937.

⁵. Subs, for the words "Local Government" by A. O. 1937.

sections 4 and 5 of this Act, or contrary to any of the conditions of such permission, commences to construct or proceeds with the construction of any canal, the Collector may, at any time, by order in writing, prohibit such person, and by general proclamation, all other persons, from continuing the construction thereof:

construction of and to close unauthorized canal.

Provided that, unless in the case of a construction which would materially extend the area irrigable by a canal, no such order or proclamation, as the ease may be, shall be made or issued in respect of any canal which, at the time when it is proposed to make or issue such order or proclamation, has been used for irrigation for a period of three years without interruption other than such as was due to natural causes beyond the control of the person aforesaid.

(2) If any person shall, at any time after the commencement of this Act construct a canal without the permission necessary under sections 4 and 5 of this Act, the Collector may, with the previous sanction of the ¹[Provincial Government] close it and shut off the supply of water thereto, and may further, by order in writing, prohibit such persons, and by general proclamation, all other persons, from maintaining, repairing or renewing such canal or continuing to use the water thereof.

8. (1) Subject to the conditions, if any, imposed or agreed to by the ²[Provincial Government] such Government may assess and levy water-dues in respect of—

Water-dues

- (i) Canals made after the commencement of this Act;
- (ii) Canals made before the commencement of this Act.—
 - (a) When the right to, or question of, water-dues has been expressly reserved by such Government, or
 - (b) When the conditions upon which the owner of the canal has been allowed to use the water have been agreed on for a term and that term has expired, or
 - (c) When such water-dues were already levied, at the commencement of this Act, or
 - (d) ³[When the owner of the canal has agreed in writing to pay such water dues].

(2) The demand on account of water-dues shall be assessed for a term of years, and shall be limited to an amount not exceeding one-quarter

¹. Subs, for the words "Local Government" by A. O. 1937.

². Subs, for the words "Local Government" by A. O. 1937.

³. Added *vide* Notification No. 1895-9,1X-B-2, dated 1st July, 1926, see Khyber Pakhtunkhwa, Gazette, dated 23rd July, 1926, Pt-I A. Pp. 745-750.

of the net profits which are likely to accrue to the owner of the canal during that term.

CHAPTER—III

PROVISIONS APPLICABLE TO CANALS UNDER SCHEDULE-I

9. Except as the ¹[Provincial Government] may otherwise direct under section 69 the provisions of this Chapter shall apply only to canals for the time being included under Schedule-I. This Chapter applicable only to canals under Schedule I.

10. (1) Notwithstanding the existence of any rights over a canal or water-course, the Collector may— General power of Collector.

(a) exercise all powers of control, management and direction for the efficient maintenance and working of such canal or for the due distribution of the water thereof: and

(b) Whenever and so long as any water-course, sluice or outlet is not maintained in proper customary repair, or any water-course, sluice or outlet through which water is supplied to any person, or, in the case of a sluice or outlet, to any water-course or any person, is subjected to wilful damage or wrongful enlargement, stop the supply of water to such water-course, sluice or outlet or to any person.

(2) No claim shall be enforceable against the ²[Provincial Government] for compensation in respect of loss caused by any order passed under sub-section (1), but any person suffering loss by reason of any order passed under sub-section (1) (a) may claim such remission of the ordinary charges payable for the use of the water as is authorised by the ³[Provincial Government]:

Provided that if any right to water entered in a record of rights prepared or revised under section 28 (1) or deemed under section 28 (3) to have been made under this Act or admitted in any agreement between the ⁴[Provincial Government] and any person is substantially diminished in consequence of action taken under sub-section (1) (a) the Collector shall award compensation under section 55 to such person in respect of the diminution of this right.

(3) No right to the use of the water of canal shall be, or be deemed to have been acquired under the ⁵Indian Limitation Act, 1877, (XV of

¹. Subs, for the words "Local Government" by A. O. 1937.

². Subs, for the words "Local Government" by A. O. 1937.

³. Subs, for the words "Local Government" by A. O. 1937.

⁴. Subs, for the words "Local Government" by A. O. 1937.

⁵. Now the Limitation Act, 1908, (Act IX of 1908).

1887) nor shall the ¹[Provincial Government] be bound to supply any person with water.

11. (1) The ²[Provincial Government] may at any time suspend or extinguish any right to which any person is entitled in or over any canal if the exercise of such right is prejudicial to the interests of other irrigators or to the good management, improvement or extension of the canal.

power of Government to suspend or extinguish right in or over any scheduled canal on payment of compensation.

(2) In every such case the ³[Provincial Government] shall cause to be paid to the person whose right is suspended or extinguished, compensation to be assessed by the Collector under section 55. In assessing compensation for the purpose of this section, the Collector shall also have regard to the character of the right, the period during which it has been enjoyed and the damage likely to be occasioned by its suspension or extinction.

12. The Collector or other person acting under the general or special orders of the Collector may enter upon any land adjacent to any canal, or through which any canal is proposed to be made, and undertake surveys or levels thereon; and dig and bore into the sub-soil;

Power to enter and survey, etc.

and make and set up suitable land-marks, level-marks and water-gauges;

and do all other Acts necessary for the proper prosecution of any inquiry relating to any existing or projected canal under the charge of the said Collector.

and where otherwise such inquiry cannot be completed, the Collector or such other person may cut down and clear away any part of any standing crop, fence or jungle:

Power to clear land.

and may also enter upon any land, building or watercourse on account of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or measuring the lands irrigated thereby or chargeable with a water rate, and of doing all things necessary for the proper regulation and management of canal:

Power to inspect and regulate water supply.

Provided that, if such Collector or person proposes to enter into any building or enclosed court or garden attached to a dwelling house not supplied with water flowing from any canal, he shall previously give the occupier of such building, court or garden at least seven days notice in writing of his intention to do so.

Notice of intended entry in to houses.

In every case of entry under this section, the Collector shall, upon application made to him in this behalf, assess and pay compensation for any damage which may be occasioned by any proceeding under this

Compensation for damage caused by entry.

¹. Subs, for the words "Local Government" by A. O. 1937.

². Subs, for the words "Local Government" by A. O. 1937.

³. Subs, for the words "Local Government" by A. O. 1937.

section.

13. In case of any accident happening or being apprehended to a canal, the Collector or any person acting under his general or special orders in this behalf may enter upon any lands adjacent to such canal, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

Power to enter for repairs and to prevent accidents.

In every such case, the Collector shall upon application made to him in this behalf, assess and pay compensation under section 55, for any damage which may be occasioned by any proceeding under this section.

Compensation for damage to land.

14. (1) The Collector or any person acting under his general or special orders in this behalf, may within such distance from the canal as the ¹[Provincial Government] may by rule determine, occupy land adjacent to any canal for the purpose of—

Power to occupy land adjacent to canal for depositing soil from canal and to excavate earth for repairs to the banks and compensation for damage.

- (a) depositing upon it soil excavated from the canal, or,
- (b) excavating from it earth for repairs to the canal.

The Collector shall, upon application made to him in this behalf, assess and pay compensation for any damage which may be occasioned by any proceeding under this section.

(2) The owner of any land which has been occupied after the commencement of this Act for any purpose under sub-section (1) and has remained in such occupation for a period exceeding three years may require that such land shall be permanently acquired in accordance with provisions of section 44.

15. Whenever application is made to a Collector for a supply of water from a canal, and it appears to him expedient that such supply should be given, and that it should be conveyed through some existing water-course, he shall give notice to the persons responsible for the maintenance of such water-course to show cause, on a day not less than fourteen days from the date of such notice, why the said supply should not be so conveyed, and after making inquiry on such day, the Collector shall determine whether and on what conditions the said supply shall be conveyed through such water-course.

Supply of water through intervening water course.

The applicant shall not be entitled to use such watercourse until he has paid the expense or any alteration of such water-course necessary in order to his being supplied through it, and also such share of the first host of such water-course as the Collector may determine.

Such applicant shall also be liable for his share of the cost of maintenance of such water-course so long as he uses it.

¹. Subs, for the words "Local Government" by A. O. 1937.

16. Any person desiring the construction of a new water-course may apply in writing to the Collector, stating—

Application for construction of new water course

- (i) that he has endeavoured unsuccessfully to acquire, from the owners of the land through which he desires such water-course to pass, a right to occupy so much of the land as will be needed for such water-course;
- (ii) that he desires the Collector, in his behalf and at his cost, to do all things necessary for acquiring such right;
- (iii) that he is able to defray all costs involved in acquiring such right and constructing such water-course.

17. If the Collector considers-

Procedure of Collector thereupon.

- (i) that the construction of such water-course is expedient; and
- (ii) that the statements in the application are true, he shall call upon the applicant to make such deposit as the Collector considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation which he considers likely to become due under section 20;

and, upon such deposit being made, he shall cause enquiry to be made into the most suitable alignment for the said water-course, and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof, and shall forthwith publish a notice in every village through which the water-course is proposed to be taken, that so much of such land as belongs to such village, has been so marked out.

18. Any person desiring that an existing water course should be transferred from its present owner to himself, may apply in writing to the Collector stating—

Application for transfer of existing water course.

- (i) that he has endeavoured unsuccessfully to procure such transfer from the owner of such water-course;
- (ii) that he desires the Collector, in his behalf, and at his cost, to do all things necessary for procuring such transfer;
- (iii) that he is able to defray the cost of such transfer.

If the Collector considers-

Procedure there upon.

- (a) that the said transfer is necessary for the better management of the irrigation from such water-course, and
- (b) that the statements in the application are true, he shall call upon the applicant to make such deposit as the Collector considers necessary to defray the cost of the preliminary

proceedings, and the amount of any compensation that may become due under the provisions of section 20 in respect of such transfer; and, upon such deposit being made, he shall publish a notice of the application in every village effected.

19. (1) When within thirty days from the publication of a notice under section 17 or section 18, as the case may be, any person interested in the land or water-course to which the notice refers, applies to the Collector as aforesaid, stating his objection to the construction or transfer for which application has been made, the Collector shall give notice to the persons interested that on a day to be named in such notice or any subsequent day to which the proceedings may be adjourned he will proceed to inquire into the matter in dispute or into the validity of such objections as the case may be.

Inquiry into, and determination of, objections to construction or transfer of water courses.

(2) Upon the day so named or any such subsequent day as aforesaid, the Collector shall proceed to hear and determine the dispute or the objection as the case may be.

20. No applicant under section 16 or section 18, as the case may be, shall be placed in occupation of such land or water-course until he has paid to the person named by the Collector such amount as the Collector determines to be due as compensation for the land or water-course so occupied or transferred, and for any damage caused by the marking out or occupation of such land, together with all expenses incidental to such occupation or transfer.

Expenses to be paid by applicant for construction or transfer of water course before receiving occupation.

Compensation to be made under this section shall be assessed as provided in section 55 but the Collector may, if the person to be compensated so desire, award such compensation in the form of a rent-charge payable in respect of the land or watercourse occupied or transferred.

Procedure in fixing compensation

If such compensation and expenses are not paid when demanded by the person entitled to receive the same, the amount may be recovered by the Collector, and shall, when recovered, be paid by him to the person entitled to receive the same.

Recovery of compensation and expenses.

21. (1) When any such applicant has duly complied with the conditions laid down in section 20, he shall be placed in occupation of the land or water-course as aforesaid, and the following rules and conditions shall be thereafter binding on him and his representative in interest:—

Conditions binding on applicant placed in occupation.

(a) In all cases,

First:- All works necessary for the passage across such water course or water-courses existing previous to its construction and of the drainage intercepted by it, and for affording proper, communication across it for the convenience of the neighbouring lands, shall be constructed by the applicant, and be maintained by him or his representative in interest to the satisfaction of the Collector.

Second—: Land occupied, for a water-course under the provisions of section 17 shall be used only for the purposes of such water-course.

Third-: The proposed water-course shall be completed to the satisfaction of the Collector within one year after the applicant is placed in occupation of the land.

- (b) In cases in which land is occupied or a water-course is transferred, on the terms of a rent-charge.

Fourth—: The applicant or his representative in interest shall, so long as he occupies such land or water-course, pay rent for the same at such rate and on such days as are determined by the Collector when (the applicant is placed in occupation.

Fifth-: If the right to occupy the land ceases owing to a breach of any of these rules, the liability to pay the said rents shall continue until the applicant or his representative in interest has restored the land to its original condition, or until he has paid, by way of compensation for any injury done to the said land, such amount and to such person as the Collector determines.

Sixth-: The Collector may, on the application of the person entitled to receive such rent or compensation, determine the amount of rent due or assess the amount of such compensation; and if any such rent or compensation be not paid by the applicant or his representative in interest, the Collector may recover the amount, with interest thereon at the rate of six per cent, per annum from the date on which it became due, and shall pay the same, when recovered, to the person to whom it is due.

(2) If any of the rules and conditions prescribed, by this section are not complied with, or if any water-course constructed or transferred under this Act is disused for three years continuously, the right of the applicant, or of his representative in interests, to occupy such land or water-course shall cease absolutely.

22. The Collector may construct or repair or alter a sluice or outlet to regulate the supply of water from a canal to any watercourse.

Construction of outlets from canals by Collector.

23. (1) In cases where there are water-courses running side by side or so situated as to interfere with the economical use or proper management of the water-supply, the Collector, if applied to for that purpose, or on his own motion may require the owners to make arrangements to his satisfaction to unite the water-courses or to substitute for them such system as may have been approved by him.

Power to convert several watercourses running for a long distance side by side into one watercourse.

(2) If the owners fail within such time as the Collector may fix to comply with any order passed by him under sub-section (1) the Collector may himself execute the work.

(3) Whenever a water-course has been reconstructed of a new system substituted under sub-section (1) or sub-section (2) , the Collector may fix the shares, in which the water shall be enjoyed by the persons entitled to use the water-course.

24. The procedure hereinbefore provided for the occupation of land for the construction of a water-course shall be applicable to the occupation of land for any extension or alteration of a water-course and for the deposit of soil from water-course clearances.

Procedure applicable to occupation for extensions and alterations.

25. In every case under section 22 of section 23, the cost of executing or completing the work shall be payable by such person or persons deriving benefit from the water-course as the Collector may in each case determine.

Costs of executing works under section 22 or section 23, by whom payable.

26. The ¹[Provincial Government] may, by notification, direct that the irrigators from any canal or any two or more adjacent canals shall be bound to furnish labour free of cost to Government for the purpose of effecting the annual silt clearance of such canal or canals or of maintaining such canal or canals, in a state of efficiency or of executing any work necessary thereto, in either of the following cases, namely:

Power of Provincial Government to direct supply of labour by irrigators.

- (a) Whenever such irrigators are bound, by a condition entered in the record-of-rights of such canal or canals or of estates supplied with water therefrom or by established custom, to furnish such labour, or
- (b) Whenever the land-owners who are responsible for the payment of more than half the land revenue assessed on the land irrigated from such canal, or canals, agree to undertake to supply such labour.

²[27. (1) Upon the issue of a notification under Section 26 the Collector may, from time to time, by general or special order:—

Power of collector upon issue of notification under section 26.

- (a) determine the amount of labour to be provided or the amount of work to be performed by each irrigator;
- (b) regulate the attendance, distribution and control of the labourers provided or the manner of the performance of the work;

¹. Subs. for "Local Government: by the A.O., 1937.

². Subs. for the original section 27, by Notification No. 1895-G-IX-B-2. dated 1st July, 1920, Khyber Pakhtunkhwa Gazette, dated 23rd July, 1926, Pt. 1-A. pp. 745-750.

- (c) assess and recover the cost of such labour from any person who fails to comply with an order passed under this section; and
- (d) fund all costs so recovered and expend them on the provision of hired labour for any of the canals to which the notification applies, or subject to the provisions, if any, of a record-of-rights specified in section 26, or section 28, on any other purpose connected with the well-being thereof:

Provided that the cost assessed as aforesaid shall not exceed one rupee for each day's labour of each of the labourers in respect of whom default has occurred.

(2) When a notification has been issued under section 26 in respect of any scheduled canal, the ¹[Provincial Government] may by notification direct that cost of any establishment which it may be necessary to maintain for the control and management of the canal shall be recovered from the irrigators from the canal or from any class of such irrigators by means of a rate of such amount as may be specified in the notification.

(3) The rate imposed under sub-section (2) shall be assessed by the Collector on the basis of the land revenue assessed or assessable on such lands of the said irrigator or class of irrigators as are irrigated from the canal and shall be recoverable as an arrear of land revenue.

(4) The ²[Provincial Government] may direct that the proceeds of the rate imposed under sub-section (2) shall be credited to the fund formed under sub-section (1), clause (d)].

³[27-A. (1) In any district in which a contribution in the form of a percentage of the land revenue realised by Government is made by Government for the purpose of affecting the annual silt clearance of any canal or any two or more adjacent canals or of maintaining such canal or canals in a state of efficiency or of executing any work necessary thereto, the ⁴[Provincial Government] may by notification direct that a special cess equal to such percentage shall be levied from the irrigators and from the assignees of land revenue directly deriving benefit from canal irrigation.

Power of Provincial Government to levy special cess.

(2) A cess imposed under sub-section (1) shall be recoverable as an arrear of land revenue and shall be credited to the fund formed under section 27, sub-section (1), clause (d).

(3) Where any cess is levied under sub-section (1) no separate rate

¹. Subs. for "Local Government: by the A.O., 1937.

². Subs. for "Local Government: by the A.O., 1937.

³. Inserted by Notification No, 1895-G, IX-B-2, dated 1st July, 1926, Khyber Pakhtunkhwa Gazette, dated. 23rd July, 1926, Pt. 1-A., Pp. 745-750.

⁴. Subs. for "Local Government: by the A.O., 1937.

shall be levied from the land owners or assignees of land revenue under section 27.

28. (1) The Collector shall, whenever the ¹[Provincial Government] may, by special order or by the rules made under the authority of this Act, so direct, prepare or revise for any canal a record showing all or any of the following matters, namely:—

Power to prepare record for canal.

- (a) the custom or rule of irrigation;
- (b) the rights to water and the conditions on which such rights are enjoyed;
- (c) the rights as to the erection, repair, reconstruction and working of mills, and the conditions on which such rights are enjoyed; and
- (d) such other matters as the ²[Provincial Government] may by rule prescribe in this behalf.

(2) Entries in the record so prepared or revised shall be relevant as evidence in any dispute as to the matters recorded, and shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor:

Provided that no such entry shall be so construed as to limit any of the powers conferred on the ³[Provincial Government] by this Act.

(3) When a record showing all or any of the matters enumerated in sub-section (1) has been framed at any settlement of the land revenue already sanctioned by the ⁴[Provincial Government] and has been attested by a revenue officer, such record shall be deemed to have been made under this section.

(4) Every person interested shall be bound to furnish to the Collector, or to any person acting under the direction of the Collector, all information necessary for the correct preparation of a record under this section.

(5) The provisions of Chapter IV of the ⁵Punjab Land Revenue Act, 1887, shall, so far as may be, apply to the preparation and revision of every such record.

29. (1) Subject to the terms of any agreement made by it with the owners or irrigators, the ⁶[Provincial Government] may, by notification, direct that a rate or rates shall be levied for the use of water of a canal in an authorised manner.

Levy of water rates.

¹. Subs. for "Local Government: by the A.O., 1937.

². Subs. for "Local Government: by the A.O., 1937.

³. Subs. *ibid.* for the words "Government".

⁴. Subs. for "Local Government: by the A.O., 1937

⁵. See Vol. I.

⁶. Subs. for "Local Government: by the A.O., 1937

(2) The ¹[Provincial Government] may, by notification, also impose a special rate for water obtained or used without authority or in an unauthorised manner.

(3) The rate or rates imposed under sub-section (1) or subsection (2) shall be leviable from such persons deriving benefit from the water as the ²[Provincial Government] may, by general or special rule, direct.

(4) Subject to the terms of any such agreement aforesaid, the proceeds of any rate or rates levied under this section be disposed of in such manner as the ³[Provincial Government] may, by general or special rule, direct.

30. If water supplied through a water-course be used in an unauthorised manner and if the person by whose act or neglect such use has occurred cannot be identified.

Liability when person using un-authorizedly cannot be identified.

The person on whose land such water has flowed if such land has derived benefit therefrom.

or, if such person cannot be identified, or if such land has not derived benefit there from, all the persons chargeable in respect of the water supplied through such water-course, Shall be liable or jointly liable, as the case may be to the charges made for such use.

31. If water supplied through a water-course be suffered to run to waste, and if, after inquiry by the Collector, the person through whose act or neglect such water was suffered to run to waste cannot be discovered, all the persons chargeable in respect of the water supplied through such water-course shall be jointly liable for the charges made in respect of the water so wasted.

Liability when water runs to waste.

32. All charges for the unauthorised use or for waste of water may be recovered in addition to any penalties incurred on account of such use or waste.

Charger recoverable in addition to penalties.

All questions under section 30 or section 31 shall be decided by the Collector.

¹. Subs. for "Local Government: by the A.O., 1937

². Subs. for "Local Government: by the A.O., 1937

³. Subs. for "Local Government: by the A.O., 1937

CHAPTER IV

PROVISIONS APPLICABLE TO CANALS INCLUDED UNDER SCHEDULE II

33. Except as the ¹[Provincial Government] may otherwise direct under section 69 the provisions of this Chapter shall apply only to canals for the time being included under schedule II. This chapter applicable only to canals under Schedule II.
34. Where there are numerous share-holders in the ownership of a canal, or where it is difficult to ascertain the persons who are shareholders or the extent of the interest of the shareholders or any of them, the Collector may, if there is no proper manager as representative, require by proclamation or notice in writing, the shareholders to nominate, within a given period, a fit person as manager of the canal and their representative and upon their failure to do so, may himself appoint any person to be the manager of such-canal and the representative of the share holders, and the person so appointed may thereupon do all acts and things which the shareholders or any of them might lawfully do in regard to the management of such canal, and all acts and things so done by him shall be binding upon every person who possesses any share in the ownership of such canal. Power of the collector in certain cases, to declare or appoint a manager of a canal.
35. The ²[Provincial Government] may by notification declare all or any of the provisions of section 28 (as to the preparation and revision of records) to be applicable to any canal and upon any such declaration being made, such provisions shall as far as may be, apply accordingly. Power of ³(Provincial) Government to apply the provision of section 28 to any canal.
36. (1) It shall be lawful for the ⁴[Provincial Government] by notification, to assume the control or management, or both, of any canal. Power to assume control or management, or both, of a canal.
- (a) if the owner of such canal consents thereto, and subject to the condition (if any) on which such consent may in any case be given;
- (b) if, after inquiry, the ⁵[Provincial Government] is satisfied that the control or management exercised by or on behalf of the owner is such as causes grave injury to the property or health of persons owning lands in the vicinity;
- (c) in the event of any wilful and continuous breach of orders issued under section 39 of this Act.

¹. Subs. for "Local Government: by the A.O., 1937.

². Subs. for "Local Government: by the A.O., 1937.

³. Subs. for "Local Government: by the A.O., 1937.

⁴. Subs. for "Local Government: by the A.O., 1937.

⁵. Subs. for "Local Government: by the A.O., 1937.

(2) When the control or management, or both, of any canal is assumed under the provisions of sub-section (1) the ¹[Provincial Government] may exercise all or any of the rights and powers in regard thereto which, but for such assumption, the owner might lawfully have exercised, and may delegate such powers or any of them to any person, but Government shall, in the absence of any decree or agreement to the contrary, be liable to account, from time to time to such owner for the income and expenditure thereof and may at any time restore the canal to the owner.

37. When the control or management, or both, of a canal shall be assumed by the ²[Provincial Government] under clause (b) or clause (c) of sub-section (1) of section 36, and such control or management, shall have continued for a period exceeding six years, the owner thereof may, by notice in writing delivered to the Collector, require that the Government shall acquire such canal.

Right of owner upon such assumption, to demand that the canal shall be acquired by the Government.

38. On receipt of notice under section 37 the ³[Provincial Government] shall by notification declare that the said canal will be acquired after a day to be named in the said notification, not being earlier than three months from the date thereof and after the issue of such notification the Collector shall proceed as in sections 46 and 47 provided.

Power to acquire canal on demand of the owner.

39. The ⁴[Provincial Government] may, after inquiry through the Collector, in respect of any canal, issue orders as to all or any of the following things, namely:—

Power to fix the limits of irrigation and water-rates and to regulate the distribution of water.

- (a) fixing the limits within which land may be irrigated from such canal;
- (b) fixing, as it may deem equitable, the amount and character of the water-rates leviable by the owner, and the conditions on which such rates are to be paid, suspended, remitted or refunded;
- (c) regulating the supply and distribution of the water to and from such canal:

Provided that if any land which has been continuously irrigated from the canal for three years previously is deprived of irrigation, or the income of the canal owner from such canal is materially reduced by reason of any orders passed under this section, the owners of such land or the canal owner shall be, paid by Government or by such persons as Government may determine such compensation as the Collector may consider reasonable:

¹. Subs. for "Local Government: by the A.O., 1937.

². Subs. for "Local Government: by the A.O., 1937.

³. Subs. for "Local Government: by the A.O., 1937.

⁴. Subs. for "Local Government: by the A.O., 1937.

Provided further that, if the canal owner has in the opinion of the ¹[Provincial Government] exercised his powers as such in an arbitrary or inequitable manner, he shall not be entitled to compensation under this section.

40. (1) The ²[Provincial Government] may, at the request of the owner, undertake the collection of the water-rates leviable in respect of a canal for such period as may be agreed upon with him and may thereupon.

Collection, in certain cases, of water-rates of a canal by the ³(Provincial Government)

- (a) regulate such collection and determine the person by whom it shall be made;
- (b) direct that by way of payment for service rendered in making such collection, deductions shall be made not exceeding three per cent of the amount collected.

(2) During the period for which the ⁴[Provincial Government] has undertaken the collection of the water-rates leviable in respect of a canal, no suit for the recovery of any such rates shall be instituted.

CHAPTER—V.

PROVISIONS APPLICABLE TO ALL CANALS.

41. Save as otherwise hereinafter expressly provided, the provisions of this chapter shall be applicable to all canals, whether included under Schedule I or under Schedule II.

This Chapter, applicable to all canals.

42. Whenever, in respect of any canal, any question arises which has under this Act, or the rules made thereunder to be determined by the request, consent or decision of the owner, and the ownership of such canal is vested in more persons than one who are unable to agree as to such request, consent or decision, it shall be lawful to the Collector to act on behalf of the owner in any such matter, and the request, consent or decision of the Collector in any such case shall be binding upon every person who possesses any share in the ownership of such canal.

Consent or decision of the owner how to be determined

In every such case the Collector shall give due consideration to the wishes of the share-holder or share-holders who possess, the larger interest, and when the question is one whether the Government shall be required to take any action, the wishes of such shareholder or share-holders shall prevail and be accepted by the Collector.

43. (1) Save as provided in the preceding section, whenever a dispute

Settlement of

¹. Subs. for "Local Government: by the A.O., 1937.

². Subs. for "Local Government: by the A.O., 1937.

³. Subs. for "Local Government: by the A.O., 1937.

⁴. Subs. for "Local Government: by the A.O., 1937.

arises between two or more persons in regard to their mutual rights and liabilities in respect of the ownership, construction, use or maintenance of a canal or water-course, and any such person applies in writing to the Collector stating the matter in dispute, the Collector shall give notice to the other person or persons interested that on a day to be named in such notice or any such day to which the proceedings may be adjourned, he will proceed to inquire into the matter in dispute. disputes.

(2) Upon the day so named or any such subsequent day as aforesaid, the Collector shall proceed to hear and determine the dispute in the following manner, that is to say-

- (a) if the dispute relates to the ownership of a canal or the mutual rights of owners in the use of the water of such canal or the construction or maintenance of a canal or the payment of any share of the costs of such construction or maintenance or the distribution of the supply of water from a canal, the Collector shall proceed as a Revenue Court under the provisions of the ¹[Punjab Tenancy Act, 1887, and the provision of that Act, regarding appeals, revisions and the provision of that Act, regarding appeals, revisions and reviews shall be applicable.
- (b) If the dispute relates to a water-course the Collector shall hear and determine the case as a revenue-officer and shall, make such order thereon as to him seems fit, and such order shall unless set aside on appeal to the ²[Commissioner] be conclusive as to the use or distribution of water for any crop sown or growing at the date of such order. The order of the ³[Commissioner] on appeal shall in every such case be final.

44. (1) Any person who has obtained the permission of the ⁴[Provincial Government] to construct, or who owns a canal, may apply in writing to the Collector to take up any land required for the purpose of such canal. Acquisition of land for canal.

(2) If the Collector is of opinion that the application should be granted, he shall submit it, with his recommendation, for the orders of the ⁵[Provincial Government].

(3) If, in the opinion of the ⁶[Provincial Government] the application should, whether in whole or in part, be granted, it may declare that the land is required for a public purpose within the meaning of the ⁷Land Acquisition Act, 1894, and direct the necessary action to be taken thereunder.

¹. This Act. has been repealed to the Khyber Pakhtunkhwa by the Khyber Pakhtunkhwa Tenancy Act, 1950 (XXV of 1950).

². Subs. by W.P. Act XVI of 1957, s.3, (2) and Sch.II for the words "Revenue Commissioner" which were to be read for the original words "Commissioner" by Notification No. 1895-G-IX-B-2, dated 1st July, 1926, Gazette, dated 23rd July, 1926 Pt. 1-A, Pp. 745-750.

³. Subs. by W.P. Act XVI of 1957, s.3, (2) and Sch.II for the words "Revenue Commissioner" which were to be read for the original words "Commissioner" by Notification No. 1895-G-IX-B-2, dated 1st July, 1926, Gazette, dated 23rd July, 1926 Pt. 1-A, Pp. 745-750.

⁴. Subs. for "Local Government: by the A.O., 1937.

⁵. Subs. for "Local Government: by the A.O., 1937.

⁶. Subs. for "Local Government: by the A.O., 1937.

⁷. Pakistan Code, Vol. III.

45. Whenever it appears to the ¹[Provincial Government] expedient in the public interest to acquire any canal, the ²[Provincial Government] may be notification declare that the said canal will be acquired after a day to be named in the said notification, not being earlier than six months from the date thereof. Power to acquire canal by consent or otherwise.
46. As soon as practicable after the issue of such notification the Collector shall cause public notice to be given at convenient places stating that the ³[Provincial Government] intends to acquire the said canal as aforesaid and that claims for compensation in respect of the acquisition thereof may be made before him. Notice as to claims for compensation.
47. (1) The Collector shall proceed to inquire into any such claim and to determine the amount of compensation which should be given to the claimant. In assessing such compensation the Collector shall proceed as provided in section 55, but for the purposes of this section he shall also have regard to the history of the canal, the expenditure incurred thereon and profits of the owner. Inquiry into claims.
- (2) No claim for compensation shall be enforceable after the expiration of one year from the date of the notice under section 46, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period. Limitation of claims.
48. (1) The ⁴[Provincial Government] shall by notification declare the day on which a canal has been acquired by it. Vesting of canal in ⁵[Government].
- (2) Subject to the award of compensation to the owner or person interested in the said canal, when the ⁶[Provincial Government] acquires a canal.-
- (a) the right, title and interest therein, of the owner thereof shall forthwith cease and determine;
- (b) such canal, subject to any rights to take water for irrigation which any person may have, shall forthwith vest in, and be the absolute property of, the ⁷[Provincial Government].
49. The ⁸[Provincial Government] may, by notification published in the Official Gazettee, take power to regulate the flow of water in any river, creek, natural channel or line of natural drainage whether by the contraction or removal of work or otherwise, and whenever it appears to such Government, after inquiry through the Collector that the supply of water to a canal or the cultivation of any land or the public health or public Power to regulate flow of water in rivers, creeks, natural channels or lines of natural drainage and to prohibit therein or order removal there

¹. Subs. for "Local Government: by the A.O., 1937.

². Subs. for "Local Government: by the A.O., 1937.

³. Subs. for "Local Government: by the A.O., 1937.

⁴. Subs. for "Local Government: by the A.O., 1937.

⁵. Subs. for the words "Crown" by W.P. Laws (Adaptation) Order, 1964.

⁶. Subs. for "Local Government: by the A.O., 1937.

⁷. Subs. for "Local Government: by the A.O., 1937.

⁸. Subs. for "Local Government: by the A.O., 1937.

convenience is likely to be injuriously affected by the obstruction of any river, creek, natural channel or line of natural drainage it may by notification published as aforesaid, prohibit within the limits to be defined by such notification the formation of such obstruction, or may within such limits order the removal or other modification of such obstruction.

from of obstructions.

50. (1) The Collector may, after such publication, issue an order to the person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in the order.

Power to remove obstruction after publication of notification, and payment of compensation.

(2) The Collector may himself remove or modify the obstruction-

- (a) if the person to whom the order under sub-section (1) was issued fails to comply with that order within the time so fixed; and
- (b) in any case where the obstruction is not caused or controlled by any person.

(3) The Collector shall determine from whom the cost of removing or modifying the obstruction shall be recovered, and the amount of compensation due to any person injuriously affected by the removal or modification of the obstruction and the person by whom such compensation shall be payable:

Provided that no compensation shall be awarded for an advantage obtained by an arbitrary or inequitable course of action.

51. When the ¹[Provincial Government] has by notification as provided in section 49 taken power to regulate the flow of water in any river, creek or natural channel or line of natural drainage it may authorize the Collector to exercise such power on its behalf in accordance with such rules as it may prescribe. A Collector so authorised may in the execution of such rules exercise all the powers conferred upon him by section 50, and his authority shall include the power to take such action as the ¹[Provincial Government] is empowered by section 49 to take after inquiry through the Collector. Such authority may on every occasion be exercised without the publication of any further notification in the ²[Official Gazette.]

Power of the Collector to regulate flow of water and prohibit or remove obstructions.

52. (1) The Collector may, at any time, order the owner of any canal under Schedule II to-

Powers as to the construction and maintenance of works in respect of canals under Schedule II.

- (a) repair and maintain, in a proper state all or any embankments, protective works, reservoirs, channels, water-courses, sluices, outlets and other works connected with the canal;

¹. Subs. for "Local Government: by the A.O., 1937.

². Subs. ibid for the word "Gazette".

- (b) construct, repair and maintain in a proper state, a suitable bridge, culvert, or similar work at any place across, under, or over the canal for the purpose of providing communication with any public road or thoroughfare which was in use before the canal was made;
- (c) construct, repair and maintain, in a proper state, suitable works for the passage of the water of the canal across, under, or over any public road or thoroughfare or any canal or drainage or channel which was in use before the canal was made:
- (d) construct, repair and maintain, in a proper state, a suitable regulator at or near the head of the canal where, for want of such regulator, an excessive supply of water may enter the canal or cause damage to it, or any crops, land, roads or property in the neighborhood;

“Canal” as used in this sub-section does not include “water-course”.

(2) The Collector may at any time order the owner of a water-course to perform in respect of such water-course all or any of the acts which he may under sub-section (1) order the owner of a canal to perform in respect of the canal, and may direct the owner of the canal to cease supplying water to the water-course till the owner of the water course has water complied with the order.

(3) Every order under sub-section (1) and (2) shall be in writing, and shall specify a reasonable time within which the works or repairs mentioned therein shall be completely executed.

(4) If any order made under this section is not obeyed, to the satisfaction of the Collector, within the time therein specified, the Collector may himself execute or complete the execution of or cause to be so executed or completed, all works or repairs specified in the order.

53. In the case of canals included under Schedule I, the Collector may-

- (a) call upon the irrigators to discharge any of the liabilities specified in section 52, sub-section (1) which the ¹[Provincial Government] may have declared to attach to the irrigators from such canal or group of canals; or
- (b) himself arrange for the performance of such acts and recover the cost as provided in section 57.

Power as to construction and maintenance of works in respect of canals under Schedule I.

54. (1) If any new work is immediately required to prevent serious

Power to take

¹. Subs. for “Local Government: by the A.O., 1937.

detriment, to the utility of a canal, the Collector may, notwithstanding anything in the ¹[Land Acquisition Act, 1894, take immediate possession of any land required for the construction of the work.

possession and to construct works in cases of emergency.

(2) When the Collector has taken possession of any land under sub-section (1) he shall, upon application made to him in this behalf, assess and pay compensation under section 55.

(3) In the event of sudden and serious damage or urgent risk to a canal or to property, situate in the immediate neighborhood thereof, or to irrigation carried on therefrom, or to the public traffic, the Collector may, after giving previous notice, execute or cause to be executed such works as he may think necessary in order to remedy or prevent such damage or risk, and may require any irrigator to furnish such labour as to the said Collector may seem reasonable and necessary for the immediate execution of such works.

(4) Labour furnished under this section shall be paid for at the local market rate.

(5) An order passed under sub-section (3) and (4) shall be final.

55. ²[(1) In assessing the amount of the compensation to be paid under any section of this Act, the Collector shall give due weight to the local custom, if any, in regard to such compensation entered in the record of rights prepared or revised under section 28.

Assessment of compensation.

(2) In assessing the amount of compensation to be paid under any section of this Act, other than sections 12,14,21,39 and 50, the Collector shall proceed under the provisions of the ³Land Acquisition Act, 1894, and the provisions of that Act, regarding inquiries and award by the Collector, references to the Civil Court and procedure thereon, apportionment of compensation, payment and appeals, shall, as far as may be, applicable to all proceedings under this section.

56. With the consent of the parties, the Collector may, when assessing the amount of compensation to be paid, direct, in the case of an acquisition of land, that the property in such land shall remain with the owner subject to a right of user so long as the land is required for the purpose of the canal or water-course, compensation being awarded for the right of user only, or in the case of an acquisition of a canal, or of land for the purposes of a canal, that the compensation shall take the form in whole or in part of a right to a supply of water from the canal which has been acquired or the purposes of which land has been acquired.

Compensation for right of user or in the form of a supply of water.

57. (1) when any land is acquired under the provisions of section 44, or when any work is executed by or under the orders of the Collector

Apportionment and recovery of the cost

¹. Pakistan Code, volume III.

².Subs. in the Khyber Pakhtunkhwa for the old section 55 by notification No. 1895-G-IX-B-2, dated 1st July, 1926, Khyber Pakhtunkhwa Gazettee, 1926, Pt. I-A., P. 745.

³.Pakistan Code, volume III.

under the provisions of section 50, section 52, section 53, or section 54, the cost of acquiring such land or of executing such work, as the case may be, shall be recoverable- of land acquired or works executed.

- (a) if the canal is included under Schedule II, from the owner thereof; or
- (b) if the canal is included under Schedule I, from the irrigators or such of them as are, in the opinion of the Collector, benefited or likely to be benefited by the acquisition or equitable liable for the whole or any part of the cost of executing the work or from the proceeds of any water-rate levied under section 29; and
- (c) if such appropriation is not contrary to the provisions of the record-of-rights specified in section 28 of this Act, for the land referred to in section 27 of this Act.

(2) When the cost of acquiring any land or of executing any work is, under the provisions of sub-section (1), recoverable from the owner of any canal or from the irrigators therefrom, or any of them, it shall be lawful for the Collector to apportion such cost as to him may seem equitable, among all or any of the persons liable for the whole or any portion thereof and such apportionment shall be final.

(3) When the cost of acquiring such land has been paid, such land, if acquired in full proprietary right, shall become the property of the canal owner.

58. The ¹[Provincial Government] may by, general or special ²order prohibit or regulate the construction of new and regulate the use of existing, mills upon canal, and the appropriation of the water of canal for working mills. Power to regulate mills.

59. Except in so far as a contrary intention is expressed, sections 13 to 16 (both inclusive) of the ³Punjab Land Revenue Act of 1887 shall apply to all proceedings under this Act. Application of certain provisions of West Pakistan Land Revenue Act, 1967.

60. Save as in section 55 provided, no Civil Court shall have jurisdiction in any matter which a Revenue officer or Revenue Court is empowered by this Act to dispose of or take cognizance of the manner in which the ⁴[Provincial Government] or any Revenue officer or Revenue Officer or Revenue Court exercises any powers vested in it or him by or under this Act. Exclusion of jurisdiction of Civil Court except under Land Acquisition Act.

¹. Subs. for "Local Government: by the A.O., 1937.

². In the Khyber Pakhtunkhwa for Orders, see Notification No. 3424, dated 26th July, 1907, Gazettee of India, 1907, Pt II, P.1188.

³. Rep. by the W.P. Act XVII of 1967, s. 184 (1), Sch, pt. 1.

⁴. Subs. for "Local Government: by the A.O., 1937.

61. (1) The ¹[Provincial Government] may appoint any ²[authority] or person or any class of officials to perform any functions or to exercise any powers, by this Act, or the rules made there under conferred on or vested in the Collector, ³[Commissioner], ⁴[Commissioner] or such Government.

Power to appoint officers to exercise functions under this Act.

(2) Such appointment may be made in respect of any canal or of all or any of the canals, situate within any specified local area.

(3) In all matters connected with this Act, the ⁵[Provincial Government] shall have and exercise over the ⁶[Commissioner] the ⁷[Commissioner and the Collector], and the ⁸[Commissioner] shall have and exercise over the ⁹[Commissioner and the Collector and the ¹⁰[Commissioner] shall have and exercise over the Collector, the same authority and control as it or they respectively have and exercise over them in the general and revenue Administration.

62. For the purposes of every inquiry made and proceeding taken under this Act, the Collector or any other Revenue Officer authorised by him in this behalf shall have power to summon and enforce the attendance of and examine parties and witnesses and compel the production of documents and for all or any of these purposes may exercise all or any of the powers conferred on a Civil Court by the ¹¹Code of Civil Procedure, 1882, and every such inquiry shall for the purposes of the ¹²Indian Penal Code, be deemed to be a judicial proceeding.

Powers of Collector in certain proceedings under the Act.

63. In all cases under section 6,8,11,21,23,25,30,31,34,36,38,39,40, 42,43,47,49,50,52,53 and 57 of this Act, the owners and other parties interested in the canal shall be given an opportunity of appearing before the Collector and of showing cause to the contrary.

Permission to owners and parties interested in any canal to object in certain cases.

64. Every summons, notice, proclamation and other process issued under this Act, shall, as far as may be, be served or made in the manner

Mode of serving notices and making

¹. Subs. for "Local Government: by the A.O., 1937.

². Ins by Khyber Pakhtunkhwa Ord. No. V of 1980.

³. Subs. by W.P. Act XVI of 1957, s.3 (2), Sch. II, for the words "Revenue Commissioner" which were to be read the word "Commissioner" by Notification No. 1895-G-IX-B-2, dated 1st July, 1926, Khyber Pakhtunkhwa Gazettee, 1926, Pt. I.A., p. 745. 700

⁴. Subs. by W.P. Act XVI of 1957, s.3 (2), Sch. II, for the words "Revenue Commissioner" which were to be read the word "Commissioner" by Notification No. 1895-G-IX-B-2, dated 1st July, 1926, Khyber Pakhtunkhwa Gazettee, 1926, Pt. I.A., p. 745.

⁵. Subs. for "Local Government: by the A.O., 1937.

⁶. Subs. by W.P. Act XVI of 1957, s.3 (2), Sch. II, for the words "Revenue Commissioner" which were to be read the word "Commissioner" by Notification No. 1895-G-IX-B-2, dated 1st July, 1926, Khyber Pakhtunkhwa Gazettee, 1926, Pt. I.A., p. 745

⁷. Subs. by W.P. Act XVI of 1957, s.3 (2), Sch. II, for the words "Revenue Commissioner" which were to be read the word "Commissioner" by Notification No. 1895-G-IX-B-2, dated 1st July, 1926, Khyber Pakhtunkhwa Gazettee, 1926, Pt. I.A., p. 745. 700.

⁸. Subs. by W.P. Act XVI of 1957, s.3 (2), Sch. II, for the words "Revenue Commissioner" which were to be read the word "Commissioner" by Notification No. 1895-G-IX-B-2, dated 1st July, 1926, Khyber Pakhtunkhwa Gazettee, 1926, Pt. I.A., p. 745

⁹. Subs. by W.P. Act XVI of 1957, s.3 (2), Sch. II, for the words "Revenue Commissioner" which were to be read the word "Commissioner" by Notification No. 1895-G-IX-B-2, dated 1st July, 1926, Khyber Pakhtunkhwa Gazettee, 1926, Pt. I.A., p. 745

¹⁰. Subs. by W.P. Act XVI of 1957, s.3 (2), Sch. II, for the words "Revenue Commissioner" which were to be read the word "Commissioner" by Notification No. 1895-G-IX-B-2, dated 1st July, 1926, Khyber Pakhtunkhwa Gazettee, 1926, Pt. I.A., p. 745

¹¹. See now the Code of Civil Procedure, 1908 (V of 1908), Pakistan Code: Volume V.

¹². Now the Pakistan Penal Code, Pakistan Code, Volume-I.

provided in that behalf in section 20,21 and 22 of the ¹Punjab Land Revenue Act, 1887. proclamations.

65. Save as otherwise expressly provided in this Act, no person shall be entitled to recover any compensation for anything at any time done in good faith intended to be done in exercise of any power conferred by this Act or by the rules made thereunder. Bar of compensation where not expressly allowed.

66. No suit, prosecution or other legal proceeding shall lie against any person for anything done, or in good faith intended to be done under this Act or the rules made thereunder. Protection of persons acting under the Act.

67. (1) In any suit or proceeding in which an entry made in any record prepared under section 28 or section 35 is directly or indirectly called in question, the Court shall, before the final settlement of issues, give notice of the suit or proceeding to the Collector and, if moved to do so by the Collector, shall make the ²[Provincial Government] party to the same. Government to be party to certain suits and proceedings.

(2) Save as provided in sub-section (1) no suit shall lie against the ³[Provincial Government] in respect of anything done by the Collector or by any person acting under the order of the ⁴[Provincial Government] in the exercise of any power by this Act conferred on such Collector or the ⁵[Provincial Government]. Bar of other suits against ⁶[Provincial Government].

68. All water-dues, water-rates, and other payments at any time due by or to be collected from any person under any provision of this Act or under an agreement entered into by the owners of the canal or the person irrigating from it and all arrears of such water-due, water-rates or other payments shall be recoverable as if the same were arrears of land-revenue. Power to recover water-dues, water-rates and other charges by revenue process.

69. Any or all of the powers exercisable by the ⁷[Provincial Government] under this Act, in respect of any canal, river, or creek, may be exercised by such Government in case of any canal, river, or creek, which is or may at any time be situate partly within and partly without the limits of the ⁸[Khyber Pakhtunkhwa] and in respect of so much of any such canal, river or creek, as is within those limits, and in the case of any such canal, river, or creek the ⁹[Provincial Government] may by notification, and notwithstanding the provisions of section 2, declare what section of this Act shall be applicable thereto. Powers as regards canals, creeks, situate partly without the limits of the ⁶[Khyber Pakhtunkhwa].

70. In respect of any canal situate beyond the limits of the ¹⁰[Khyber Pakhtunkhwa] the ¹¹[Provincial Government] may, by notification Powers exercisable in cases of urgency with regard to canals

¹. Rep. by W.P. Act, XVII of 1967, s. 184 (1), Sch Pt. 1.

². Subs. for words "Secretary of State for India in Council" by A.O., 1937.

³. The original words "against the Government" were amended to read as "against the Crown" by A.O., 1937.

⁴. The word "Crown" amended to read as "Provincial Government" by W.P. A.O., 1964.

⁵. Subs. for the word "Local Government" by the A.O., 1937.

⁶. The word "Crown" amended to read as "Provincial Government" by W.P. A.O., 1964.

⁷. The word "Crown" amended to read as "Provincial Government" by W.P. A.O., 1964.

⁸. Subs. vide the Khyber Pakhtunkhwa Act, IV of 2011.

⁹. Subs. for the words "Local Government" by the A.O., 1937.

¹⁰. Subs. vide the Khyber Pakhtunkhwa Act, IV of 2011.

¹¹. Subs. for "Local Government" by the A.O., 1937.

published in the official Gazettee, declare that the powers exercisable by a Collector under section 54 may under the circumstance there specified be exercised by the Collector or other authorised officer within the limits of the ¹[Khyber Pakhtunkhwa] for all or any of the purposes of such canal. ²situate beyond the [Khyber Pakhtunkhwa].

71. Whoever without proper authority and voluntarily does any of the following acts, that is to say:- Offences under the Act.

- (1) damages, alters, enlarges, or obstructs any canal;
- (2) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under any canal;
- (3) interferes with or alters the flow of water in any river, creek, or stream so as to endanger, damage or render less useful any canal;
- (4) being responsible for the maintenance of any water-course or using a water-course, neglects to take proper precaution for the prevention of waste of the water thereof, or interferes with the authorised distribution of the water therefrom or uses such water in an unauthorized manner;
- (5) corrupts or fouls the water of any canal so as to render it less fit for the purposes for the which it is ordinarily used;
- (6) being liable to furnish labour under this Act, fails, without reasonable causes, to supply or to assist in supplying the labour required of him;
- (7) being liable to supply labour under this Act, neglects, without reasonable cause, so to supply and to continue to supply labour;
- (8) destroys or removes any level-mark or water gauge fixed by the authority of a public servant;
- (9) passes or causes animals or vehicles to pass on or across any of the works, banks or channels of a canal contrary to rules made under this Act after he has been desired to desist there from;
- (10) disobeys any order or proclamation issued under this Act, or commits any breach of any rule made thereunder;

¹. Subs. vide the Khyber Pakhtunkhwa Act, IV of 2011.

². Subs. vide the Khyber Pakhtunkhwa Act, IV of 2011.

shall be liable on conviction before a Magistrate of such class as the ¹[Provincial Government] directs in this behalf, to ²[imprisonment of either description not exceeding one year or to fine or to both]:

³[Provided that if the person committing such act or neglecting to take such precaution as is referred to in clauses (I) to (4) is not apprehended on the spot and cannot be indentified otherwise, the person on whose land water has flowed as a result of such act or neglect shall, if his land has derived benefit therefrom, be deemed, until the contrary is proved, to have committed such act or failed to take such precautions:

Provided further that the above proviso shall not apply in cases of Rod Kohi System of irrigation in the Dera Ismail Khan District.

Explanation-The person mentioned in the first proviso, shall, where the land is owned by a minor or women, include any adult male who may be incharge of the land on behalf of such minor or women].

⁴[71-A. Any Magistrate empowered for the time being to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898, may try, in accordance with the provisions contained in section 262 to 265 of the said Code, any offence punishable under this Act.]

Procedure in trial of cases under Act III of 1905.

72. Any person incharge of or employed upon any canal managed by ⁵[Servant of the State] or by a ⁶[District Council] may remove from the lands or building belonging thereto, or may take into custody without a warrant, and take forthwith before a Magistrate, or to the nearest police station to be dealt with according to law any person who, within his view, commits any o the following offences:-

Power to arrest without a warrant.

- (1) willfully damages or obstructs any canal.
- (2) without proper authority interferes with the supply of, for flow of water in or from any canal or in any river or stream, so as to endanger, damage or render less useful any canal.

73. In section 71 and 72 the word canal shall (unless there be something repugnant in the subject or context) be deemed to include also all lands occupied for the purposes of canals and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce upon such lands.

Definition of canal for purposes of section 71 and 72.

¹. Subs. for "Local Government: by the A.O., 1937.

². Subs. for the words "of fine not exceeding fifty rupees or to imprisonment not exceeding one month or to both" by Khyber Pakhtunkhwa Act XII, of 1948, s.2(1).

³. Added, *ibid*, s 2 (2).

⁴. *Ins. Ibid*, s. 3.

⁵. Subs. for the words "Crown" by W.P. Laws (Adaptation) Order, 1964, which were previously subs. for the words "Servants of the Crown" by A.O., 1937.

⁶. Subs. Khyber Pakhtunkhwa, Ord. No. V of 1980.

74. (1) The ¹[Provincial Government] may, make rules, consistent with this Act, regulating any matter in regard to which any power is, by this Act, conferred upon the ²[Provincial Government] or upon any servant of the State ³[or upon any person or authority] and generally to carry out the purposes of this Act. Power to make rules.

(2) Without prejudice to the generality of the power conferred by sub-section (1), rules made under this Act, may provide for the levy of a rate imposed upon land in consideration of its protection from sand or flood.

(3) All rules made under section (1) shall be so made after previous publication in the Gazette.

⁴[75. The Peshawar Canals Regulation (1898) is hereby repealed].

¹. Subs. for "Local Government: by the A.O., 1937.

². Subs. for "Local Government: by the A.O., 1937.

³. Subs. for "Local Government: by the A.O., 1937.

⁴. Added by the Khyber Pakhtunkhwa by Notification No. 1895-G-IX-B-2, dated 1st July, 1926. Khyber Pakhtunkhwa Gazette, 1926, pt. I-A., p.745.

¹SCHEDULE I.

Canal	Hazara.
Nil	.. Hazara
The Michni Dalazak Canal	..
The Doaba Feeder	.. Peshawar
The Bara Canals, including the Band Miana Channels	..
The Joi Sheikh	..
The Joi Zardad	..
The Joi Mamum	..
The Joi Emanzai	..
The Joi Bazid Khel	..
The Joi Mandakzai	..
The Joi Beri Wala	..
The Joi Palosa	..
The Joi Zormandi	..
The Joi Zardadi	..
The Joi Babal	..
The Joi Sarkhana	..
The Joi Nilawi	..
The Joi Jabhari	..
The Joi Marwari	.. Peshawar- Contd:
The Joi Sougher Jabbi	..
The Joi Katiala	..
The Joi Babujan	..
The Joi Marghalra	..
The Joi Loewala	..
The Joi Ishara	..
The Joi Katiala Nao	..
The Joi Shakarpura	..
The Joi Bindyala	..
The Joi Ayas	..
The Joi Ichri	..
The Joi Karam Bela	..
The Joi Muri	..
The Joi Sam Kana	..
The Joi Landi	..
The Joi Irab	..
The Joi Yarghajo	..
The Joi Bachozo	..
The Joi Kandara	..
The Joi Tandi	..
The Area Sheikh Kili Canal	..
The Charpariza Minor	..
The Abazai Canal	..
The Charpariza Main Canal	..
The Joi Kal	..

¹. Subs. for the original Schedules I and II by Notification No. 1895-G-IX-B-2, dated 1st July, 1926, Khyber Pakhtunkhwa Gazette 1926, Khyber Pakhtunkhwa Gazette 1926, Pt. I-A., p. 745.

Canal	District
The Joi Vatai	..
The Joi Gorkai	..
The Joi Chalagram	..
The Joi Lalwai or Jura	..
The Joi Watai	..
The Joi Doba	..
The Joi Landakai	..
The Joi Vargai	..
The Joi Kalandher	..
The Joi Kare Khara	..
The Joi Shahi	..
The Joi Sarzaba	..
The Joi Chilgazai	..
The Khaista Killi	..
Gilji Kandar Khel Canal	..
Melugan Bhattian Canal	..
Gulbela Canal	..
Kohat Joi and Canals dependent on it	.. Kohat
Kohat springs and canals dependent on them	..
Kachkot Canal	..
Landidak Canal	..
Kharri Waziran	..
Petanna Mohammad Khel	..
Dodiwala	.. Bannu.
Shah Joya	..
Mandan	..
Fatma Khel	..
Nagram and Kharoba hill torrents	..
Bahadur Sher or Lashtai Kos	..
Khatri Basya Khel	..
Dhand	..
Dhand	..
Hinjal And Barra	..
Chashana and Khunbaha	..
Kot Daim	..
Mardi Khel	..
Kati Sadat	..
Shamshi Khel	.. Kurram Canals
Kuti Walla	..
Kam Walla	..
Kam Welo	..
Mirmali	..
Kas Welo	..
Mitha Welo	..
Landi Welo	..
Mama Khel	..
	.. Bannu.

HILL TORRENTS.

Rod Largai (and its small tributaries)	..	} .. Dera Ismail Khan.
Rod Tarkhoba	..	
Rod Pezu (and its small tributaries)	..	
Rod Soheli (and its small tributaries)	..	
Rod Takwara (with includes both its Zam and Shuza branches and also all small distributary streams which join it.	..	
Nala Asphari	..	
Zam Tank (including Rod Sidgi, Rod Choha, Rod Lohra and Rod Pir Kachh).	..	
Rod Kiriani	..	
Rod Kaur	..	
Zam gomal (including the Khan Wand Canal and Nala Waran and Nali Kalabani Dera).	..	
Nala Kot Azam (including Nala Gomal, Nala Naskor, Bolton Wah and Crosthwaite Wah).	..	} Dear Ismail Khan
Luni	..	
Rod Sawan	..	
Zam Daraban (including Rod Toya, Kaura, Rod Lohri and Rod Gud and Deane Wah).	..	
Zam Zarkanni	..	
Zam Chandwan (including Rod Kaurs, Rod Tarkhoha and Wabri.	..	
Rod Gajistan	..	
Rod Sharan	..	
Rod Ramak	..	
Paharpur Canal	..	
CREEKS.		
Kas Chura	..	} ..
Nala Puran	..	
Kas Said Alian	..	
Kas Tucker Wab	..	

SCHEDULE-II.

The Dor Canals	..	}	Hazara
The Siran Canals	..		
The Harroh Canals	..		
The Kunhar Canals	..		
<i>Note:-</i> These include canals from affluents of the five rivers.		}	Hazara
The Kalpani and its affluents, viz, Bagiara.			
Murdara, Makam and Balar	..	}	Peshawar
The Gaddar	.. Hil torrents or springs.		
The Badrai	..		
Rashida	..		
The Zindai	..		
The Matani Wala	..		
The Adezai Wala	..		
The Yusaf Khel Wala	..		
The Miriamzai Kathas	..		
The Sham Shattu Khwar	..		
The Aza Khel Khwar	..Hill torrents or springs.		
The Pasanni Jaba Wala	..		
The Charpariza Drain (Irab-i-Kalan) And its Affluent.	..		
Kurram River Canal	..		
Ishkalai	..		
Ghurbin	..	}	Kohat
Changes Algad	..		
Lawaghar Algad	..		
Khushai or tharka Algad	..		
Hangu	..	}	Kohat.
Naryab	..		
Darsamand	..		
Khawaja Ashraf	..		
Khawaja Khizar	..		
Chili China	..		
Khadezai	..		
Dowana	..		
Dhoda	..		
Banda Mansam Khan	..		
Gada Khel	..		
Darmalak	..		
The Lohra or Baran Canals	..		

The tochi Canals	..	} Hill Torrents	}	Bannu-contd.
Kashu	..			
Baragnathu	..			
Khaisora	..			
Shaktu	..			
Chal	..			
Kach Waziristan Mohammad Khel	..			
Garwa Sirkati Michan Khel	..			
Landidak Sirkati Michan Khel	..			
Gultali Mir Azam Michan Khel	..			
Pinjama Mir Azam Michan Khel	..	} Krram Canals		
Kotka Mir Azam Michan Khel	..			
Chulga Mir Azam Michan Khel	..	}		
Daddiwalla	..			
Dabwali Daddiwala	..			
Darazinda Atshi Michan Khel	..			
Gagi Atshi Michan Khel	..			
Bandi Khana Pahar Khel	..			
Sarguna Pahar Khel	..			