

THE CANAL AND DRAINAGE ACT, 1873.

(Act VIII Of 1873)

CONTENTS

PART I

PRELIMINARY

SECTIONS

1. Short title.
Local extent.
2. [*Repealed.*]
3. Interpretation clause.
4. Power to appoint officers.

PART II

OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES.

5. Notification to issue when water-supply is to be applied for public purposes.
6. Powers of Canal-officers.
7. Notice as to claims for compensation.
8. Damage for which compensation shall not be awarded.
Matters in respect of which compensation may be awarded.
9. Limitation of claims.
10. Enquiry into claims and amount of compensation.
11. Abatement of rent on interruption of water-supply.
12. Enhancement of rent on restoration of water-supply.
13. Compensation when due.
Interest.

PART III

OF THE CONSTRUCTION AND MAINTENANCE OF WORKS.

14. Power to enter and survey, etc.

Power to clear land.

Power to inspect and regulate water-supply.

Notice of intended entry into houses.

Compensation for damage caused by entry.

SECTIONS

15. Power to enter for repairs and to prevent accidents.
Compensation for damage to land.
16. Application by persons desiring to use canal-water.
Contents of application.
Liability of applicants for cost of works.
Recovery of amount due.
17. Government to provide means of crossing canals.
18. Persons using water-course to construct works for passes water across roads, etc.

If they fail Canal-officer may construct, and recover cost.
19. Adjustment of claims between persons jointly using water course.
Recovery of amount found due.
20. Supply of water through intervening water-course.
21. Application for construction of new water-course.
22. Procedure of Canal-officer thereupon.
23. Application for transfer of existing water-course Procedure thereupon.
24. Objections to construction or transfer applied for.
25. When applicant may be placed in occupation.
26. Procedure when objection is held valid.
27. Procedure when Canal-officer disagrees with Collector.
28. Expenses to be paid by applicant before receiving occupation. Procedure in fixing compensation.
Recovery of compensation and expenses.
29. Conditions binding on applicant placed in occupation.
30. Procedure applicable to occupation for extensions and alterations.

SECTIONS

PART IV OF THE SUPPLY OF WATER

31. In absence of written contract, water-supply to be subject to rules.
32. Conditions as to supply—
 - power to stop water-supply ;
 - claims to compensation in case of failure or stoppage of supply ;
 - claims on account of interruption from other causes ;
 - duration of supply ;
 - sale or subletting of right to use canal water ;
 - transfer, with land, of contracts for water.No right acquired by user.

PART V OF WATER-RATES

33. Liability when person using unauthorisedly cannot be identified.
34. Liability when water runs to waste.
35. Charges recoverable in addition to penalties.
 - Decision of questions under sections 33 and 34.
36. Charge on occupier for water, how determined.
 - "Occupier's rate."
37. "Owner's rate ".
38. Amount of owner's rate.
39. Owner's rate, when not chargeable.
40. When occupier is to pay both owner's rate and occupier's rate.
41. Power to make rules for apportioning owner's rate.
42. When owner is to pay owner's rate.

SECTIONS

- 43. Effect of introduction of canal irrigation on landlord's right to enhance.
- 44. Water-rate by whom payable when charged on land held by several owners.

RECOVERY OF CHARGES.

- 45. Certified dues recoverable as land-revenue.
- 46. Power to contract for collection of canal-dues.
- 47. Lambardars may be required to collect canal-dues.
- 48. Fines excluded from sections 45,46, 47.

49. Detainer of vessels violating rules.
Liability of owners of vessels causing damage.
50. Recovery of fines for offences in navigating canals.
51. Power to seize and detain vessel on failure to pay charges.
52. Power to seize cargo or goods, if charges due thereon not paid.
53. Procedure for recovery of such charges after seizure.
54. Procedure in respect of vessels abandoned and goods claimed.
Disposal of proceeds of sale.

55. Power to prohibit obstructions or order their removal.
56. Power to remove obstructions after prohibition.
57. Preparation of schemes for works of improvement.
58. Powers of persons employed on such schemes.
59. Rate on lands benefited by works.
60. Recovery of rate.
61. Disposal of claims to compensation.
62. Limitation of such claims.

63. Definition of "labourer".

64. Power to prescribe number of labourers to be supplied by persons benefited by canal.

SECTIONS

- 65. Procedure for obtaining labour for works urgently required.
- 66. Liability of labourers under requisition.

PART IX

OF JURISDICTION

- 67. Jurisdiction under this Act of Civil Courts.
- 68. Settlement of differences as to mutual rights and liabilities of persons interested in water-course.
- 69. Power to summon and examine witnesses.

PART X.

OF OFFENCES AND PENALTIES

- 70. Offences under Act.
Penalty.
- 71. Saving of prosecution under other laws.
- 72. Compensation to person injured.
- 73. Power to arrest without warrant.
- 74. Definition of "canal".

PART XI

OF SUBSIDIARY RULES

- 75. Power to make, alter and cancel rules.
Publication of rules.

SCHEDULE .—[Repealed.]
Act No. VIII of 1873

THE CANAL AND DRAINAGE ACT, 1873.

¹[Act VIII of 1873]

[11th February, 1873]

An Act to regulate Irrigation, Navigation and Drainage ²[* *]

WHEREAS, throughout the territories to which this Act extends ³[the Provincial Government] is entitled to use and control for public purposes the water of all rivers and streams flowing in natural channels, and of all lakes, ⁴[sub-soil water] and other natural collections of still water, and whereas it is expedient to amend the law relating to irrigation, navigation and drainage in the said territories;

Preamble.

It is hereby enacted as follows:—

PART I

PRELIMINARY

1. This Act may be called the ⁵[* * *]Canal and Drainage Act, Short title.
1873.

It extends to ⁶[the Punjab]; and applies to all lands, whether Local extent.
permanently settled, temporarily settled, or free from revenue.

⁷[* * * * *]

2. [Repeal of Acts.] Rep by the Repealing Act, 1873 (XII of 1873),
s.1 and Sch., Pt. II.

¹ For Statement of objects and reasons, see Gazette of India 1870 Pt. V- P. 651. for Reports of Select Committee, see ibid, p. 747 and ibid, Supplement 1873, p. 223, for Proceedings in Council, see ibid, Supplement, pp. 919 and 1031, ibid, 1873, Supplement, pp. 154,156,223,246 and 279.

The Act, as in force in the Khyber Pakhtunkhwa immediately before commencement of the Khyber Pakhtunkhwa Regulation No. 11 of 1974, has been applied to the Provincially Administered Tribal Areas of Chitral, Dir, Kalam, Swat and Malakand Protected Area, by Khyber Pakhtunkhwa., Regulation, No. 11 of 1974, S. 3.

This Act has been repealed in its application to the Province of Baluchistan, by Baluchistan Ordinance No. XX of 1980, S. 73

² The words "Northern India" omitted by A. O., 1949.

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

⁴ Ins. by W. P. Ord. XXIII of 1965.

⁵ The words "Northern India" omitted by A. O., 1949

⁶ Subs, by the Federal Leased (Revision and Declaration) Act, 1951 (XXVI of 1951), subs. for "West Punjab" which had been subs, by A. O., 1949, Sch. for "the territories [which on the 11th February, 1873, were] respectively under the Government of the Lieutenant-Governors of the North-Western Provinces and the Punjab and under the Administration of the Chief Commissioners of Oudh and the Central Provinces." The bracketted words were sub-by A. O., 1937, "for the time being".

⁷ Commencement clause rep. by the Repealing Act, 1874 (X of 1874).

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

Interpretation clause.

(1) "Canal" includes,—

(a) All canals, channels, ¹[tube-wells] and reservoirs constructed, maintained or controlled by ²[the Provincial Government] for the supply or storage of water;

"Canal".

(b) all works, embankments, structures, supply and escape-channels connected with such canals, channels or reservoirs;

(c) all water-courses as defined in the second-clause of this section ;

(d) all parts of a river, stream, lake or natural collection of water or natural drainage-channel, to which the ³[Provincial Government] has applied the provision of Part II of this Act;

(2) "water-course" means any channel which is supplied with water from a canal, but which is not maintained at the cost of ⁴[the Provincial Government], and all subsidiary works belonging to any such channel:

"Water-course".

(3) "drainage-work" includes escape-channels from a canal, drains, weirs, embankments, sluices, groins and other works for the protection of lands from flood or from erosion formed or maintained by ⁵[the Provincial Government] under the provisions of Part VII of this Act, but does not include works for the removal of sewage from towns:

"Drainage work".

(4) "vessel" includes boats, rafts, timber and other floating bodies;

"Vessel"

¹ Ins. by W. P. Ord. XXIII of 1965.

² Subs- by A. O., 1937 for "Government".

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

⁴ Subs- by A. O., 1937 for "Government".

⁵ Subs- by A. O., 1937 for "Government".

¹[(4A) "Board of Revenue" means the Board of Revenue established under the West Pakistan Board of Revenue Act, 1957 (West Pakistan Act XI of 1957):]

(5) ²[Revenue Commissioner] means a Commissioner of a division, and includes any officer appointed under this Act to exercise all or any of the powers of a Commissioner : "Commissioner".

(6) "Collector" means the head revenue- officer of a district and includes a Deputy Commissioner or other officer appointed under this Act to exercise all or any of the powers of a Collector; "Collector".

³[(7) "Canal-officer" means an officer or a person or an authority appointed, under this Act to exercise control or jurisdiction over a canal or any part thereof;

'Superintending Canal-Officer' means an officer exercising general control over canal or portion of a canal and includes a person or an authority appointed to exercise such control;

'Divisional Canal-officer' means an officer exercising control over a division of a canal and includes a person or an authority appointed to exercise such control;

'Sub-Divisional Canal-officer' means an officer exercising control over a sub-division of a canal and includes a person or an authority appointed to exercise such control:";

(8) "district" means a district as fixed for revenue-purposes. "District".

4. The ⁴[Provincial Government] may from time to time declare by notification in the Official Gazette,⁵[the officers, persons or authorities by whom] and the local limits within which, all or any of the powers or duties herein after conferred or imposed shall be exercised or performed. Power to appoint officers.

All officers mentioned in section 3, clause (7), shall be respectively subject to the orders of such officers as the ⁶[Provincial Government] from time to time directs.

¹ Ins by W. P. Act VII of 1968.

² Ins by Khyber Pakhtunkhwa for Commissioner read Revenue Commissioner see Khyber Pakhtunkhwa Law and Practice Regulation, 1970(7 of 1970).

³ Subs, by Khyber Pakhtunkhwa Ord. No. V of 1980.

⁴ Subs, by A.O. 1937. for "L.G."

⁵ Subs. by Khyber Pakhtunkhwa Ord. No. V of 1980.

⁶ Subs, by A.O. 1937. for "L.G."

PART II

OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES

5. Whenever it appears expedient to the ¹[Provincial Government] that the water of any river or stream flowing in a natural channel or of any lake or other natural collection of still water, ²[or any subsoil water] should be applied or used by ³[the Provincial Government] for the purpose of any existing or projected canal or drainage-work, the ⁴[Provincial Government] may, by notification in the official Gazette, declare that the said water will be so applied or used after a day to be named in the said notification not being earlier than three months from the date thereof.

Notification to issue when water supply is to be applied for public purposes.

6. At any time after the day so named, any Canal Officer acting under the orders of the ⁵[Provincial Government] in this behalf may enter on any land and remove any obstructions, and may close any channels, and do any other thing necessary for such application or use of the said water.

Powers of Canal Officers.

7. As soon as is practicable after the issue of such notification, the Collector shall cause public notice to be given at convenient places, stating that ⁶[the Provincial Government] intends to apply or use the said water as aforesaid, and that claims for compensation in respect of the matters mentioned in section 8 may be made before him.

Notice as to claims for compensation.

8. No compensation shall be awarded for any damage caused by.—

Damage for which compensation shall not be awarded.

- (a) stoppage or diminution of percolation or floods;
- (b) deterioration of climate or soil;
- (c) stoppage of navigation, or of the means of drifting timber or watering cattle;
- (d) displacement of labour.

But compensation may be awarded in respect of any of the following matters:—

Matter in respect of which compensation may be awarded.

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

² Ins. by W. P. Ord. XXIII of 1965.

³ Subs, by A.O., 1937, for "Government".

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

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

⁶ Subs, by A.O., 1937 for "Government".

- (e) stoppage or diminution of supply of water through any natural channel to any defined artificial channel, whether above or under ground, in use at the date of the said notification;
- (f) stoppage or diminution of supply of water to any work erected for purposes of profit on any channel, whether natural or artificial, in use at the date of the said notification;
- (g) stoppage or diminution of supply of water through any natural channel which has been used for purposes of irrigation within the five years next before the date of the said notification;
- (h) damage done in respect of any right to a water-course or the use of any water to which any person is entitled under the ¹[Indian Limitation Act, 1877], Part IV;
- (i) any other substantial damage, not falling under any of the above clauses (a), (b), (c) (d) and caused by the exercise of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation.

In determining the amount of such compensation regard shall be had to the diminution in the market value at the time of awarding compensation, of the property in respect of which compensation is claimed; and, where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property caused by the exercise of the powers conferred by this Act.

No right to any such supply of water as is referred to in clauses (e), (f) or (g) of this section in respect of a work or channel not in use at the date of the notification, shall be acquired as against ²[the Provincial Government] except by grant or under the ³[Indian Limitation Act, 1877], Part IV; and no right to any of the advantages referred to in clauses (a), (b) and (c) of this section shall be acquired, as against ⁴[the Provincial Government), under the same Part.

XV of 1877.

9. No claim for compensation for any such stoppage, diminution or damage shall be made after the expiration of one year from such stoppage, diminution or damage, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

Limitation of
Claims

¹ See now the limitation Act, 1908 (9 of 1908).

² Subs- ibid for "Government.

³ See now the limitation Act, 1908 (9 of 1908).

⁴ Subs- ibid for "Government.

10. The Collector shall proceed to enquire into any such claim, and to determine the amount of compensation if any, which should be given to the claimant; and sections 9 to 12 (inclusive), 14 and 15, 18 to 23 (inclusive), 26 to 40 (inclusive), 51, 57, 58 and 59 of the ¹[Land Acquisition Act, 1870], shall apply to such inquiries:

Enquiry into claims and amount of compensation.

Provided that instead of the last clause of said section 26, the following shall be read. "The provision of this section and of section 8 of the ²[* * * * *] Canal and Drainage Act, 1873, shall be read to every assessor in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded".

11. Every tenant holding under an unexpired lease, or having a right of occupancy, who is in occupation of any land at the time when any stoppage or diminution of water supply in respect of which compensation is allowed under section 8, takes place, may claim an abatement of the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding.

Abatement of rent on interruption of water Supply.

12. If a water-supply increasing the value of such holding is afterwards restored to the said land, the rent of the tenant may be enhanced, in respect of the increased value of such land due to the restored water-supply, to an amount not exceeding that at which it stood immediately before the abatement.

Enhancement of rent on restoration of water Supply.

Such enhancement shall be on account only of the restored water-supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

13. All sums of money payable for compensation under this part shall become due three months after the claim for such compensation is made in respect of the stoppage, diminution or damage complained of,

Compensation when due.

and simple interest at the rate of six per cent, per annum shall be allowed on any such sum remaining unpaid after the said three months except where the non-payment of such sum is caused by the wilful neglect or refusal of the claimant to receive the same.

Interest.

PART III OF THE CONSTRUCTION AND MAINTENANCE OF WORKS.

14. Any Canal Officer, or other person acting under the general or special order of a Canal Officer,
may enter upon any lands adjacent to any canal, or through which any canal is proposed to be made, and under-take surveys or levels thereon;

Power to enter and survey etc.

¹ See now the Land Acquisition Act 1894 (1 of 1894).

² The words "Northern India" rep. by the Federal Laws Act, 1951 (26 of 1951).

and dig and bore into the sub-soil;
 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 enquiry relating to any existing or projected canal under the charge of the said Canal Officer;

and, where otherwise such enquiry cannot be completed, such officer or 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 water-course on account of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the lands irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of such canal:

Power to inspect and regulate water supply.

Provided that, if such Canal Officer 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 into houses.

In every case of entry under this section, the Canal Officer c shall, at the time of such entry, tender compensation for any damage which may be occasioned by any proceeding under this section; and, in case of dispute as to the sufficiency of the amount so tendered, he shall forthwith refer the same for decision by the Collector, and such decision shall be final.

Compensation for damage caused by entry.

15. In case of any accident happening or being apprehended to a canal, any Divisional Canal Officer 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 such Canal Officer or person shall tender compensation to the proprietors or occupiers of the said lands for all damage done to the same. If such tender is not accepted, the Canal shall refer the matter to the Collector, who shall proceed to award compensation for the damage as though the ¹[Provincial Government] had directed the occupation of the lands under section 43 of the ²[Land Acquisition Act, 1870].

Compensation for damage to land.

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

² Now the Land Acquisition Act, 1894.

16. Any persons desiring to use the water of any canal may apply in writing to the Divisional or Sub-divisional Canal Officer of the division or sub-division of the canal from which the water-course is to be supplied, requesting such officer to construct or improve a water-course at the cost of the applicants.

Application by person desiring to use canal water.

The application shall state the works to be undertaken, their appropriate estimated cost, or the amount which the applicants are willing to pay for the same, or whether they engage to pay the actual cost as settled by the Divisional Canal Officer, and how the payment is to be made.

Contents of application.

When the assent of the ¹[Canal Officer authorised in this behalf by Provincial Government] is given to such application, all the applicants shall, after the application has been duly attested before the Collector, be jointly and severally liable for the cost of such works to the extent mentioned therein.

Liability of applicants for cost of works.

Any amount becoming due under the terms of such application, and not paid to the Divisional Canal Officer, or the person authorised by him to receive the same, on or before the date on which it becomes due, shall, on the demand of such officer, be recoverable by the Collector as if it were an arrear of land revenue.

Recovery of amount due.

17. There shall be provided, at the cost of ²[the Provincial Government] suitable means of crossing canals constructed or maintained at the cost of ³[the Provincial Government], at such places as ⁴[the Provincial Government] thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands.

Government to provide means of crossing canals.

On receiving a statement in writing, signed by not less than five of the owners of such lands, to the effect that suitable crossings have not been provided on any canal, the Collector, shall cause enquiry to be made into the circumstances of the case, and if he thinks that the statement is established, he shall report this opinion thereon for the consideration of ⁵[the Provincial Government], and the ⁶[Provincial Government] shall cause such measures in reference thereto to be taken as it thinks proper.

18. The Divisional Canal Officer may issue an order to the person using any water-course to construct suitable bridges, culverts or other works for the passage of the water of such water-course across any c public road, canal or drainage-channel in use before the said watercourse was made, or to repair any such works.

Persons using water- course to construct works for passing water across roads, etc.

¹ Subs, for the words "Superintending Casual Officer", by \V. P. Ord XXV of 1962.

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

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

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

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

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

Such order shall specify a reasonable period within which such construction or repairs shall be completed;

and if, after the receipt of such order, the persons to whom it is addressed do not, within the said period construct or repairs such works to the satisfaction of the said Canal Officer, he may, with the previous approval of the Superintending Canal Officer, himself construct or repair the same;

If they fail, Canal Officer may construct:

and if the said persons do not, when so required, pay the cost of such construction or repairs as declared by the Divisional Canal Officer, the amount shall, on the demand of the Divisional Canal Officer, be recoverable from them by the Collector as if it were an arrear of land-revenue.

And Recover cost.

19. If any person, jointly responsible with others for the construction or maintenance of a water-course, or jointly making use of a water-course with others, neglects or refuses to pay his share of the cost of such construction or maintenance or to execute his share of any work necessary for such contraction or maintenance, the Divisional or Sub-divisional Canal Officer, on receiving an application in writing from any person injured by such neglect or refusal, shall serve notice on all the parties concerned that, on the expiration of a fortnight from the service, he will investigate the case, and shall, on the expiration of that period, investigate the case accordingly, and make such order thereon as to him seems fit.

Adjustment of claims between persons jointly using water course.

Such order shall be appealable to the ¹[Revenue Commissioner;] whose order thereon shall be final.

Any sum directed by such order to be paid within a specified period may, if not paid within such period, and if the order remains a in force, be recovered by the Collector, from the person directed to pay the same, as if it were an arrear of land revenue.

Recovery of amount found due.

20. Whenever application is made to a Divisional Canal Officer 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 enquiry on such day, the Divisional Canal-Officer shall determine whether and on what conditions the said supply shall be conveyed through such water-course.

Supply of water through intervening water course.

¹ For "commissioner" and Revenue commissioner see the Khyber Pakhtunkhwa Law and Justice Regulation 1901 (7 of 1901)

When such officer determines that a supply of canal water may be conveyed through any water-course as aforesaid, his decision shall, when confirmed or modified by the ¹[Such authority as may be specified in the rules to be framed under section 75] be binding on the applicant and also on the persons responsible for the maintenance of the said water-course.

Such applicant shall not be entitled to use such water-course until he has paid the expense of any alteration of such water-course necessary in order to his being supplied through it and also such share of the first cost of such water-course as the ²[Divisional Canal Officer] or ³[such Officers as may be specified in the rules to be framed under section 75] 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.

21. Any person desiring the construction of a new water-course may apply in writing to the Divisional Canal-Officer, stating—

Application for construction of new watercourse.

- (1) 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;
- (2) that he desires the said Canal-Officer, in his behalf and at his cost, to do all things necessary for acquiring such right;
- (3) that he is able to defray all costs involved in acquiring such right and constructing such water-course.

22. If the Divisional Canal-Officer considers—

Procedure of Canal- Officer thereupon.

- (1) that the construction of such water-course is expedient, and
- (2) that the statement in the application are true, he shall call upon the applicant to make such deposit as the Divisional Canal-Officer 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 28;

and upon such deposit being made, he shall cause enquiry to be made into the most suitable alignment for the said water-course, and

¹ Subs by W.P Ord. XXV of 1962.

² Subs. by W P Ord. 1 of 1970.

³ Subs. by W P Ord. No XXV of 1962.

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, and shall send a copy of such notice to the Collector of every district in which any part of such land is situate.

23. Any person desiring that an existing water-course should be transferred from its present owner to himself may apply in writing to the Divisional Canal-Officer, stating—

Application for transfer of existing water course.

- (1) that he has endeavoured unsuccessfully to procure such transfer from the owner of such water-course;
- (2) that he desires the said Canal-Officer, in his behalf and at his cost, to do all things necessary for procuring such transfer;
- (3) that he is able to defray the cost of such transfer.

If the Divisional Canal-Officer 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 Divisional Canal-Officer 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 28 in respect of such transfer;

and upon such deposit being made, he shall publish a notice of the application in every village, and shall send a copy of the notice to the Collector of every district through which such water-course passes.

24. Within thirty days from the publication of a notice under section 22 or section 23, as the case may be, any person interested in the land or water-course to which the notice refers may apply to the Collector by petition, stating his objection to the construction or transfer for which application has been made.

Objections to Construction or transfer applied for.

The Collector may either reject the petition or may proceed to inquire into the validity of the objection, giving previous notice to the Divisional Canal-Officer of the place and time at which such inquiry will be held.

The Collector shall record in writing all orders passed by him under this section and the grounds thereof.

25. If no such objection is made, or (where such objection is made) if the Collector over-rules it, he shall give notice to the Divisional Canal-Officer to that effect, and shall proceed forthwith to place the said applicant in occupation of the land marked out or of the water-course to be transferred, as the case may be.

When applicant may be placed in occupation.

26. If the Collector considers any objection made as aforesaid to be valid he shall inform the Divisional Canal-Officer accordingly; and if such officer sees fit, he may, in the case of an application under section 21, alter the boundaries of the land so marked out, and may give fresh notice under section 22; and the procedure hereinbefore provided shall be applicable to such notice, and the Collector shall thereupon proceed as before provided.

Procedure when objection is held valid.

27. If the Canal-Officer disagrees with the Collector, the matter shall be referred for decision to the ¹[Revenue Commissioner].

Procedure when canal-officer disagrees with Collector.

Such decision shall be final, and the Collector, if he is so directed by such decision, shall, subject to the provisions of section 28 cause the said applicant to be placed in occupation of the land so marked out or of the water-course to be transferred, as the case may be.

28. No such applicant 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 before receiving occupation.

In determining the compensation to be made under this section the Collector shall proceed under the provisions of the ²[Land Acquisition Act, 1870]; but he may, if the person to be compensated so desires, award such compensation in the form of a rent-charge payable in respect of the land or water course 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 as if it were an arrear of land revenue, and shall, when recovered, be paid by him to the person entitled to receive the same.

Recovery of compensation and expenses.

29. When any such applicant is placed in occupation of land or on of a water-course as aforesaid, the following rules and conditions shall be binding on him and his representative in interest:—

Conditions binding on applicant play cod in occupation.

¹ In the Khyber Pakhtunkhwa for “Commissioner read Revenue Commissioner” see the Khyber Pakhtunkhwa Law and Justice Regulation, 1901 (7 of 1901).

² See now the Land Acquisition Act, 1894 (1 of 1894).

First.—All works necessary for the passage across such water-courses, existing previous to its construction and of the-drainage intercepted by it, and for affording proper communications 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 Divisional Canal-Officer.

Second.—Land occupied for a water-course under the provisions of section 22 shall be used only for the purpose of such water-course.

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

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 cease owing to a breach of any of these rules, the liability to pay the said rent 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 persons 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 paid by the applicant or his representative in interest, the Collector may recover the amount, with interest thereon at the rate of six percent per annum from the date on which it became due, as if it were an arrear of land-revenue, and shall pay the same, when recovered, to the person to whom it is due.

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.

30. 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 or extension and alteration.

PART IV OF THE SUPPLY OF WATER

31. In the absence of a written contract, or so far as any such contract does not extend, every supply of canal-water shall be deemed to be given at the rates and subject to the conditions prescribed the rules to be made by the ¹[Provincial Government] in respect thereof.

In absence of written contract water supply to be subject to rules.

32. Such contract and rules must be consistent with the following conditions.—

Conditions as to—

(a) The Divisional Canal Officer may not stop the supply of water to any water-course, or to any person, except in the following cases:—

Power to stop water supply,

(1) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority and with the previous sanction of the ²[Provincial Government]

(2) whenever and so long as any water-course is not maintained in such proper customary repair as to prevent the wasteful escape of water there from;

(3) within periods fixed from time to time by the Divisional Canal Officer:

(b) No claim shall be made against ³[the Provincial Government] for compensation in respect of loss caused by the failure or stoppage of the water in a canal, by reason of any cause beyond the control of ⁴[the Provincial Government] or of any repairs, alterations or additions to the canal, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the Divisional Canal Officer considers necessary; but the person suffering such loss may claim such remission of the ordinary charges payable for the use of the water as is authorised by the ⁵[Provincial Government]:

Claims to compensation in case of failure or stoppage of supply.

(c) If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in the last preceding clause, the occupier or owner of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector may award to the petitioner reasonable compensation for such loss:

Claims on account of interruption from other causes;

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

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

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

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

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

- (d) When the water of a canal is supplied for the irrigation of a single crop, the permission to use such water shall be held to continue only until that crop comes to maturity, and to apply only to that crop; but, if it be supplied for irrigating two or more crops to be raised on the same land within the year, such permission shall be held to continue for one year from the commencement of the irrigation, and to apply to such crops only as are matured within that year: duration of supply;
- (e) Unless with the permission of the Superintending Canal Officer, no person entitled to use the water of any canal or any work, building or land appertaining to any canal, shall sell or sublet or other-wise transfer his right to such use: Sale or subletting of;

Provided that the former part of this clause shall not apply to the use by a cultivating tenant of water supplied by the owner of a water-course for the irrigation of the land held by such tenant:

But all contracts made between ¹[the Provincial Government] and the owner or occupier of any immovable property, as the supply of canal-water to such property, shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such property takes place: transfer, with land, of contracts for water;

- (f) No right to the use of the water of a canal shall be, or be deemed to have been acquired under the ²[Indian Limitation Act, 1877, Part IV,] nor shall the ³[Provincial Government] be bound to supply any person with water except in accordance with the terms of a contract in writing. No right acquired by user;

PART V OF WATER-RATES

33. 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 unauthorisedly cannot be identified.

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

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

² Now the Limitation Act, 1908 (IX of 1908).

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

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

34. If water supplied through a water course be suffered to run to waste, and if, after enquiry by the Divisional Canal Officer, 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.

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

Charges recoverable in addition to penalties.

(2) All questions under section 33, or section 34 shall be decided by the Divisional Canal Officer.

(3) Any person aggrieved by an order passed by the Divisional Canal Officer in respect of a question under section 33 may, within thirty days of the passing of such order, appeal to the Commissioner, who, after giving such person an opportunity of being heard, may confirm, modify or set aside the order of the Divisional Canal Officer.

(4) Any person aggrieved by an order passed by the Divisional Canal Officer in respect of question under section 34 may, within thirty days of the passing of such order, appeal to the Head Revenue Officer of the District, who after giving such person an opportunity of being heard, may confirm, modify or set aside the order of the Divisional Canal Officer.

(5) The Commissioner, on an application made to him by any person aggrieved by an order passed in appeal under sub-section (4), and the Board of Revenue, on an application made to it by any person aggrieved by an order passed in appeal under sub-section (3) within ninety days of the passing of such order, and after giving such person an opportunity of being heard, may revise the order passed in appeal and the order passed by the Commissioner or the Board of Revenue, as the case may be, in revision shall be final.

36. The rates to be charged for canal-water supplied for purposes of irrigation to the occupiers of land shall be determined by the rules ²[to be made by the

Charge on occupier for

¹ Subs by W P Act, No.VII of 1968.

² For instance of such notifications.see Punjab Gazette, 1893, Pt T. pp 223 and 224.

¹[Provincial Government], and such occupiers as accept the water shall pay for it accordingly. water, how determined,

A rate so charged shall be called the "occupier's rate".
²[The rules hereinbefore referred to may prescribe and determine what persons or classes of persons are to be deemed to be occupiers for the purposes of this section, and may also determine the several liabilities, in respect of the payment of the occupier's rate of tenants and of persons to whom tenants may have sublet their lands or of proprietors and of persons to whom proprietors may have let the lands held by them in cultivating occupancy.] "Occupiers rate"

37. In addition to the occupier's rate, to be called the "owner's rate" may be imposed, according to rules¹ to be made by the ³[Provincial Government], on the owners of canal-irrigated lands, in respect of the benefit which they derive from such irrigation. "Owners rate"

38. The owner's rate shall not exceed the sum which, under the rules for the time being in force for the assessment of land-revenue, might be assessed on such land on account of the increase in the annual value or produce thereof caused by the canal-irrigation. And, for the purpose of this section only, land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue. Amount of owners rate.

39. No owner's rate shall be chargeable either on the owner or occupier of land temporarily assessed to pay land-revenue at irrigation-rates, during the currency of such assessment. Owners rate when not chargeable,

40 to 43. [When occupier to pay both rates: apportionment of owner's when owner to pay owner's rate : *effect of introduction of canal-irrigation on landlord's right to enhance.*] *Rep. by the Punjab Tenancy Act, 1887 (XVI 1887), s. 3 and Sch.*

44. Where a water-rate is charged on land held by several joint owner's it shall be payable by the manager or other persons who receives the rents or profits of such land, and may be deducted by him from such rents or profits before division, or may be recovered by him from the persons liable to such rate in the manner customary in the recovery of other charges on such rents or profits. Water-rate by whom payable when charged on land held be several owners,

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

² Ins. by the Northern India Canal and Drainage (Amendment) Act, 1899 (XVI of 1899).

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

Recovery of charges

45. Any sum lawfully due under this Part, and certified by the Divisional Canal Officer to be so due which remains unpaid after the day on which it becomes due shall be recoverable by the Collector from the person liable for the same as if it were an arrear of land-revenue. Certified dues recoverable as land revenue.

46. The Divisional Canal Officer or the Collector, may enter into an agreement with any person for the collection and payment to the ¹[Provincial Government] by such person of any sum payable under this Act by a third party. Power to contract for collection of canal dues,

When such agreement has been made, such person may recover such sum by suit as though it were a debt due to him, or an arrear of rent due to him on account of the land, work or building in respect of which such sum is payable, or for or in which the canal-water shall have been supplied or used.

If such person makes default in the payment of any sum collected by him under this section, such sum may be recovered from him by the Collector under section 45; and, if such sum or any part of it be still due by the said third party, the sum or part so due may be recovered in the like manner by the Collector from such third party.

47. The Collector may require the lambardar, or person under engagement to pay the land-revenue of any estate, to collect and pay any sums payable under this Act by a third party, in respect of any land or water in such estate. Lambardars may be required to collect canal dues.

Such sums shall be recoverable by the Collector as if they were arrears of land-revenue due in respect of the defaulter's share in such estate;

and for the purpose of collecting such sums from the subordinate zamindars, raiyats, ²[tenants or sub-tenants], such lambardar or person may exercise the powers, and shall be subject to the rules, laid down in the law for the time being in force in respect to the collection by him of the rents of land or of shares of land-revenue.

The ³[Provincial Government] shall provide—

(a) for remunerating persons collecting sums under this section ; or

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

² Subs, by the Northern India Canal and Drainage (Amendment) Act. 1899 (XVI of 1899), for "or tenants".

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

- (b) for indemnifying them against expenses properly incurred by them in such collection; or
- (c) for both such purposes.

48. Nothing in sections 45, 46 or 47 applies to fines.

Fine excluded from sections 45, 46, 47.

PART VI OF CANAL-NAVIGATION

49. Any vessel entering or navigating any canal contrary to the rules made in that behalf by the ¹[Provincial Government] or so as to cause danger to the canal or the other vessels therein, may be removed or detained, or both removed and detained, by the Divisional Canal Officer, or by any other person duly authorised in this behalf.

Detainer of vessels violating rules.

The owner of any vessel causing damage to a canal, or removed or detained under this section, shall be liable to pay to ²[the Provincial Government] such sum as the Divisional Canal Officer, with the approval of the Superintending Canal Officer, determines to be necessary to defray the expenses of repairing such damage or of such removal or detention, as the case may be.

Liability of owners of vessels causing damage.

50. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner or other person in charge of any vessel, for any offence in respect of the navigation, of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure or, if the Magistrate imposing the fine so directs, as though it were a charge due in respect of such vessel.

Recovery of fines for offences in navigating canals,

51. If any charge due under the provisions of this part in respect of any vessels not paid on demand to the person authorised to collect the same, the Divisional Canal Officer may seize and detain such vessel and the furniture thereof, until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

Power to seize and detain vessel on failure to pay charges.

52. If any charge due under the provisions of this Part in respect of any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal is not paid on demand to the

Power to seize cargo or goods, if charges due thereon are not paid.

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

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

person authorised to collect the same, the Divisional Canal Officer may seize such cargo or goods and detain them until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

53. Within a reasonable time after any seizure under section 51 or section 52, the said Canal Officer shall give notice to the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than fifteen days from the date of the notice, be sold in satisfaction of the claim on account of which such property was seized, unless the claim be discharged before the day so named.

Procedure for recovery of such charges after seizure.

And, if such claim be not so discharged, the said Canal Officer may, on such day, sell the property seized or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale:

Provided that no greater part of the furniture of any vessel or of any cargo or goods shall be so sold than shall, as nearly as may be, suffice to cover the amount due in respect of such vessel, cargo or goods.

The residue of such furniture, cargo or goods, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

54. If any vessel found abandoned in a canal, or any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal, be left unclaimed for a period of ¹[15 days] the Divisional Canal Officer may take possession of the same.

Procedure in respect of vessels of abandoned and goods unclaimed.

The officer so taking possession may publish a notice that, if such vessel and its contents, or such cargo or goods, are not claimed previously to a day to be named in the notice, not sooner than (ninety days) from the date of such notice, he will sell the same, and, if such vessel, contents, cargo or goods be not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

The said vessel and its contents, and the said cargo or goods if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls, charges and expenses incurred by the Divisional Canal Officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Divisional Canal-Officer.

Disposal of proceeds of sale.

If the Divisional Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold as aforesaid,

¹ Subs, by Khyber Pakhtunkhwa .Ord. No.III of 1985.

and the proceeds to be paid into the district treasury, there to be held until the right there to be decided by a court of competent jurisdiction.

PART VII

OF DRAINAGE

55. Whenever it appears to the ¹[Provincial Government] that injury to any land or the public health or public convenience has arisen or may arise from the obstruction of any river, stream or drainage-channel, such Government may, by notification published in the Official Gazette, prohibit, within limits to be defined in such notification the formation of any obstruction, or may, within such limits, order the removal or other modification of such obstruction.

Power to prohibit obstructions or order their removal.

Thereupon so much of the said river, stream or drainage-channel as is comprised within such limits shall be held to be a drainage-work as defined in section 3.

56. The Divisional Canal Officer, or other person authorised by the ²[Provincial Government] in that behalf, 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 obstructions after prohibition.

If, within the time so fixed, such person does not comply with the order, the said Canal Officer may himself remove or modify the obstruction ; and if the person to whom the order was issued does not, when called upon, pay the expenses involved in such removal or modification, such expenses shall be recoverable by the Collector, from him or his representative in interest as an arrear of land-revenue.

57. Whenever it appears to the ³[Provincial Government] that any drainage-works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof, or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands, the ⁴[Provincial Government] may cause a scheme for such drainage-works to be drawn up and published, together with an estimate of its cost ⁵[* * *], and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.

Preparation of schemes for work of improvement.

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

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

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

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

⁵ The words, and a statement of the proportion of such cost, which the Provincial Government proposes to defray". del, by W. P. Od. IV of 1970.

58. The person authorised by the ¹[Provincial Government] to draw up such scheme may exercise all or any of the powers conferred on the Canal Officers by section 14. Powers of person employed on such schemes.

²[59. An annual rate, in respect of such scheme, may be charged, according to rules to be made by the Provincial Government, on the owners of all lands which shall, in the manner prescribed by such rules, be determined to be so chargeable; Rate on land benefited by works.

Provided that in the case of agricultural land, no such rate shall be charged for the first two harvests immediately, following the completion of the scheme

60. Any such drainage rate may be collected and recovered in manner provided by sections 45, 46 and 47 for the collection and recovery of water-rates. Recovery of rate.

61. Whenever, in pursuance of a notification made under section 55, any obstruction is removed or modified, or whenever any drainage work is carried out under section 57, Disposal of claims to compensation,

all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction or the construction of such work may be made before the Collector, and he shall deal with the same in the manner provided in section 10.

62. No such claim shall be entertained after the expiration of one year from the occurrence of the loss complained of, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period. Limitation of such claims,

PART VIII

OF OBTAINING LABOUR FOR CANALS AND DRAINAGE-WORKS.

63. For the purposes referred to in this part, the word "labourer" includes persons who exercise any handicraft specified in rules to be made on that behalf by the ³[Provincial Government]. Definition of labourer,

¹ Subs by A O., 1937, for 'Local Government.'

² Subs, by W. P. Ord IV of 1970.

³ Subs, by W. P. Ord IV of 1970.

64. In any district in which a canal or drainage-work is constructed, maintained or protected by ¹[Provincial Government] may if it thinks fit direct the Collector—

Power to
prescribe
number of
labourers to be
supplied by
persons
benefited by
canal,

- (a) to ascertain the proprietors, sub-proprietors or farmers whose villages or estates are or will be in the judgment of the Collector benefited by such canal or drainage-work and
- (b) to set down in a list, having due regard to the circumstances of the districts and of the several proprietors, sub-proprietors or farmers, the number of labourers which shall be furnished by any of the said persons, jointly or severally, from any such village or estate, for employment on any such canal or drainage-work when required as hereinafter provided.

The Collector may, from time to time, add to or alter such list or any part thereof.

65. Whenever it appears to a Divisional Canal Officer duly authorised by the ²[Provincial Government] that, unless some work is immediately executed, such serious damage will happen to any canal or drainage-work as to cause sudden and extensive public injury,

Procedure for
obtaining
labour for
works urgently
required.

and that the labourers necessary for the proper execution thereof cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such injury,

the said officer may require any person named in such list to furnish as many labourers (not exceeding the number which, according to the said list he is liable to supply) as to the said officer seems necessary for the immediate execution of such work.

Every requisition so made shall be in writing, and shall state—

- (a) the nature and locality of the work to be done;
- (b) the number of labourers to be supplied by the persons upon whom the requisition is made; and

¹ Subs, by W. P. Ord IV of 1970.

² Subs by A O., 1937, for 'Local Government.'

- (c) the approximate time for which and the day on which the labourers will be required;

and a copy thereof shall be immediately sent to the Superintending Canal Officer for the information of the ¹[Provincial Government].

The ²[Provincial Government] shall fix, and may from time to time alter the rates to be paid to any such labourers:

Provided that such rates shall exceed the highest rates for the time being paid in the neighborhood for similar work.

In the case of every such labourer, the payment shall continue for the whole period during which he is, in consequence of the provisions of this Part, prevented from following his ordinary occupation.

The ³[Provincial Government] may ⁴[* * *] direct that the provisions of this Part shall apply, either permanently or temporarily (as the case may be), to any district or part of a district for the purpose of effecting necessary annual silt clearances, or to prevent the proper operation of canal drainage-work being stopped or so much interfered with as to stop the established course of irrigation or drainage.

66. When any requisition has been made on any person named in the said list, every labourer ordinarily resident within the village or estate of such person shall be liable to supply, and to continue to supply, his labour, for the purposes aforesaid.

Liability of laborers under requisition,

PART IX

OF JURISDICTION

67. Except where herein otherwise provided, all claims against ⁵[the Provincial Government] in respect of anything done under this Act may be tried by the Civil Courts; but no such Court shall in any case pass an order as to the supply of canal-water to any crop sown or growing at the time of such order.

Jurisdiction under this Act of Civil Court,

⁶[68. (1) Whenever a difference arises between two or more persons with regard to their mutual rights and liabilities in respect of the of use, construction or maintenance of a water-course any such person may apply in writing the

Settlement of difference as to mutual rights

¹ Subs by A O., 1937, for 'Local Government.'

² Subs by A O., 1937, for 'Local Government.'

³ Subs by A O., 1937, for 'Local Government.'

⁴ The words, "with the previous sanction of the G. G. in C".rep by the Decentralization Act, 1914 (IV of 1914).

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

⁶ Sub-section (1) of Section 68 subs, by W.P. Act No. I of 1968.

¹[Divisional Canal Officer] stating the matter in dispute. Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to inquire into the said matter, and after such inquiry, he shall pass his order thereon, unless he transfers (as he is hereby empowered to do) the matter to the Collector, who shall there upon inquire into and pass his order on said matter.

and liabilities of persons interested in the use of water from a canal outlet.

²[(2)]Any person aggrieved by an order made by the ³[Divisional Canal Officer] under sub-section (1) may, within fifteen days of the passing of such order, prefer an appeal against the order to the ⁴[Superintending Canal Officer].

(3) Where an appeal has been preferred under sub-section(2) the Superintending Canal Officer.—

- (a) shall decide the appeal as expeditiously as possible.
- (b) may, pending the disposal of the appeal, stay the operation of the order appealed against, provided such stay order does not adversely affect any standing crops.

(4) An order passed under sub -section (1), if there be no appeal preferred against it, and an order passed in appeal ⁵[after giving the appellant an opportunity of being heard] under sub-section (2) shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made, or remain in force until it is set aside by a decree of a civil court."

69. Any officer empowered under this Act to conduct any inquiry may exercise all such powers connected with the summoning and examining of witnesses as are conferred on Civil Courts by the Code of Civil Procedure, and every such inquiry shall be deemed a judicial proceeding.

Power to summon and examine witnesses.

PART X

OF OFFENCES AND PENALTIES

70. 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 or drainage-work;

¹ Subs by Khyber Pakhtunkhwa Ord, No. X of 1978.

² Sub-Sections 2 and 3 of Section 68 subs, by West Pakistan Ord. No. 1 of 1970.

³ Subs, by Khyber Pakhtunkhwa Ord. No. X of 1978.

⁴ Subs, by Khyber Pakhtunkhwa Ord. No. X of 1978.

⁵ These words ins, by Khyber Pakhtunkhwa Ord. III of 1985.

- (2) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under, any canal or drainage-work;
 - (3) interferes with or alters the flow of water in any river or stream, so as to endanger, damage or render less useful any canal or drainage-work;
 - (4) being responsible for the maintenance of a 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 unauthorised manner;
 - (5) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;
- ¹[(5-A) throws garbages and polythene bags in the Canal to block the water flow of Canal;
- (5-B) encroaches on the side areas of water Canal;
- (5-C) diverts sewerage lines towards the Canal;]
- (6) causes any vessel to enter or navigate any canal contrary to the rules for the time being prescribed by the ²[Provincial Government]for entering or navigating such canal;
 - (7) while navigating on any canal, neglects to take proper precautions for the safety of the canal and of vessels thereon;
 - (8) being liable to furnish labourers under Part VIII of this Act, fails without reasonable cause, to supply or to assist in supplying the labourers required of him;
 - (9) being a labourer liable to supply his labour under Part VIII of this Act, neglects, without reasonable cause, so to supply, and to continue to supply, his labour;

¹ Inserted vide Khyber Pakhtunkhwa Act No. XXXVI of 2015.

² Sub by A O 1937 for L G.

- (10) destroys or moves any level mark or water gauge fixed by the authority of a public servant:
- (11) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of a canal or drainage work contrary to rules made under this Act, after he has been desired to desist therefrom;
- (12) violates any rule made under this Act, for breach whereof a penalty may be incurred.

shall be liable, on conviction before a Magistrate of such class as the ¹[Provincial Government]/directs ²[in this behalf, to a fine not exceeding ³[twenty thousands rupees] or to imprisonment not exceeding ⁴[two years but not less then one year], or to both]

Penalty

71. Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act:

Saving of prosecution under other laws.

Provided that no person shall be punished twice for the same offence.

72. Whenever any person is fined for an offence under this Act, the Magistrate may direct that the whole or any part of such fine may be paid by way of compensation to the person injured by such offence.

Compensation to person injured.

73. Any person in charge of or employed upon any canal or drainage-work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant and take forthwith before a Magistrate or to the nearest police-station, to be dealt with according to law, any person who, within his view, commits any of the following , offences :—

Power to arrest without warrant.

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

¹Sub by A O 1937 for L G.

² for notification empowering Magistrate of the Second class to try enforces under this Section, See Punjab local Rules and orders.

³ Substituted vide Khyber Pakhtunkhwa Act No. XXXVI of 2015.

⁴ Substituted vide Khyber Pakhtunkhwa Act No. XXXVI of 2015.

74. In this Part, the word "canal" shall (unless there be something repugnant in the subject or context) be deemed to include also all lands occupied by ¹[the Provincial Government] for the purposes of canals, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by or belonging to ²[the Provincial Government] upon such lands.

Definition of
"Canal"

PART XI

OF SUBSIDIARY RULES

75. The ³[Provincial Government] may, from time to time ⁴[* * *] make rules ⁵[to regulate the following matters] :--

Power to make,
alter and cancel
rules.

- (1) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;
- (2) the cases in which, and 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 ;
- (3) the person by whom, ⁶[and] the time, place or manner at or in which anything for the doing of which provisions is made under this Act shall be done;
- (4) the amount of any charge made under this Act; and
- (5) generally to carry out the provisions of this Act.

⁷[Rules made under clause (4) may be made to have effect retrospectively from any date not earlier than the date on which water has been supplied or the charge has other-wise become leviable under this Act.]

The ⁸[Provincial Government] may from time to time ⁹[* * *] alter or cancel any rules so made.

Publication of
rules.

¹ Sub by A.O., 1937, for "the Government".

² Sub by A.O., 1937, for "the Government."

³ Subs, *ibid.*, for "Local Government."

⁴ The words, "subject to the control of the G. G. in C." rep. by the Devolution Act, 1920 (XXXVIII of 1920).

⁵ for Such rules, see the Punjab R and O.

⁶ Subs, by Amending Act 1891 (12 of 1891)

⁷ Add. by W. P. Ord. XXIII of 1965.

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

⁹ Rep. by Act No. XXXVIII of 1920

Such rules, alterations and cancelments shall be published in the¹[Official Gazette], and shall thereupon have the force of law.

SCHEDULE

**[Rep. by the Repealing Act, 1873 (XII of 1873), S.I and Sch.,
Pt: II]**

¹ Subs by A O 1937 "Local Official Gazette".