

THE BENGAL EMBANKMENT ACT, 1855

ACT NO. XXXII OF 1855

[Passed on the 30th November, 1855.]

1. *Repeal Bengal R. 6, 1806 and B.R. 11, 1829.*
2. *Defines what embankments are within the Act.*
3. *4. Embankments to be under superintendent of embankments; to whom powers are given to take charge, &c. change, &c. and enlarge &c. the embankments.*
5. *Superintendent to give notice to Collector before he removes, changes or enlarges and embankment; who (cl. 2,) shall make proclamation; (cl.3,) hear objections, and pass orders if Collector and Superintendent agree: and (cl.4,) orders appealable: (cl.5) subject to appeal, orders to be final.*
6. *Proprietors bound to maintain embankments, to pay for their maintenance, when.*
7. *Entitles persons sustaining damage from alterations, to compensation from Collector, and by civil action, and amount in admitted claims to be settled by arbitration; and (cl. 2,) provides for appointment of arbitrators: (cl. 3) when there are several claimants : and (cl. 4,) for umpire, and (cl. 5,) for case of refusal of arbitrator to act, &c.; and (cl. 6,) empowers Collector to enforce attendance of arbitrators; and (cl. 7,) on default of arbitration may appoint new arbitrators; and (cl. 8,) to conduct the arbitration; (cl. 9.) and award, and proceedings to be deposited in his office; and (cl. 10,) may defer payment in certain cases; and (cl. 11,) award to be set aside only on grounds of corruption, &c. and (cl. 12,) gives costs to Government; and (cl. 13,) fixes a measure of compensation; but (cl. 14,) excepts from these provisions certain cases of compensation.*
8. *Provides for making sluices for landholders in embankments; (cl. 2,) officer to report on the proposed work; but (cl. 3,) applicant to pay the expense.*
9. *Sluices to be opened only by public officer, &c.*
10. *Authorizes the making of temporary water-courses, &c. through embankment.*
11. *Provides for specifications, &c. of works expense of which belongs to Zemindars, &c. and (cl. 2,) provides for accounts being kept.*
12. *Authorize Sup. to report to Collector houses, &c. the removal of which he deems necessary; and (cl. 2,) Collector to give notice to interested parties; and (cl. 3, 4 and 5,) jury to ascertain the value and make award.*
- 13, 14. *After award Collector to give notice to parties concerned : and (14) in their default houses, &c. May be removed by Collector.*
- 15, 16 ,17. *Establishes penalty for obstructing the removal of houses, &c. and (16) for cutting, &c. embankments; and (17) for damaging embankments by other means.*
18. *Gives jurisdiction under the Act to Deputy and Assistant Magistrates.*
19. *Empowers Darogahs to inquire.*
20. *Orders of Magistrate, &c. appealable.*
21. *Interpretation clause.*

An Act relating to Embankments.

Preamble. - Whereas the Regulations now in force for the maintenance embankments in the Territories under the Government of the Lieutenant-Governor of Bengal, have been found ineffectual for the intended purposes thereof, and whereas it is desirable that provision should be made for the better supervision and protection of the same it is enacted as follows:

I. Regulations Repealed.—Regulation VI. of 1806 and Regulation XI. of 1829, so far as they relate to the said Territories, are hereby repealed, except so far as they repeal the whole or part of any other Regulation, and except as to acts done, offences committed, and liabilities incurred before the passing of this Act.

II. What is a public embankment within this Act.—The word “embankment” in this Act means an embankment for the purpose of excluding or retaining water; and every embankment which is now kept up, or may hereafter be kept up, by the officers of the Government, at the expense either of Government or of any private person, is a public embankment within the meaning hereof.

III. Who to have superintendence of public embankments.—The Superintendence of the public embankments shall be entrusted, subject to the general orders Government, to an Officer who shall be called the Superintendent of Embankments.

IV. Clause 1.—*Superintendent may take charge of any embankment which connecting public embankments, &c.* — The Superintendent of Embankments may cause any Embankment which connects public embankments, or forms by junction with them part of a line of embankments, or is necessary for the protection of the neighbouring country, to be taken charge of and kept up by the officers of the Crown.

Clause 2.—*And remove private embankment endangering a public embankment.*— He may also cause any private embankment, which endangers the stability of a public embankment, or obstructs the beneficial drainage of the country, to be removed.

Clause 3.—*And Change line of any public embankment or make a new embankment.*— He may also, when necessary, change the line of any public embankment, or make a new embankment.

Clause 4.—*And enlarging embankment, etc.*— He may also enlarge any public embankment, and do all acts necessary and proper for the maintenance thereof.

VI. Clause 1.—*Before taking charge of private embankments, &c. Superintendent to give notice to Collector, who shall issue a proclamation.*— Before the Superintendent shall cause any of the works mentioned in the first three clauses of the next preceding Section to be executed, he shall give notice in writing to the Collector of the district of his intention so to do. Upon the receipt of such notice, the Collector shall cause a proclamation to be issued, incorporating the substance of the notice, and calling upon all persons interested, who may be desirous of showing cause against the execution of such works, to appear before him on a certain day to be named therein.

Clause 2.—*Publication of proclamation.*— The proclamation shall be published by affixing the same in the Cutcherry of the Collector, the Mal Cutcherry (if any) of the estate on which the works are intended to be executed, and on some conspicuous spot in the neighbourhood thereof. The proclamation shall be published not less than fifteen days before the day appointed for hearing the parties interested.

Clause 3.—*Procedure on appearance of parties.*— The Collector shall hear the objections of any parties who may appear, and, after recording any evidence which they may adduce, shall communicate the objections that may be made, together with his opinion thereon, to the Superintendent of Embankments. If the Superintendent agrees in opinion with the Collector, he shall pass an order accordingly. If he differ from the Collector, the case shall be referred to the Commissioner of Revenue, who shall pass such orders thereon as he may deem fit.

Clause 4.—*Appeal from orders of Superintendent and Commissioner of Revenue.*— Every such order passed by the Superintendent shall be appealable to the Commissioner of Revenue, and every order of the Commissioner shall be appealable to the Board of Revenue ; but no appeal shall lie against any order passed under this section, unless the same be presented within one month from the date of the order.

Clause 5.—*Order not open to revision by Civil Court.*—Subject to the right of appeal above-mentioned and to the orders and control of Government, every order passed under this Section shall be final and shall not be open to revision by any Civil Court, and shall be conclusive as to the necessity of any works ordered to be executed.

VI. Maintenance of private embankments taken charge of by the Officers of Government. — (1) Whenever the Superintendent of Embankments shall hereafter cause an embankment, which any person is bound to keep up, to be taken charge of by the officers of Government, the expense of keeping up such embankment shall be charge to such person, Provided that the amount so charged shall not exceed the

reasonable expenses of keeping up an embankment in the size and description, which such person was bound to keep up, notwithstanding the embankment shall have been enlarged or improved by the officers of Government.

VII. Clause 1. — Compensation for damages sustained under this Act.— When the Superintendent of Embankments shall enlarge or change the line of any embankment, or make a new embankment, or cause an embankment to be removed, any person sustaining damages thereby, who, but for the passing of this Act, would be entitled to compensation, may prefer his claim for such compensation to the Collector of the District, at any time within twelve months after the execution of the work by which he is endamaged, and the Collector thereupon shall report the case for the orders of the superior Revenue authorities. If the claim be rejected, the claimant shall not be deprived, by reason of this Act, of any right which he might otherwise have had, to recover such compensation by a civil action; but such action shall not lie, unless the claimant shall have first preferred his claim to the Collector within the period above mentioned, nor unless the suit be brought within a period of one year after notice to the claimant of its rejection. If the claim for compensation be admitted by the Revenue authorities, and the amount of compensation cannot be agreed upon, the same shall be settled by arbitration, in the manner hereinafter provided, and in no other manner, unless by the consent of the claimant and of the superior Revenue authorities.

Clause 2.—Appointment of arbitrator.—Unless the Collector and the claimant concur in the appointment of a single arbitrator, the Collector on the part of Government, and the claimant, shall each appoint an arbitrator. The appointment shall be in writing, and neither of the said parties shall have power to revoke the same without the consent of the other.

Clause 3. — Arbitrator how to be chosen when there are several claimants for compensation. —If there be several claimants for compensation in respect to the same injury, and they cannot agree in the appointment of an arbitrator on their behalf, in that case each of them may nominate one person; and the Collector shall choose by lot out of the person so nominated by the parties, or any of them a person to act as arbitrator on behalf of the claimants. If only one person shall be so nominated, he shall be the arbitrator on behalf of the claimants.

Clause 4. — Appointment of third arbitrator. — When more than a single arbitrator shall be appointed, the arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing a third person to act with them as arbitrator; and in case the arbitrators shall neglect to appoint such third arbitrator for a period of seven days after having been required so to do, the Collector may appoint such third arbitrator. If the arbitrators differ in opinion, or if one of them, having received due notice of a meeting of arbitrators, neglect to attend, any two arbitrators may make an award.

Clause 5. — Arbitrator refusing or becoming incapable to act, &c. — If any person, on being appointed an arbitrator, shall refuse to act, or after accepting the appointment, shall die or become incapable of acting, another person shall be appointed in his stead, in the same manner in which the first person was appointed.

Clause 6. — Collector empowered to enforce attendance of arbitrators.— After the arbitrators have accepted the appointment, the Collector shall be competent to exercise towards them such powers and authority, for securing their attendance and the due completion of their award, as the said Collector may legally exercise towards witness summoned before him, when acting judicially for the purposes of compelling them to attend and give evidence.

Clause 7. — In default of award within a specified period, fresh arbitrators may be chosen.— If no award to be made within a period to be fixed for that purpose by the Collector, he may order that the matter shall be referred to another arbitrator or other arbitrators, to be chosen in the same manner and subject to the same rules as the first.

Clause 8. — Collector to furnish information to the arbitrators, and to enforce the attendance and examination of witnesses, &c.— The Collector shall furnish to the arbitrators, or, so far as may be in his power, procure for them, any information which his records or those of any public department may afford connected with the subject of enquiry. He shall, on the application of the arbitrators, summon any witnesses whom the arbitrators may call for, and whom the parties may not be able to produce before them without such process, and require the persons so summoned to bring and produce before them all such books, papers, deeds, writings, maps and plans as they shall require. He shall also cause the proper affirmation to be made and signed by any witness whom the arbitrators may desire to examine upon affirmation, or he may

empower the arbitrators to cause such affirmation to be made and signed before them. Any witness who shall refuse or omit to appear when duly summoned by the Collector, or who shall appear but shall refuse to make such affirmation, or who shall refuse to give evidence, shall be liable to the same punishment which would be incurred under the law by a witness refusing to appear or give evidence before the Collector when acting judicially. Any person giving intentionally and deliberately a false deposition under an affirmation, in any case referred to arbitration as above, shall be held to be guilty of perjury, and shall be liable to the penalties prescribed for that offence by law.

Clause 9. — Award of arbitrators.— On the close of the inquiry the arbitrators shall deliver a full and complete award, which shall specify the amount of compensation and the party or parties entitled thereto. The proceedings of the arbitration shall be deposited in the Collector's office; and every party interested therein shall be entitled to a copy of the award on plain paper under the seal and signature of the Collector, which copy shall be *prima facie* evidence thereof.

Clause 10. — Payment of compensation may in certain cases be deferred.— If the right to the compensation awarded shall in any case be doubtful, or if there exists any ground which, in the judgement of the arbitrators or of the Collector, render it improper to make immediate payment thereof to any of the claimants, the amount shall be invested in Government securities, and held in deposit until one of the claimants shall obtain an order of Court for the payment thereof.

Clause 11. — Reversal or alteration of award.— No award passed under this Section shall be liable to be reversed or altered, except by the decision of a Civil Court on the ground of corruption or misconduct of the arbitrators and no suit to set aside such an award shall be entertained, unless it be instituted within three months from the date of the award. In case the award shall be reversed, the matter shall be referred to another arbitrator or other arbitrators, to be appointed in the same manner as the first.

Clause 12. — Suits and proceedings against Government, except suits for reversal of awards, to be dismissed with cost.— All suits and proceedings instituted against Government in any case in which compensation has been awarded, except suits instituted for the reversal of awards as aforesaid, shall be dismissed with costs. **Proviso.**- But nothing herein contained shall affect the right of any party to recover the amount awarded from any person who may have received the same without any just title thereto.

Clause 13.—Estimated value of benefit to be set off against compensation to be awarded.— In fixing the amount of compensation to which any person may be entitled by reason of any of the acts mentioned in Clause 1 of this Section, the Court or arbitrators, as the case may be, shall take into consideration whether any party to the suit or arbitration has derived or will derive, benefit from the act in respect of which the compensation is claimed, and shall set off the estimated value of such benefit, if any, against the compensation which would otherwise be decreed or awarded to that party.

Clause 14.—The provisions of this Section not to apply to cases of compensation in respect to huts, trees, or crops. — The provisions of this Section shall not be held applicable to cases in which the compensation to be made has reference only to huts, trees, or crops, which it may be necessary to remove or destroy in enlarging or changing the line of a public embankment. In all such cases the officer in charge of the public embankments of the district shall report to the Collector, and the Collector shall thereupon proceed to value and make compensation for such huts, trees and crops, in the manner prescribed in Section XII. of this Act.

VIII. Clause 1. —Application by land-holder to have a sluice made in a public embankment.—If any land-holder, farmer, or cultivator be desirous of having a sluice made in any public embankment for the purpose of drainage or irrigation, he shall make an application in writing to the Collector of the district in which such embankment is situate. The application shall contain such particulars of the land to be drained or irrigated as may enable the officers of the Crown to judge of the advantage which may be derived from the work, and shall declare as regards an embankment maintained at the expense of the State, whether the applicant is willing to bear such part, not exceeding half of the cost thereof, as may be determined by the Provincial Government; and, as regards any other public embankment whether the applicant is willing to defray the whole or such part of the cost incidental to and attendant on, the proposed work, as may be determined as aforesaid.

Clause 2. — Officer in immediate charge of embankments to report on the proposed work.— The Collector shall transmit such application to the Officer in charge of the embankments of the district, who shall report his opinion thereon to the Superintendent of Embankments, and, if he be of opinion that

compliance with the application is unobjectionable shall annex to his report a plan of the proposed work and an estimate of the expense of its construction. The Superintendent of Embankments shall pass such order thereon as he shall think fit, which order shall be final.

Clause 3.—*Upon the applicant engaging to the defray the cost, Collector may issue certificate.*— If the construction of the proposed sluice receive the approval of the Superintendent of Embankments, the Collector shall require the applicant to enter into a written agreement to defray the whole or half of the expense or such portion thereof as may be determined under the provisions of Clause 1 of this section, as the case may be, and, upon such agreement being executed, shall issue a certificate to the officer in charge of the public embankments of the district to construct the sluice.

IX. Opening of sluices. — Sluices constructed in any public embankment shall be opened only by, or with the permission of the officer of the immediate charge of the embankment, under such orders, either general or special, as he may receive from the officer in charge of public embankments of the district or from the Superintendent of Embankments.

X. Officer in immediate charge of embankments may authorize temporary water-course, &c. to be made. — Whenever any person is desirous that a temporary watercourse should be made through, or that a temporary roadway should be made over any public embankment, or that a temporary dam should be constructed in any embanked river, he shall apply to the nearest officer of the Embankment Department, who shall communicate the application to the officer in charge of the public embankments of the district, and that officer shall pass such orders thereon as he shall think fit, subject to the control of the Superintendent of Embankments. If the proposed work is to be executed by an officer of the Crown the applicant, before the commencement of the work, shall enter into a written agreement to defray the expenses of, and incidental to, making such roadway, or of making and closing or removing such watercourse or dam. In any case of emergency the officer in immediate charge of an embankment, subject to such general instructions as he may receive from the officer in charge of the embankments of the district, or from the Superintendent of Embankments, may cause a temporary watercourse to be made through such embankment.

XI. Clause 1. Specifications and estimates for maintaining or improving embankments kept up at the expense of zamindars to be prepared annually, &c. — Specifications of the work and estimates of the expense which may be required for the maintenance or improvement of embankments kept up at the expense of zamindars or others shall be prepared as soon after the rains in each year as may be practicable. Copies of the specifications and estimates shall be transmitted to the office of the Collector, and may be examined by any person interested in the embankments. Notice of the receipt of the specifications and estimates shall be posted up in the Collector's office ; and, should any objection be preferred by any such person within a period of one month from the date of such notice, the Collector shall communicate the objection, with his own opinion thereupon, to the Superintendent of Embankments, who shall pass such orders as may appear to him reasonable and proper : Provided, however, that if the objection referred to the construction of sluices or other new works, any person dissatisfied with the order of the Superintendent may appeal to the Commissioner, who, subject to the orders of the Board of Revenue and of the Provincial Government may disallow the construction of the work.

Clause 2. — Accounts to be forwarded to Collector, who may recover the amount as arrears of Government revenue.— The accounts of the actual expense incurred in maintaining or improving embankments kept up at the expense of *zamindars* or others and in constructing and repairing sluices and making temporary watercourses or roadways through or over any public embankment, or executing any other work the expense of which may be chargeable to individuals, shall be prepared as soon as possible after the completion of such works, and shall, as soon as such accounts shall have received the sanction of the Superintendent of Embankments, be forwarded to the office of the Collector, and may be there examined by any person interested. Notice of the receipt of the accounts shall be posted up in the Collector's office; and if, within one month from the date of such notice, any interested person shall object to the accounts, on the ground either that the work charged for has not been performed, or that the whole sum charged has not been expended, or that the rates of charge are higher than the estimate, the Collector shall inquire into such objection, and if the objection appears to be well founded, shall communicate the same with his opinion thereon, to the Superintendent of Embankments. If the Superintendent concurs with the Collector, he shall pass order accordingly; if he differs, the case shall be reported to the Commissioner whose decision shall be final. When the objection shall have been finally disposed of, or, if no objection be preferred when a full

month shall have elapsed from the date of notice, the Collector shall proceed to levy the amount from the parties liable to pay the same by the process which is or may be in force for the recovery of arrears of Government revenue.

XII. Clause 1. — Superintendent to report to Collector as to removal of buildings, etc. — Whenever the Superintendent of Embankments shall be of opinion that the removal of any houses, huts or other buildings, situated between a public embankment and the river, is necessary, he shall make a report to that effect, accompanied by a detailed statement of the houses, huts or other buildings to be removed, to the Collector of the district in whose jurisdiction the land on which such houses, huts or other buildings stand, is situated.

Clause 2. — Collector to give notice to claimants. — When such report is received the Collector shall cause a notice, containing a general description of the houses, huts or other buildings proposed to be removed, to be affixed in some conspicuous place upon the land, and to be published by proclamation in the nearest bazar, calling on all persons claiming a right in such houses, huts or other buildings to appear in person or by authorized agent at a place to be specified in the notice, on or before a given date, not being less than fifteen days from the date of such proclamation, in order to make known the amount and particulars of their claim to compensation to a jury to be appointed in the following manner.

Clause 3. — Selection of jury. —The Collector shall direct a Deputy Collector or a Principal Officer of his establishment to proceed to the spot, and thereto select three respectable inhabitants of the neighbourhood, to form with himself, a jury for determine the value of the houses, huts or buildings, and, if any dispute should arise, the rights of the claimants.

Clause 4. — Proceedings of jury. —The jury shall assess the value of each house, hut or building separately. If in any case they differ, the value shall be assessed according to the opinion of the majority ; and, if they be equally divided, the Deputy Collector or other officer as aforesaid shall have a casting vote.

Clause 5. — Award of jury . —Having completed their proceedings, the jury shall make their award, which shall contain a schedule of the houses, huts and buildings, the amount of value assessed on each and the name of the person or persons entitled to receive the same. The award shall be final and conclusive and not open to question in the Civil Court : Provided always that any person who was not present at the inquiry, or whose claim may have been set aside by the jury, may institute a suit for the value of the property claimed by him against the person to whom payment may have been made under the award.

XIII. After award, Collector to give notice of payment, and to remove buildings, &c. in 30 days.— The Collector, on receiving the award, shall cause a notice to be affixed in some conspicuous place upon the land, with a citation calling on the parties to appear before him or the Deputy Collector or other officer aforesaid, in person or by authorised agent, at a certain time and place, and receive the amount so awarded, and warning them to remove their houses, huts or other buildings within thirty days from the date of such notice.

XIV. Collector may remove buildings, &c., at the cost of the owners, in case they neglect to do so themselves. —If, on the expiration of the above stated period, the houses, huts, or other buildings shall have not been previously removed, the Collector shall cause the same to be removed or levelled ; and if any expense be incurred in removing or levelling the same, the Collector may sell the materials at public auction in order to defray the charge, delivering any surplus that may remain to the owner.

XV. Penalty for obstructing officer or person in discharge of duty. — Whoever wilfully obstructs any duly authorised person in removing or levelling any embankment, house, hut or other building shall be liable to be imprisoned for any time not exceeding six months, with or without labour, at the discretion of the Magistrate, or to fine not exceeding two hundred rupees, commutable, if not paid, to a period of imprisonment not exceeding six months, or to both.

XVI. Penalty for wilful damage to embankment by cutting, etc. — Whoever wilfully, and without due authority cuts through, or attempts to cut through, any embankment, whether public or private, or destroys, or attempts to destroy, any such embankment, or open any sluice or water-course in any such embankment, shall be liable, on conviction before a Magistrate, to be imprisoned for a term not exceeding one year, with or without labour, or to a fine not exceeding two hundred rupees, commutable, if not paid, to a period of imprisonment not exceeding one year, or to both ; or, if the Magistrate be of opinion that such punishment is insufficient for the offence, he may commit the offender to the Sessions Court, in which case

he shall be liable, on conviction, to imprisonment for a period not exceeding seven years, with or without labour, or to fine, or to both.

XVII. Penalty for other wilful damage. —Whoever damages any public embankment by making any dam or other obstruction for the purpose of diverting or opposing the current of an embanked river without the permission of the officer in immediate charge of the embankment, or by refusing or neglecting to remove any such dam or obstruction at the proper season, or by cutting or otherwise altering the banks of any embanked river, or by removing the earth from such embankment, or by grazing or tethering any cattle or animals on any such embankment, or by driving stakes into or cutting or rooting out grass growing on, such embankment, or by any other wilful act destroys or diminishes the efficiency of such embankment shall be liable, on conviction before a Magistrate, to simple imprisonment for a term not exceeding six months, or to a fine not exceeding two hundred rupees, or to both.

XVIII. Jurisdiction of Deputy or Assistant Magistrate under this Act. —Any Deputy or Assistant Magistrate may take cognizance of offences under this Act, and may punish offenders to the extent of the power conferred upon him by the Regulations of the Bengal Code, and by the Acts of the Governor General of India in Council with respect to the punishment of misdemeanors.

XIX. Provision of Section XIII. Regulation XX. 1817 extended to this Act. —The provision of Section XIII. Regulation XX. Of 1817 shall extend to any charge or information of the offences specified in Section XVI. of this Act ; and Darogahs and other Police Officers shall enquire into such offences in the mode and subject to the provisions therein prescribed.

XX. Right of appeal. —All sentences and orders passed by a Magistrate, Deputy Magistrate or Assistant Magistrate under this Act shall be appealable, subject to the general provisions which regulate appeals.

21. Interpretation. —In the construction of this Act, words importing the singular number only shall include the plural, and words importing the plural number only shall include the singular: words importing the masculine gender only shall include females; the word “Collector” shall mean any Collector, Deputy Collector or other Revenue Officer in independent charge of any district or portion of a district.