

# THE RIVERS AND CANALS ACT 1863

## Act 35/1863

### ARRANGEMENT OF SECTIONS

1. 1. Short title
2. 2. Interpretation

#### PART I — RIVERS

- 3 Rivers and streams are public property
- 4 Drawing water from river
- 5 Portions of rivers may be taken for public purposes
- 6 Jouissance of rivers
- 7-8 Repealed
- 9 Rights to water maintained
- 10 Concession presumed not for irrigation
- 11 Borderers not to prejudice others rights
- 12 Borderers rights
- 13 Mode of calculating portion of water
- 14 Mode of abstraction of water
- 15 Supply may be made to increase or diminish
- 16 Penalty for removing and altering pipes
- 17 Water conveyed through ground of another
- 18 Owners of inferior land
- 19 Limits on servitude
- 20 Works on opposite bank
- 21 Repealed
- 22 Supreme Court to fix size of apertures
- 23 Right to springs
- 24 Works not required for prescription
- 25 No one to stop or alter river or stream
- 26 Control of activities near rivers
- 27-28 Repealed
- 29 Establishment of public facilities
- 30 Bathing and washing in rivers
- 31 Fishing

#### PART II — CANALS

- 32 Classification of canals
- 33 Rights to canal water
- 34 34 Repealed
- 35 35 PriRivers and Canals Act 1863se d'eau
- 36 36 Repealed
- 37 37 Taking of prise
- 38 38 Repealed
- 39 39 Penalty for removing pipe or aperture
- 40 40 Drawing water from canal for personal use

- 41 41 Penalty for drawing water unlawfully
- 42 42 Use of machines in canals
- 43 43 Diversion of canal water
- 44 44 Repealed
- 45 45 Projections in canals prohibited
- 46 46 Contravention of sections 42, 43 and 45
- 47 47 Mode of administering classes of canals
- 48 48 Community of riverains
- 49 49 Meetings of riverains
- 50-52 50-52 Repealed
- 53 53 Appointment of syndic and joint syndic
- 54 54 Dismissal of syndic and joint syndic
- 55 55 Duties of syndic
- 56 56 Duties of joint syndic
- 57 57 Corporations may appoint officers
- 58 58 Appointment and dismissal of guardian
- 59-60 Repealed
- 61 Appointments and dismissals to be gazetted
- 62 Duties of guardians
- 63 Guardian's privileges
- 64 Repealed
- 65 Riverains to keep canal clean
- 66 Path to be left along canal
- 67 Canals may be stopped in order to be cleaned
- 68 Penalties for defiling canals
- 69 Restrictions on building near canals
- 70 Prevention of canals from defiling
- 71 Repairs to canals
- 72 Syndic may order certain repairs
- 73 Summary recovery of expenses
- 74 Repealed
- 75 Appointment of share not recovered
- 76 Where syndic refuses to repair
- 77 Magistrate may order repairs
- 78 Minutes of proceedings
- 79 Repealed

### **PART III — GENERAL PROVISIONS**

- 80 Jurisdiction
- 81 Referral to Supreme Court
- 82 Orders of the President
- 83 Decision of the President final
- 84 Complaints under Parts I and II
- 85 Disposal of fines
- 86 Savings
- 87 Throwing of dirty waters in river
- 88 Duty of manager of sugar mill
- 89 89 Injunction
- 90 90 Repealed
- 91 Prosecution of offences
- 92 Normal flow of river

- 93 Measures for ascertaining normal flow
- 94 Where normal flow has been ascertained
- 95 Temporary servitudes
- 96 Normal flow to be recorded
- 97 Assessment of compensation
- 98 Clearing of river bed
- 99 Clearing and replanting river reserves

## **1 Short title**

This Act may be cited as the Rivers and Canals Act.

## **2 Interpretation**

(1) In this Act-

“canal” includes all artificial watercourses belonging to any corporation or community of riverains, but does not include any private watercourse belonging to any individual;

“Permanent Secretary” means the Permanent Secretary, Ministry of Health;

“rivers and streams” includes all natural rivers of water and watercourses, but does not include any artificial watercourse.

(2) (2) In this Act terms used have the same meaning as in the Forests and Reserves Act 1983 and the Woods and Forests Act.

## **PART I — RIVERS**

### **3 Rivers and streams are public property**

Subject to this Act all rivers and streams are public property (du domaine public).

### **4 Drawing water from river**

(1) (1) Subject to subsection (2), any person may draw water from any river or stream for the use of himself, his family, and any animals possessed by him.

(2) (2) Without the authority of the Supreme Court, no person shall under subsection (1) draw water by means of machinery, or by turning aside any portion of the river or stream.

(3) (3) Nothing in subsections (1) and (2) shall entitle any person to enter on private property, without the occupant’s consent, for the purpose of drawing water.

### **5 Portions of rivers may be taken for public purposes**

Portions of the water of a river or stream may with due regard to existing and future interest be removed by the authority of the President for supplying towns, villages, public buildings or establishments, and for similar purposes of public utility.

Amended by [[Act No. 48 of 1991](#)]

## **6 Jouissance of rivers**

Subject to this Act, the proprietors of land bordered or traversed by any river or stream —

- (a) (a) may have the use (jouissance) of the water, to the exclusion of all others;
- (b) (b) shall have rights that are equal in character and principle notwithstanding differences as to the portions of water to which they may be respectively entitled from the river or stream to which their rights apply;
- (c) (c) may use the water for the irrigation of their land.

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## **9 Rights to water maintained**

The holders of concessions to the water of a river or stream may take water in conformity with their titles of concession.

## **10 Concession presumed not for irrigation**

Any concession of water from a river or stream, of which the titles of concession have been lost, shall be presumed, until the contrary is proved, to be —

- (a) (a) for purposes other than irrigation; and
- (b) (b) subject to the condition of returning the water to the river or stream, so far as not required for the purpose of the concession.

## **11 Borderers not to prejudice others rights**

- (1) (1) Proprietors of land are prohibited from using the water of any river or stream in such a manner as to prejudice the rights of any person or corporation to the water of that river or stream.
- (2) (2) Any person who contravenes subsection (1) shall be liable in damages to all persons interested, and may be ordered by the tribunal having jurisdiction in the premises, to restore the river or stream to its proper condition.

## **12 Borderers rights**

- (1) (1) Subject to subsection (2), each proprietor is entitled to a portion of water in accordance with the total volume of water of the river or stream, and the quantity of land capable of being irrigated by it.
- (2) (2) A sufficient quantity of water shall be always preserved in the river, to meet the natural wants of all the borderers and the public.
- (3) (3) Any proprietor who has not had his portion of water granted or assigned to him shall have the same assigned to him by the Supreme Court —
  - (a) (a) after considering the report of a competent person appointed by the court to measure the water; or
  - (b) (b) without a report, by consent of the proprietors of land or of shares of water, below the place from which it is proposed to take the portion of water.

## **13 Mode of calculating portion of water**

In determining what quantity of water shall be assigned to any property, any portion of water which has been previously granted or assigned to the same property, or to the property of which it formed a part, shall be taken into account, to the effect that no property shall have assigned to it a greater quantity of water than that to which it was originally entitled.

## **14 Mode of abstraction of water**

Every portion of water to which any proprietor is entitled under this Act or in consequence of any concession, shall be taken from the river or stream —

- (a) (a) only by means of a pipe or aperture in metal, stone, or mason work;
- (b) (b) with the assistance of any dam, bar or machinery which may be required, but which shall not be made or placed, altered or removed, except with the authority of the Supreme Court.

## **15 Supply may be made to increase or diminish**

- (1) A riverain may require that the pipe or other means by which any superior riverain in the same river or stream takes his portion of water, is arranged so that the quantity of water to be taken, increases or diminishes in accordance with any greater or lesser volume of water in the river or stream.

- (2) Arrangements under subsection (1) shall be made to the satisfaction of the Supreme Court.

**16 Penalty for removing and altering pipes**

Any person who, without lawful authority, places, removes or alters any metal, stone, dam or other thing placed under section 14 shall commit an offence and shall on conviction, be liable to a fine not exceeding 500 rupees, and shall restore everything to its proper condition at his own expense.

**17 Water conveyed through ground of another**

- (1) Any proprietor who wishes to have any water, which he has a right to use or dispose of, brought to his land for any purpose, may have the water taken through intermediate lands, with the authority of the Supreme Court, and upon payment of a fair compensation to be previously fixed by arbitration.
- (3) (3) The water shall be conveyed in the way arranged by the proprietors, or, where they do not agree, in the way decided by the Supreme Court, after receiving the report of one or more experts.

**18 Owners of inferior land**

Subject to compensation for any damages which they may suffer, the owners of land below the land irrigated in conformity with this Act, shall receive into their land any water which may proceed from the land irrigated.

**19 Limits on servitude**

No building, yard, garden, park or fence, adjacent to a dwelling house, shall be subject to the servitude of sections 17 and 18.

**20 Works on opposite bank**

- (1) (1) A proprietor who wishes to have his property irrigated by any water which he has a right to use, or dispose of, may subject to the prior payment of a fair indemnity, have such works laid on the property of the opposite riverain as may be necessary for his obtaining his portion of water.
- (2) (2) The works must be so constructed and kept up by the proprietor as not to injure any neighbouring property.
- (3) (3) No building, yard or garden adjacent to a dwelling house, shall be subject to the servitude of subsection (1).
- (4) (4) A riverain on whose property works are laid under

subsection (1) may, on contributing one half of the cost of construction and repair, claim the right to use the works in common with the proprietor by whom they were constructed.

- (5) No compensation shall be due to either party under subsection (4).
- (6) Where the right to use the works in common is not claimed until after they have been commenced, the party making the claim shall be liable to bear any additional expense that may arise from any alteration made in the works, to apply them towards the irrigation of his land.

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**22 Supreme Court to fix size of apertures**

All questions as to the size and position of any aperture by which water may be taken from any river or stream, or of any related dam or bar or other construction, and questions as to rights maintained on written or prescriptive title, shall be determined by the Supreme Court.

**23 Right to springs**

- (1) Subject to subsection (2), and to any right which any inferior proprietor shall have acquired by title or prescription, any person who has a spring in his ground, may use it, in or upon his ground, in any way he thinks proper.
- (2) (a) All springs which are the sources either of a river, of a tributary of a river, or of a stream, are public property.
- (b) The proprietor of the ground in which a spring rises, which supplies the water required by the inhabitants of a district, village or hamlet, may not alter the course of that spring or stop its water.
- (c) Where the inhabitants specified in paragraph (b) have not acquired, by title or prescription, the right to use the spring water, the proprietor shall be entitled to compensation which shall be determined by arbitration.

**24 Works not required for prescription**

- (1) The acquisition by anyone of a prescriptive right to the passage of a spring, stream or run of water, through his property, shall not require that works, apparent or otherwise, have been made in relation to it.
- (2) The prescription period under subsection (1) shall be 30 years.

**25 No one to stop or alter river or stream**

- (1) Except with authority from the Supreme Court, no person shall —
  - (a) (a) stop or change the course or level of; or
  - (b) (b) make or place any dike, dam, basin, or construction of any kind in the course of, any river, stream, or run of water that is public property.
- (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees, and shall restore the river, stream or run of water to its former state.

**26 Control of activities near rivers\***

- (1) No dwelling house, kitchen, slaughter house, or camp of labourers, and no privy, urinal, stable, cow house, cattle yard, pigsty, poultry house or poultry yard, and no distillery or sugar or other manufactory, shall be erected within 100 feet of any river or stream, unless the Permanent Secretary or the Sanitary Authority certifies in writing that the water of the river or stream, is not liable to be defiled by any matter or water issuing from such erection or building.
- (2) Where any premises specified in subsection (1), or any quantity of sugar, cane trash, bagasse, syrup, molasses, wash, manure, dung, or accumulation of matter of any kind, or any sewer, ditch, or drain, appears to the Supreme Court (after a report on the matter by one or more persons of skill, and after the parties interested have been duly called) to be so situated that any water or matter from there can defile any river or stream, the occupier of the premises shall remove the water or matter or make arrangements, to the satisfaction of the Permanent Secretary, or of some skilled person appointed by the Supreme Court, for preventing the defiling.
- (3) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees, and the works or arrangements necessary for preserving the purity of the water of the river or stream in question. may be made at his expense on order of the District Magistrate.

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**29 Establishment of public facilities**

The authority of the Supreme Court shall be necessary for the establishment by the Permanent Secretary, of any public drinking fountain, reservoir, bath, or washing house, in, or in the course of any



river or stream, and to the withdrawing from that river or stream, or from any spring, which is public property, of any water for supplying any such establishment.

**30 Bathing and washing in rivers**

- (1) (1) Where the Permanent Secretary establishes any public bath or washing house under section 29, he may prohibit any person from bathing or washing himself, or any other person, or any linen or clothes, or any animal in the river or stream or in any part of it that he may determine.
- (2) (2) Any person who, after such public notice of the prohibition as the Permanent Secretary thinks proper has been given, contravenes the prohibition, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50 rupees.

**31 Fishing**

Nothing in this Act shall apply to or alter or modify the right of any person to fish in any river or stream, in accordance with any other enactment.

**PART II — CANALS**

**32 Classification of canals**

Canals shall be the property of the individuals who have the right to them and shall be used and enjoyed by them in conformity with their titles and this Act.

**33 Rights to canal water**

- (1) (1) The rights of parties who claim portions of water from any canal on the ground of concession, apportionment, or prescription, shall be determined in conformity with their written or prescriptive titles.
- (2) (2) Where the rights cannot be determined on the basis of written or prescriptive title, the persons who contributed to the cost of constructing the canal, or their successors in the properties through which the canal passes, shall have rights to portions of the canal.
- (3) (3) Where there is insufficient proof to determine who were the contributors to the construction of a canal, the Supreme Court shall determine who shall have rights to portions of the canal.
- (4) (4) This section shall not prejudice any other arrangement warranted by the titles in regard to a canal.

**35**     **Prise d'eau**

- (1)     (1)     Any person may have right to a portion of water from any canal with the written consent of all the persons who have portions of the water of the canal.
- (2)     (2)     The water apportioned from any canal to any individual, shall, unless otherwise provided by written title, be his absolute property, and shall be held to be of one or more shares, each equivalent to a circle of 15 lines (French measure) in diameter.

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**37**     **Taking of prise**

- (1)     (1)     Shares of water shall be taken from the canal by means of a pipe or aperture in metal, stone, or mason work, and in no other way.
- (2)     (2)     The position and size of every pipe or aperture, and of any dam, canal, basin, or other work shall —
  - (a)     (a)     where the canal is administered by a corporation or other body on behalf of the community, be regulated and determined in conformity with the titles by that body;
  - (b)     (b)     in any other case, be regulated and determined by the Supreme Court.
- (3)     Subsection (2) shall not apply to any claim founded on written or prescriptive title.
- (4)     Notwithstanding possession for any length of time of a portion of water of any canal, without the portions being defined as a certain number of shares, the party or parties interested shall only have right to one or more shares or fractional parts of shares of the canal, to be determined according to their titles or other evidence, and to be measured under this Act upon the application of an interested party.

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**39**     **Penalty for removing pipe or aperture**

Any person who, without lawful authority, removes or alters the size or portion of any pipe or aperture, or dam, basin, or other work shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and the property shall be restored to its previous condition at his expense.

**40**     **Drawing water from canal for personal use**

- (1) (1) Any person may draw water from any open part of a canal for the use of himself, his family, and domestic establishment and animals used by him or his family.
- (2) (2) A person who has no right to a portion of the water of a canal shall not draw water from the canal by means of any pipe, canal or drain, or with the aid of any machinery, or for irrigating or watering any kind of crop or any garden or other ground, or for use in carrying on any manufacture.
- (3) Nothing in this section shall authorise any person to enter on private property, without the owner's consent, for the purpose of drawing water from a canal.

#### **41 Penalty for drawing water unlawfully**

- (1) Subject to subsection (2) any person who draws water from a canal in any way or for any purpose not authorised by this Act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50 rupees.
- (2) No person shall commit an offence under subsection (1) by using the water of a canal for irrigating or watering any crop or garden or other ground unless he has been personally warned not to do so, by the syndic, joint syndic, or guardian of the canal, or after the syndic or joint syndic has, by public notice, warned all persons against contravention.
- (3) (a) In the case of canals belonging to individuals, the warning or notice under subsection (2) may be given by the proprietor or by any person authorised by him.  
(b) The notice shall be published by affixing copies at the District Court House and principal police stations, one or more, in the district, and in such other way, as the syndic or joint syndic or proprietor shall determine.

#### **42 Use of machines in canals**

- (1) Any person may establish a machine in the course of any canal, in any place where it passes through his property, and may use the water of the canal for working the machine unless by doing so he injures the canal, or diminishes or defiles the water of the canal.
- (2) (a) Any person whose land borders a canal shall, with consent of the proprietor on the opposite bank, have the right specified in subsection (1).  
(b) Where the other proprietor refuses, the machine and necessary works may be erected on payment of an indemnity to be fixed by arbitration.

- (3) The prior written consent of the syndic of the canal is necessary for the establishment of a machine in a canal under this section.

**43 Diversion of canal water**

- (1) A riverain of a canal, with the consent of the corporation or other body or community, administering the canal, may turn aside the whole or part of the water of the canal for any purpose, on condition that—
- (a) (a) the water turned aside is restored without diminution or deterioration, and so as not to prejudice the right of any other riverain, without his consent;
  - (b) (b) it is conveyed in the manner required by the corporation or community, at the expense of the riverain turning aside the water; and
  - (c) (c) all the pipes, gutters, and masonry, are kept in thorough repair by the riverain.
- (2) Where a condition of subsection (1) is not observed, the District Magistrate, upon application by the syndic, or by any person interested, shall order that the necessary works be made and completed and that the water of the canal be returned to its original channel, until completion, all at the expense of the riverain by whom the water has been turned aside.
- (3) Any person may turn aside the whole or part of the water of any canal, not being administered by any corporation or other body for the benefit of the community, with the written consent of all the riverains having shares in the canal, below the place at which the water is turned aside.

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**45 Projections in canals prohibited**

No person shall make any projection into, or any dike, dam, weir, erection, basin, drinking place, or pond, in the course of a canal or of any branch of a canal, the water of which returns to the canal, or, change the level, depth, width, or direction of the canal or branch, without the previous written consent —

- (a) (a) of the riverains below; or
- (b) (b) in the case of canals administered by a corporation or other public body, of the corporation or body.

**46 Contravention of sections 42, 43 and 45**

- (1) Any person who—

- (a) (a) erects any machine in the course of a canal;
- (b) (b) turns aside the whole or part of the water of a canal except in conformity with sections 42, 43 and 45;
- (c) (c) breaks, destroys or impairs the bank of a canal;
- (d) (d) without authority, opens or breaks any part of any pipe, ironwork, mason work, aqueduct or conduit pipe of a canal or any dam, sluice, or construction in connection with a canal; or
- (e) (e) contravenes sections 42, 43 or 45,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200 rupees, and the canal or related work shall be restored to its former state at the offender's expense.

- (2) The proprietors of the ground on, or adjoining which any contravention of sections 40, 42, 43 or 45 has occurred, shall jointly and severally, restore the canal or related work to its proper condition without prejudice to their right to recover the expenses from any person responsible.

#### **47 Mode of administering classes of canals**

- (1) Canals shall be managed and administered by the community of riverains in accordance with this Act, except in the case of any canal —
  - (a) (a) for the administration of which some other body or individuals are appointed in the title to that canal; or
  - (b) (b) belonging to a corporation or other body for the benefit of any part of the community.
- (2) A canal specified in subsection (1) (b) shall be administered by the corporation or body.
- (3) Notwithstanding subsection (1), this Act shall apply to the appointment and powers of syndics and guardians for all canals.

#### **48 Community of riverains**

The community of riverains of a canal may pass and carry out resolutions and bylaws on all matters relative to their common interest and especially with regard to —

- (a) (a) any alteration in the course, structure, level, depth, or width of the canal;
- (b) (b) any repair or improvement of the canal, or of any work

belonging to the canal;

- (c) (c) the remuneration of any skilled person employed in the conservation, repair, or improvement of the canal;
- (d) (d) the appointment of the syndic, and joint syndics, and the appointment and remuneration of any guardians, of the canal; and
- (e) (e) matters specially devolved on community by this Act.

#### **49 Meetings of riverains**

(1) Every meeting of riverains shall be called by written notice or circular intimated to them personally, or at their dwelling houses, or to the occupants of the properties to which their respective rights apply.

(2) (a) The syndic of any canal shall convene a meeting of riverains where required to do so in writing by 3 riverains.

(b) Where there is no syndic, or the syndic fails to convene a meeting the District Magistrate shall convene the meeting.

(3) (a) Every meeting of riverains required by this section may be convened by notices published twice in 3 daily newspapers at least 3 clear days before the day of meeting in addition to the notice or circular mentioned in subsection (1).

(b) Where there is no occupant of the land receiving or entitled to water from the canal, a copy of the notice shall be posted up on the land.

(4) Any usher's certificate that there is no occupant of the land and that the notice has been posted up shall be evidence of those facts.

(5) Every meeting of riverains shall be presided over by the syndic or joint syndic, and, in their absence, by a riverain chosen by those present.

(6) (a) At every meeting of riverains, 3 persons being riverains or their proxies, shall be a quorum, and the majority of the riverains present, or represented by proxies, shall decide.

(b) The chairman shall have a casting vote, and if he is a riverain, he shall also have a deliberative vote.

(7) Every decision by a majority, or carried by a casting vote shall be binding on all the riverains.

### **53 Appointment of syndic and joint syndic**

- (1) A syndic shall be appointed for every canal not administered by a corporation or other public body on behalf of any part of the community.
- (2) The riverains may also appoint one or 2 joint syndics, for any canal not administered as specified in subsection (1).
- (3) The appointments under this section shall be made at a meeting of the riverains called for the purpose on not less than 8 days notice by the District Magistrate, and presided over by him.
- (4) An appointment may be for a term of not less than one, nor more than 3 years, as the riverains shall determine.
- (5) A syndic or joint syndic may be re-appointed.

### **54 Dismissal of syndic and joint syndic**

- (1) A syndic or joint syndic may be dismissed from his office by the riverains at a meeting —
  - (a) (a) called for the purpose on not less than 8 days notice specifying the object of the meetings;
  - (b) (b) presided over by the District Magistrate.
- (2) A corporation or other body administering a canal on behalf of the community may appoint or suspend, or dismiss a syndic and joint syndic for the canal.

### **55 Duties of syndic**

The syndic shall —

- (a) (a) watch over the interests of the riverains, or shareholders of the canal, in relation to their common property;
- (b) (b) convene, and (except in regard to canals administered by any corporation or other body), preside over the meetings of riverains, and keep minutes of meetings;
- (c) (c) take steps for having all the lawful resolutions of the riverains or corporation or other body carried into effect;
- (d) (d) superintend the maintenance, conservation and repair of the canal and works belonging to the canal;
- (e) (e) superintend the guardians of the canal;
- (f) (f) prosecute all contraventions of the law relative to the canal;

- (g) (g) take proper measures for recovering rates and expenses payable by the riverains or others, relative to the canal.

**56 Duties of joint syndic**

A joint syndic shall have all the powers of the syndic, where circumstances prevent the syndic from acting, proof of which circumstances shall not be required in any question as to a joint syndic's authority.

**57 Corporations may appoint officers**

Nothing in this Act shall impair the power of a corporation or other body administering a canal on behalf of any part of the community to appoint an inspector or other officer, according to any law or practice existing at the date of the appointment.

**58 Appointment and dismissal of guardian**

- (1) (a) One or more guardians may be appointed for every canal in Mauritius.
- (b) The guardians for canals administered by any corporation or other body shall be appointed by such corporation or body.
- (c) In cases not covered by paragraph (b) the guardians shall be appointed by the riverains at a meeting called for the purpose.
- (d) At the meeting under paragraph (c) the rate of remuneration to be paid to the guardian or guardians shall be fixed.
- (e) The syndic of a canal may appoint a guardian or guardians for the canal, subject to the ratification of the appointment by the riverains at their first meeting after the appointment.
- (2) (a) Every guardian shall, before entering on his duties, take before a District Magistrate the official oath under the Oaths Act.
- (b) Proof that the oath has been taken shall not be required in any question which may arise as to the validity of any act of the guardian.
- (3) (a) The guardian of a canal shall be subject to suspension or dismissal by the community of riverains or corporation or body, respectively, by which he was appointed.
- (b) The syndic of a canal may provisionally suspend the guardians of the canal pending the decision by the



community or other body.

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**61 Appointments and dismissals to be gazetted**

The appointment, suspension, or dismissal of any syndic, joint syndic or guardian shall be published in the *Gazette*, as soon as possible after the event.

**62 Duties of guardians**

A guardian shall —

- (a) (a) watch over the canal under his care, so that the canal is kept in thorough repair and conservation, and its water is kept pure and free from depredations;
- (b) (b) prevent and detect contravention of any law relative to the canal;
- (c) (c) with the written authority of the syndic or joint syndic, prosecute contravention before the District Magistrate;
- (d) (d) apprehend persons contravening this Act; and
- (e) (e) apprehend without warrant persons detected in the act of defiling the water of any canal.

**63 Guardians' privileges**

- (1) The guardian of a canal shall, in regard to the execution of his duties, have the same powers and privileges as a constable of Police.
- (2) A guardian may without warrant enter on and pass along the whole course of the canal under his care, and on any property other than a dwelling house within 30 yards of the canal, and in so doing he may be accompanied by one or 2 persons for the purpose of examining the canal and land and others adjacent, and of establishing any contravention of the law relating to the canal.
- (3) Any person who molests a guardian or any person by whom he may be accompanied in the exercise of his powers and duties under this Act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50 rupees and to imprisonment for a term not exceeding 6 months.

64 -

**65 Riverains to keep canal clean**

- (1) Every proprietor of ground through which a canal passes shall keep the open parts of the canal in its whole course through his property clear from obstruction of any kind.
- (2) Where there are different proprietors on each side of a canal, each shall keep the ground on his side clear from obstruction and they shall be jointly and severally bound to keep the open portions of the canal between their properties clear.
- (3) Where a person fails to comply with subsections (1) and (2)—
  - (a) (a) the work may be done at his expense by any person having the authority of the syndic, or of the corporation or body administering the canal; and
  - (b) (b) he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 rupees.

**66 Path to be left along canal**

- (1) (a) A passage 3 feet wide at least shall be left on one or other side of every canal along its whole length, and the proprietor of the ground on which the passage is, shall keep it free from obstruction.
  - (b) Paragraph (a) shall not apply where the canal has been carried underneath, or within 3 feet of, a building, or where a building has been erected on, or within 3 feet of, a canal.
- (2) (a) Subject to paragraph (b), where there are different proprietors on each side of a canal, the passage shall be left on each side, and each proprietor shall keep the passage on his own side free from obstruction.
  - (b) Where the proprietors agree to have the passage on one side only, it shall be on the side so agreed and the proprietors shall be jointly and severally responsible for keeping it free from obstruction.
- (3) Where a proprietor fails to comply with this section—
  - (a) the necessary passage shall be made or cleared of obstruction, as the case may be, at his expense, by any person authorised by the syndic, or by the corporation or other body administering the canal; and
  - (b) he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 rupees.

**67 Canals may be stopped in order to be cleaned**

- (1) The riverains or corporation or other body administering a canal

may cause the water of the canal to be stopped for such time as they may determine, in order that the canal may be cleaned, and every occupier of land bordering a canal shall, during the stoppage, clean and clear the open parts in its course through or past the ground occupied by him.

- (2) Where the occupier fails to perform his duty, the necessary work shall be performed at his expense by any person having the authority of the syndic, or of the corporation or other body administering the canal.

## **68 Penalties for defiling canals\***

Any person who —

- (a) (a) plants or causes to be planted on the bank or within 2 yards of any canal, any tree, shrub or plant, capable of tainting the water in such canal;
- (b) (b) eases himself in a river, stream or canal or on the bank of a river, stream or canal;
- (c) (c) places or causes to be placed in a river, stream or canal or on the bank of a river, stream or canal, any dead animal, or any dung, rubbish, manure, cane trash, bagasse or any filth, or any poisonous narcotic or noxious substance or any other substance which tends to pollute the water of the river, stream or canal;
- (d) (d) throws into or places in a canal, or on the bank of a canal any soap suds or dirty water;
- (e) (e) washes any part of his person or of any other individual or animal in a river, stream or canal, where he or the individual or animal suffers from a cutaneous disease;
- (f) (f) washes any part of his person or of any other individual or animal in a canal;
- (g) (g) washes any article in a canal;
- (h) (h) places any linen, clothes, utensils, furniture, cart or implement in a canal;
- (i) (i) permits any impure water from a building or manufactory, or from an accumulation of matter, to enter a canal, or to pollute or impair the quality of the water of a canal;
- (j) (j) places or causes or authorises the placing of any dead animal, dung, manure, cane trash, or any filth or noxious substance in such a situation that water or matter issuing from it can enter a canal, or does or causes to be done any other thing by which the water of a canal may be polluted; or

- (k) (k) causes, or being in charge of any horse, mule, ass, cattle, sheep, goat or pig, or other domestic animal allows the animal to enter or drink out of a canal,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees.

## **69 Restrictions on building near canals**

- (1) No person shall erect or place within 100 feet of an open canal, any dwelling house, slaughter house, hut, kitchen, camp of labourers, privy, urinal, stable, cow house, cattle yard, pigsty, poultry house, poultry yard, or any sugar manufactory, distillery or other manufactory, unless the syndic of the canal and the Permanent Secretary or the Sanitary Authority certifies in writing that the water of the canal will not be defiled by any matter or water from that place.
- (2) In the case of canals for which there is no syndic, and which are not administered by a corporation or other body, the Permanent Secretary, and in case of canals administered by a corporation or other body without a syndic, the chief officer of the corporation or body, shall certify in place of the syndic.
- (3) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200 rupees, and shall at his option either remove the building or erection to a place beyond the distance of 100 feet, or provide for it such arrangements and precautions as the Permanent Secretary, Sanitary Authority, syndic or chief officer certify to be sufficient.
- (4) Any certificate required by this section may be signed by the Permanent Secretary or by the Sanitary Authority.

## **70 Prevention of canals from defiling\***

- (1) Where any place specified in section 69 or any heap or quantity, of sugar, cane trash, bagasse, syrup, molasses, wash, manure, dung, or accumulation of matter of any kind, or any sewer, ditch, cesspool or drain, is so situated that any impure water or matter from it can enter a canal, the owner of that place shall, within such time as the District Magistrate shall appoint, remove the same or make arrangements so that the water or other matter from it no longer enters the canal.
- (2) Where the owner fails to comply with subsection (1), the removal or arrangements shall be made under order of the District Magistrate at his expense.

## **71 Repairs to canals**

- (1) The corporation or other body (not being a community of riverains) administering any canal shall determine all matters regarding repairs to the canal.
- (2) Repairs to a canal administered by a community of riverains shall be made at the expense of the riverains jointly, and in proportion to the number of their shares in the canals, in terms of sections 72 to 77.

## **72 Syndic may order certain repairs**

- (1) Repairs to an amount not exceeding 1,000 rupees a year, may be ordered and carried out by the syndic of a canal without special authority from the riverains.
- (2) Repairs to an amount exceeding 1,000 rupees may be carried out by the syndic by special authority of the riverains given at a meeting.

## **73 Summary recovery of expenses**

- (1) Where any expense has been incurred by the syndic in conformity with this Act, the syndic may deposit with the District Magistrate of the district, a statement certified by the syndic to be correct, setting forth the expense incurred, the share of such expense payable by each riverain, and the names of the riverains who have failed to pay their shares after having been required in writing so to do.
- (2) Where such expense has been incurred in virtue of a resolution of a meeting of riverains, a copy, certified by the syndic, of the resolution shall also be deposited with the District Magistrate.
- (3) (a) On receipt of the documents, the District Magistrate shall grant an order declaring the list of shares of expense to be executive, whereupon a copy of the list and order shall be affixed for 14 days in such part of the District Court House as the District Magistrate may determine.  
  
(b) After the time specified in paragraph (a) a warrant of seizure shall be issued by the Magistrate against every person named in the list, who has not paid his share, or has not shown sufficient cause to the Magistrate why he should not pay the amount charged against him.
- (4) The warrant shall be placed by the Magistrate in the hands of an usher who shall execute it by seizure and sale in the same way as warrants issued by the District Magistrate on judgments for debt.

**74 -**

## **75 Appointment of share not recovered**

Where the syndic, after using lawful means under this Act, has been unable to recover from any riverain his share of any expenses or any part of those expenses, the share or part shall be contributed by the other riverains in proportion to their several shares, and, where not paid, shall be recovered, as provided in section 73.

#### **76 Where syndic refuses to repair**

Where a shareholder in a canal considers that repairs which the syndic will not make on behalf of the community of riverains are required to a part of the canal above the separation of the share of the riverain from it, or in the passage of the canal through or along his property, he may, upon summary application to the District Magistrate, obtain an order on the syndic to convene a meeting of the riverains, to consider whether the repairs ought to be made at their joint expenses, and the syndic, on such order being served upon him, shall convene the meeting to be held not later than 14 days after the date of service.

#### **77 Magistrate may order repairs**

- (1) Where there is no quorum for a meeting of riverains called under section 76 by the syndic either on requisition by a riverain, or on order by the District Magistrate, or where the riverain, at the meeting do not resolve to make the repair called for by the riverain, the riverain may institute before the District Magistrate a civil action against the other riverains for the purpose of having the repairs made under judicial authority, and in that action it shall only be necessary to call as defendant the syndic of the canal as representing the body of the riverains.
- (2) Where in any action it is proved to the District Magistrate that such repair is necessary and ought to be made by the community of riverains, the District Magistrate shall order the same to be made at their joint expense, and shall afterwards give judgment against the riverains for the expense of the same in proportion to their respective shares in the canal.
- (3) The costs of the proceedings shall be paid by the person or persons whose refusal or omission rendered the proceedings necessary.
- (4) This section shall apply to canals supplying water to fewer than 3 riverains, or to riverains who are unable to form a quorum, and have no syndic, and in such cases the action shall be entered by one of the riverains against the others.

#### **78 Minutes of proceedings**

- (1) A copy of the minutes of proceedings of every meeting of canal riverains held under this Act, signed by the person who presided over the meeting and by any 2 other persons who are riverains or

authorised agents of riverains present at the meeting, shall be deposited at the Registration Office, by the person who presided over the meeting, within 14 days of the meeting.

- (2) The copies referred to in subsection (1) shall be free from stamp and registration duties and fees and shall be transmitted by the Registrar-General to the Permanent Secretary, Ministry of Works, immediately after their registration for deposit in the Records Office of the Ministry of Works, and when so deposited shall be stamped with the stamp of the Records Office of the Ministry of Works.
- (3) (3) A syndic or joint syndic, and a riverain chosen in their absence to do so, who presides over a meeting of riverains and who fails without sufficient excuse to comply with subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and be liable to a daily penalty not exceeding 50 rupees for non-compliance, after conviction, with this section.
- (4) (4) This section shall apply only to meetings of riverains of canals managed and administered by the community of riverains.

79 -

### **PART III — GENERAL PROVISIONS**

#### **80 Jurisdiction**

- (1) (1) Subject to section 5, all questions as to any concession or any right to water from any river, stream, run of water or canal, shall be brought before and decided by the Supreme Court.
- (2) (2) All questions as to the possession of any share or quantity of water from a river, stream or canal, shall be determined by the District Magistrate for the district, pending the decision of the Supreme Court, on the question of right.
- (3) (3) Where a question arises as to which of 2 or more District Magistrates has jurisdiction regarding any matter or thing under this Act, that Magistrate shall be held to have jurisdiction, within whose district the head of the river, stream or canal is unless there is some other rule of law, by which the question may be determined.
- (4) (4) All proceedings for contravention of this Act shall be brought before the District Magistrate of the district within which the contravention took place.

#### **81 Referral to Supreme Court**

The President may, where a question of law or fact arises in a matter to

be determined by him under this Act, refer the questions to the Supreme Court for determination, and the Supreme Court shall, upon any such reference, determine the question of law or fact in the same manner, as if it had arisen in a civil action duly instituted in the Supreme Court, and, when the decision is pronounced, the Master and Registrar shall transmit a certified copy to the President, by whom the decision shall be received and acted upon as a final decision upon the matter, and shall be applied in other respects as he thinks proper.

Amended by [\[Act No. 48 of 1991\]](#); [\[Act No. 29 of 1992\]](#)

## **82 Orders of the President**

The Supreme Court or the District Magistrate for the district within which any order of the President under this Act, purports to be executable, shall provide for and secure its execution, on receiving a copy from any party interested.

Amended by [\[Act No. 48 of 1991\]](#)

## **83 Decision of the President final**

All decisions by the President on any matter within his competence under this Act, shall be final and conclusive, and shall not be subject to certiorari, or to appeal to, or revision by, any tribunal.

Amended by [\[Act No. 48 of 1991\]](#)

## **84 Complaints under Parts I and II**

(1) (1) Complaints for contravention of Part I may be made by any Superintendent of Police, the Sanitary Authority within whose jurisdiction the offence took place, or the syndic, or joint syndic, or guardian of any canal which receives water from the river or stream in or on either bank of which the offence occurred.

(2) (2) Complaints for contravention of Part II may be made and prosecuted by the syndic or joint syndic, or guardian (with consent under section 62) of the canal to which the offence relates or by any riverain whose interests are injured by the offence.

## **85 Disposal of fines**

All fines recovered under this Act shall —

(a) (a) where recovered on prosecution by the syndic, joint syndic or guardian of a canal, be payable to the syndic for the maintenance of the canal;

(b) (b) in all other cases be paid into the Consolidated Fund.

## **86 Savings**



- (1) (1) Subject to subsection (2), nothing in this Act shall affect the provisions of the Criminal Code relating to rivers, streams or canals.
- (2) (2) Section 378 (o) of the Criminal Code shall not apply to any person who washes or bathes in a river, where that person is not within the provisions of section 68.

#### **87 Throwing of dirty waters in rivers**

- (1) (1) Subject to subsection (2), any person who throws, or causes to be thrown, or sends or allows to flow into a river or into a canal, pipe or other conduit discharging into a river or canal, any scum, residue, refuse, washing or other dirty waters or other liquid that may tend to pollute the water of such river or canal shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees.
- (2) (2) Where the manager of an estate has complied with section 88, water discharged from a vacuum pan or triple effect shall be deemed not to be a liquid tending to pollute the water of a river or canal.
- (3) (3) In a prosecution against the manager of a sugar estate or against a person having charge of a factory, it shall be sufficient to prove that scum, or some other matter or liquid mentioned in subsection (1), are discharged or issued from the sugar house, mill or factory under the charge of the manager or person, and flow into a river or canal, pipe or conduit.

#### **88 Duty of manager of sugar mill**

- (1) (1) The manager of a sugar house shall make the necessary arrangements and take the necessary precautions for keeping the waters of vacuum pans, triple effects and boilers, where the waters are discharged into a river or canal, separate from the scum, residue, refuse, washings and other dirty waters existing in or issuing from any sugar house, or mill under his charge.
- (2) (2) Any manager who does not comply with subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50 rupees for every day that such default continues.

#### **89 Injunction**

- (1) (1) Subject to subsection (2), on the application of the Permanent Secretary, a Judge in Chambers may issue an injunction to restrain the persons referred to in subsection (2), or any of them, from sending or allowing to flow into any river or stream, or into any canal, pipe or other conduit issuing or discharging into a river or canal any scum, residue, refuse, washings or other liquid that may tend to pollute the water of such river or canal.

- (2) (2) Where the manager of an estate has complied with section 88, the water discharged from a vacuum pan or triple effect shall be deemed not to be a liquid tending to pollute the water of a river or canal.
- (3) (3) The injunction under this section may be issued against the manager or owner of a sugar estate, or where the estate belongs to a company, against the directors.
- (4) (a) Where an application under subsection (1) is refused, the Permanent Secretary may appeal to the Supreme Court within 3 days.
- (b) Where the writ is issued, the persons against whom it is issued may move the court or, in vacation, the Judge in Chambers to discharge it.
- (5) On appeal or motion under subsection (4) being filed in the Registry, it shall be fixed for hearing on a day which shall not be less than 5 nor more than 8 days from the filing.

**90** --

**91 Prosecution of offences**

Offences against sections 87 and 88 may be prosecuted by any officer of the Ministry of Health, who may enter and inspect lands and premises not being private dwelling houses.

**92 Normal flow of river**

- (1) (1) The normal flow of a river shall be fixed by the President on the application of the Permanent Secretary, Ministry of Works, or of any interested party.
- (2) (2) The President may make regulations for prescribing the manner in which the normal flow of any river shall be ascertained.

Amended by [\[Act No. 48 of 1991\]](#)

**93 Measures for ascertaining normal flow**

Where the President is satisfied that such course is necessary for the purpose of ascertaining the normal flow of any river, he may authorise the Permanent Secretary, Ministry of Works, or any interested party, to execute in such river at any specified point or points such temporary works as may be necessary for the purpose, and in such a case notwithstanding any other enactment, the Permanent Secretary, Ministry of Works, or the interested party may not obtain the authority of the Supreme Court for the execution of the works.

Amended by [\[Act No. 48 of 1991\]](#)

**94 Where normal flow has been ascertained**

- (1) (a) Where on an application for the fixing of the normal flow of any river the normal flow is ascertained in the manner prescribed, the findings of the Permanent Secretary, Ministry of Works, or of the interested party, together with a report explaining the manner in which the findings were arrived at and such plans and drawings as may be necessary for their proper understanding, shall be deposited with the Secretary to the Cabinet, who shall make them available to any interested party.
- (b) The party depositing the materials under paragraph (a) shall cause to be published in the *Gazette* and in 3 daily newspapers a notice calling upon persons who may have any objections to the findings to file their objections with the Secretary to the Cabinet within 4 weeks from the last publication of the notice.
- (2) (a) The application, the findings, the report, the objections, if any, and the comments of the Permanent Secretary, Ministry of Works, shall be submitted to the President who shall after consideration of the whole matter fix the normal flow of the river to which the application relates.
- (b) Any interested party may be represented by counsel or attorney before the President.
- (3) (3) Any interested party, may after the normal flow has been fixed, represent to the President that owing to climatic or other conditions, the normal flow as previously determined has changed and the President may, where he thinks necessary, cause the normal flow to be fixed again under this Act.
- (4) The decision of the President shall be final and conclusive.

Amended by [\[Act No. 48 of 1991\]](#)

**95 Temporary servitude**

- (1) (1) Subject to subsections (1) and (2), the Permanent Secretary, Ministry of Works, or any interested party when authorised by the President under section 93 and all persons employed or authorised by them may —
- (a) (a) enter on private land;
- (b) (b) take stones and earth from the private land;
- (c) (c) erect provisionally on private land within 200 metres of works to be performed, labourers' camps, workshops, forges

and places for mixing and preparing materials for the works;  
and

- (d) (d) provide a passage for labourers, materials and all persons in connection with the works.
- (2) (2) Compensation shall be made for the value of the stones and earth taken under subsection (1) and for any prejudice caused by the temporary servitude created.
- (3) (3) This section shall not apply except with the owner's consent, to any land which forms the whole or part of a garden, orchard, or of any enclosure or space forming an appendage to a dwelling house, sugar mill or other manufactory nor to any private road or avenue or ornamental ground.

Amended by [[Act No. 48 of 1991](#)]

#### **96 Normal flow to be recorded**

The normal flow of a river as fixed by the President under this Act and the site or sites at which the normal flow was ascertained shall be recorded in the Registry.

Amended by [[Act No. 48 of 1991](#)]

#### **97 Assessment of compensation**

- (1) (1) The compensation allowed by section 95 shall be assessed where the amount claimed does not exceed 1,000 rupees, by the Magistrate of any of the districts in which the claim for compensation has arisen, and where the amount claimed exceeds 1,000 rupees, by 2 arbitrators selected one by the President and the other by the party to be compensated, and where the arbitrators disagree, by an umpire appointed by the Supreme Court on motion.
- (2) (2) An umpire appointed under subsection (1) shall not award less than the lower sum nor more than the higher sum assessed by the arbitrators.

Amended by [[Act No. 48 of 1991](#)]

#### **98 Clearing of river bed**

The Conservator of Forests may, under such conditions as he thinks fit, authorise the owner of any land through or beside which flows any river or stream to destroy, remove and clear, and to appropriate any tree, bush, weed or other growth or impediment, that may be pointed out to him by a forest officer, lying or being in the bed of that part of the river or stream flowing on or alongside his land so that the flow is not impeded, slackened or interfered with.

## 99 Clearing and replanting river reserves

- (1) (1) Subject to subsection (2), the Conservator of Forests may, with a view to improving the sanitary condition and the growing stock of any locality, authorise the owner of the banks of any river or stream to destroy, remove and appropriate any tree growing in the reserves of such river and stream.
- (2) (2) No tree shall be destroyed, removed or appropriated under subsection (1) unless it has been marked by an authorised forest officer, and that any permission granted under this section shall be subject to such conditions as the Conservator of Forests thinks necessary —
  - (a) (a) as to the felling operation;
  - (b) (b) as to the mode of replanting and the proper upkeep and watching over of the reserves of the river or stream;
  - (c) (c) as to the security to be furnished by the riparian owner for the payment of all expenses incidental to the control of the felling operations and to the proper replanting and upkeep of the reserves.