THE SHORE NUISANCES (BOMBAY AND KOTABA) ACT, 1853

ACT NO. XI OF1853

[*Passed on the* 15*th July,*1853.]

1. *Empowers the Collector, & c. to require the removal of Nuisances, &c. in the harbor, &c. and in default to abate them himself.*

2, 3, 4, *Authorizes the proprietor of the Nuisance on receipt of notice from Collector to apply by petition to Supreme Court, to stop proceedings of Collector, &c.* (*3*) *the onus probandi to lie on petitioner to prove his alleged right : (4) petition to be presented within a month, except under special circumstances.*

5. *Prescribes mode of proceeding in case of no petition being presented or of petition being decided against petitioner.*

7. *Empowers Collector to sell materials of encroachment.*

8. *Save rights of E.I. Co. as trustees for the Crown, &c.*

9. *Defines the term "high water mark."*

Schedule. 1. Notice. 2. Warrant.

An Act to facilitate the removal of Nuisances and Encroachments below High-water Mark in the Islands of Bombay and Colaba.

Whereas there is a large sea-shore in the Islands of Bombay and Colaba, and it is expedient, with a view to the safe Navigation of the Harbour of Bombay, and to the public interests generally, to facilitate the removal of nuisances, obstructions and enroachments below high-water mark in the said Harbour, or upon or about the shores of the said Islands; it is enacted as follows:—

I.It shall be lawful for the Collector of Land Revenue at Bombay to give notice requiring the removal of any nuisance, obstruction or encroachment anywhere below high-water mark in the said Harbour of Bombay, or upon or about the shore of the said Islands;such notice shall be given by affixing the same in some conspicuous place on or near to the encroachment, obstruction or nuisance complained of, and by publication thereof in the *Bombay Government Gazette,* andshall State that, unless the nuisance, obstruction or encroachment be removed or abated within one month, the same will be removed or abated by the said Collector;such notice may be in the

Form No. 1, in the Schedule to this Act annexed, or to the like effect.

II. If any person shall deny the right of the said Collector to effect such abatement or removal, he shall, within one month after such notice shall have been given as aforesaid, apply to the Supreme Court of Judicature at Bombay by petition, setting forth the grounds of his alleged right and praying that the said Collector may be restrained from causing such abatement or removal; andthe said Court may thereupon (on the petitioner's giving sufficient security for costs), fix a time for hearing and adjudicating upon such petition, and given such directions, and make such orders as the said Court may think just, and the said Court may also make an order for restraining the alleged nuisance, obstruction or encroachment from being extended, or from being abated or removed by the said Collector, until after adjudication upon the said petition, or the dismissal thereof for want of prosecution.

III. Upon the hearing of every such petition, the *onus* of proving the alleged right shall be on the petitioner.

IV. No person shall be allowed, after the expiration of such period of one month, to present any such petition as aforesaid, unless on satisfactory accounting to the said Court for the delay.

V. If no such petition shall be presented within the said period of one month, or if the same be presented and determined against the right of the petitioner, or be dismissed for want of prosecution, it shall be lawful for the Collector to cause such abatement or removal as aforesaid, by any person or persons to be authorized by warrant under his hand, andsuch warrant may be in the

Form No. 2 in the Schedule to this Act annexed, or to the like effect; andthe said Collector, and any person acting under his

warrant, shall not be answerable for any damage unavoidably occasioned in the removal of any such nuisance, obstruction or encroachment.

VI. The said Collector may sell the materials of any encroachment or obstruction removed under this Act, and may apply the proceeds of sale in or towards payment of the expenses of the removal, and, if any surplus shall remain, the same be forfeited, and be paid and applied in such manner as the Governor of Bombay in Council shall direct.

VII. Nothing in this Act shall prejudice or affect the rights of the East India Company as trustees for the Crown in any part of the said Harbour, or of the sea-shore of the said Islands, or preclude or interfere with any such proceedings, civil or criminal, for abating such nuisances and encroachments as aforesaid, as might have been had if this Act had not been passed.

VIII. The words “high-water mark” in this Act shall mean the ordinary line of high-water at monsoon tides.

SCHEDULES

SCHEDULE

NOTICE is hereby given by the Collector of Land-revenue in Bombay, under Act XI. of 1853, that (*describe the encroachment*) is to be removed or abated within one month from the date hereof; otherwise the same will be removed or abated by the said Collector under the authority of the said Act.Dated the day of in the year of *our Lord*

(*Signature of Collector*.)

Form No. 2.

This Warrant, granted by the Collector of Land-revenue in Bombay, under Act XI. of 1853, is to authorize of to remove (*describe encroachment*).

Dated (*Signature of Collector*.)