

BOARD OF REVENUE, BIHAR.

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THE BIHAR SALE LAW MANUAL, 1936

CORRECTION SLIP NO. 1.

Patna, the 12th June 1937.

I.—The following corrections shall be made in the Bengal Land Revenue Sales Act, 1859 (XI of 1859), reproduced on pages 1—90 of the Bihar Sale Law Manual, 1936.

- Section 8. *For* the first "Government" *substitute* "the Provincial Government" and *for* the second "Government" *substitute* "the Crown".
- „ 14. *For* "Government" *substitute* "the Provincial Government".
- „ 15. *For* "to Government" *substitute* "to the Provincial Government".
- „ 32. *For* "the Government" *substitute* "the Provincial Government".
- „ 35. *For* "Government" *substitute* "the Provincial Government".
- „ 50. *For* "by Government" *substitute* "by the Provincial Government".
- „ 52. *For* "Regulations of Government" *substitute* "law for the time being in force".
- „ 58. *For* "Government" *substitute* "Provincial Government".

Sections 60 and 61. *For* "Government" *substitute* "the Provincial Government".

[Slip no. 1, dated the 12th June 1937.]

II.—The correction noted below shall be made in the Bengal Land Revenue Sales Act, 1868 [Act VII (B.C.) of 1868], as reproduced on pages 91—101 of the Bihar Sale Law Manual, 1936.

Section 1. *For* "under Government" *substitute* "under the Crown".

[Slip no. 1, dated the 12th June 1937.]

[Price—3 pias.]

BGP (Bd. of Rev.) 29—405—3-7-1937—ARN

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BOARD OF REVENUE, BIHAR.

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THE BIHAR SALE LAW MANUAL, 1936.

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CORRECTION SLIP NO. 2.

*Patna, the 11th September 1937.*

Page 61—

*Cancel* the note and its marginal heading below section 30 of Act XI of 1859.

[Slip no. 2, dated the 11th September 1937.]

[Price—3 pies.]

BGP (Bd. of Rev.) 59—405—16-9-1937—MMG

BOARD OF REVENUE, BIHAR.

THE BIHAR SALE LAW MANUAL, 1936.

CORRECTION SLIP NO. 3.

*Dated Patna, the 22nd November, 1937.*

Pages 168-171.

*Substitute* the following revised rules for the existing ones in section IV :—

**“ SECTION IV, SYSTEM TO BE FOLLOWED IN THE ARREAR COLLECTION DEPARTMENT AS REGARDS THE PAYING OF ARREARS.**

1. The payer will prepare chalans in triplicate in form no. 368 (H) or 369 (B) of Schedule XIV and in duplicate in Form no. 186—Schedule LIII, filling up of chalans. writing or having written on the former chalan the amount of the outstanding balance of land revenue or cess (and interest thereon) he intends to pay in, with necessary particulars against the various cross heads ; and on the latter chalan the process fees or costs, etc., due, which he wishes to pay, as well as the other requisite entries.

2. The payer will then present his five chalans to the clerk of the Arrear Collection Department deputed to receive chalans, over whose desk Payer to present chalans to the clerk of the Arrear Collection Department. should be hung a board, on which should be painted in large characters in English and the vernaculars in use in the district—

**“ ARREAR CHALANS RECEIVED HERE ”.**

3. On receiving the chalans the clerk will stamp across each of the five forms the word “ ARREARS ” and Treatment of chalans. pass them and the payer on to the clerk who keeps the account of the arrear which the payer wishes to liquidate. This latter clerk will then see that the copies agree with the originals, that

(Price—9 pias.)

the entries as to the arrear to which the sum is to be credited, and also the number and date of the case concerned are correctly entered. He will then give any information as to the state of the balance which the payer may require and initial all the chalans. But as regards a land revenue arrear chalan and its copies, he will not initial the chalans until he has ascertained that the Collector has agreed to accept from the defaulter payment of such arrear.

4. The clerk will then ask the payer to affix on the duplicate copy of the chalan in form no. 186, Schedule LIII, relating to process fees or costs, etc., due, stamps of the value equivalent to the amount mentioned therein. The clerk will retain the duplicate copy and will enter in red ink across the original chalan the words "Paid in stamps," and return it to the payer along with the other three chalans relating to land revenue or cess arrears. The Deputy Collector in-charge of the Arrear Collection Department will see that the stamps are punched in his presence and certify on the chalan that the requisite amount has been paid in stamps. The clerk will enter the value of the stamps in Register 58 and then file them with the record of the case.

5. The payer will next present his three chalans in form no. 368 (H) or 369 (B) to the Accountant, who after seeing—  
 Payer to present chalans to the Accountant.

(I) that these are duly stamped "ARREARS" the need of which he can at once ascertain by a glance at the column "Year and kist for which paid,"

(II) that the copies agree with the original,

(III) that each has been stamped by the Arrear Collection Department clerk and initialled by the clerk of the Department to which the arrears relate, and

(IV) that the amount noted in words agrees with that given in figures

will sign and date the chalan and its copies and return all three to the payer.

6. The payer will then present his three chalans to the Treasurer, who after carrying out or causing to be carried out the procedure referred to in clauses (a) to (e) both inclusive, paragraph (iii) rule 2, section XVI, chapter II, Tauzi Manual, will return all three chalans to the payer.

7. The payer will then again go to the Accountant and give him the three chalans. The Accountant will then enter the details of Land Revenue and local cess (and interest thereon) in his Register in the form of Appendix K to the Tauzi Manual, put on each chalan in his registers.



chalan and its copies the serial number which the entry relating to it bears in the register in which its details have been noted, and return the original only to the payer, retaining the two copies.

NOTE.—(rules 5-7). In places where the business of the Treasury is conducted by a branch of the Imperial Bank of India, the procedure laid down in Article 302 of the Civil Account Code, Volume II, should be followed.

8 The Accountant will on the following morning distribute one copy of the chalan to the Head Tauzi Navis and the other to the Arrear Collection Department and in a manuscript book to be kept by him for the purpose, will obtain from the officer, to whom such chalans may be made over, a receipt showing the total number of such chalans so made over daily and their total value.

9. As regards the method to be followed in the amalgamated Tauzi Department after the receipt of the chalan copies from the Accountant, the procedure laid down in rules 4 and 5, section XVI, chapter II, Tauzi Manual, will *mutatis mutandis* apply, but chalans for arrear payments must be distinguished from those for current, and a separate total be given in column 9 of the register prescribed in rule 4 (d), section XVI, chapter II of the Tauzi Manual.

10. The payments referred to in the copies of the chalans including the one already retained under rule 4 above on which stamps have been affixed will then be noted up in the registers relating to the cases in question with which the chalan copies should then be filed.

11. To the Arrear Collection Department will belong the duty of maintaining Register 19 (Sales for arrears of revenue).

Register 19.

[Slip no. 3, dated the 22nd November, 1937.]

Per. G. 3-20

**A MANUAL**  
**OF**  
**THE REVENUE AND THE PATNI**  
**SALE LAWS**  
**WITH NOTES AND THE RULES, &c.,**  
**UNDER THEM.**

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*Published under the Authority of the Board of Revenue,  
Bihar.*



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## P R E F A C E .

THIS is a reprint of the Sale Law Manual, 1923, with corrections up to date.

2. Errors and omissions in the Manual should be brought to the notice of the Board.

3. This Manual is to be briefly cited as "The Bihar Sale Law Manual, 1936."

BOARD OF REVENUE, BIHAR : }

*The 4th June 1936.* }

A. N. DAS,

*Secretary.*

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**A**  
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**OF**  
**THE REVENUE AND THE PATNI SALE LAWS.**

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**PART I.**  
**THE BENGAL LAND-REVENUE SALES ACT,**  
**1859.**

**(ACT XI OF 1859.)**

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[Received the assent of the Governor-General on the 4th  
May 1859.]

*An Act to improve the law relating to sales of land  
for arrears of revenue in the Lower Provinces  
under the Bengal Presidency.*

WHEREAS it is expedient to discontinue the practice of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of revenue, or other demands of Government, in the Province of Cuttack : and whereas it is just that a person having a lien upon an estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured : and whereas it is expedient to afford sharers in estates, who duly pay their shares of the *sadr jama* of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers : and whereas it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents : and whereas it is expedient to provide for the voluntary registration of dependent *taluks* existing at the time of settlement : and whereas it is expedient to protect the holders of registered under-tenures created since the settlement, and not resumable by the grantors or their representatives,

from loss by the avoidance of their tenures on the occasion of a sale of the superior estate for arrears of public revenue, when the arrears can be realized by such sale : and to give absolute security to such tenures by special registry, when shown to be held at rents sufficient for the security of the revenue : and it is therefore proper, for the above and other purposes, to improve the law relating to sales of land for arrears of revenue in the provinces of Bengal, Bihar and Orissa ;

It is enacted as follows :—

NOTE.—(1) *Short Title*.—The short title was given by the Amending Act, 1903 (I of 1903), Sch. I.

*Local Extent*. The Lower Provinces include the present province of Bihar and Orissa except the district of Sambalpur.

This Act has been declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 6, to be in force throughout the former province of Bengal, except as regards the Scheduled Districts. It has been extended by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 5, to the districts of Hazaribagh, Ranchi, Palamau and Manbhum, and pargana Dhalbhum and the Kolhan, in the district of Singhbhum, in the Chota Nagpur Division.

It is in force in the Santal Parganas but not in the district of Angul [*vide* s. 3(2) of the Angul Laws Regulation, 1913 (3 of 1913)].

*Amending Acts*.—The Bengal Land Revenue Sales (Amendment) Act, 1862 (Bengal Act 3 of 1862) and the Bengal Land Revenue Sales Act, 1868 (Bengal Act 7 of 1868), are to be read and taken as part of this Act.

*Further Enactments*.—Sales for arrears of revenue are not liable to annulment by the Civil Courts on the ground—

(a) that one or more of the sharers may not have obtained possession of his or their interests in the property, or

(b) that the proceeds of the sales have materially exceeded the amount of the arrears.

The Board of Revenue has full discretion in ordering sales in such cases, subject to the control of the Government, *see* the Bengal Land-revenue Sales Regulation, 1812 (5 of 1812), ss. 24 and 25.

As to the sale of *ghatwali* tenures, *see* the Bengal Ghatwali Lands Regulation, 1814 (29 of 1814), s. 5.

For saving of liability of tenures to cancellation on sale of estate for arrears of land-revenue, *see* the Bengal Patni Taluks Regulation, 1819 (8 of 1819), s. 2, proviso.

The Bengal Tenancy Act, 1885, does not affect any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue, *see* s. 195(c) of that Act.

As to the recovery, beyond the district in which they accrued, of arrears of land-revenue and of sums recoverable as arrears of land revenue, *see* the Revenue Recovery Act, 1890 (I of 1890).

As to the protection from sale of estates and shares of estates which are under the charge of the Court of Wards, *see* the Court of Wards Act, 1879 (Bengal Act 9 of 1879).

For special procedure as to the sale or attachment of a settled estate for an arrear of land-revenue, or for any other arrear which is recoverable in the same manner as an arrear of land revenue, *see* the Bengal Settled Estates Act, 1904 (Bengal Act 3 of 1904), ss. 33 and 34.

Certain instruments executed under the Ancient Monuments Preservation Act, 1904 (7 of 1904), are binding on purchasers at sales for arrears of land-revenue or other public demands, *see* s. 8 of that Act.

*The Certificate Procedure.*—As to the recovery, under the certificate procedure, of arrears of revenue not realized by sales under the present Act, and of arrears of revenue due from farmers, *see* the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar and Orissa Act IV of 1914).



1. [*Laws repealed*].—*Repealed by Act XIV of 1870, section 1.*

2. If the whole or a portion of a *kist* or instalment of any month of the era according to which the settlement and *kistbandi* of any *mahal* have been regulated be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

Post-office not the agent of the Collector.

NOTE 1.—The revenue of an estate was sent through the post office by a money-order in sufficient time, but it did not, owing to the negligence of the post-office, reach the Collector in due time and the estate was sold for arrears of revenue: *Held* that the sale was rightly held.

Payment to the post-office is not equivalent to payment to the Collector, and the post-office cannot be considered as the agent of the Collector. (Calcutta Weekly Notes, Vol. IV, page 103).

appropriation can not be varied without the consent of the payer: varied, sale is invalid.

NOTE 2.—When the proprietor of an estate makes a payment in respect of arrears of revenue and in the document which accompanies the payment expressly appropriates it to the satisfaction of a particular *kist*, and the money is accepted and acknowledged by the Treasury officer as paid on that account, it is not open to one of the parties to the transaction without the consent of the other to vary the transaction by altering the appropriation in which both originally concurred. When a Collector in such a case subsequently without the consent of the payer appropriated the payment to an earlier *kist* which was also in arrear and advertised and sold the estate for arrears which owing to this appropriation became due on the *kist* for which the payment was originally made, it was held by the Privy Council that there was really no arrear for that *kist* and that the sale was without jurisdiction and invalid. (See I. L. R., Cal. Vol. XXXVIII, page 537.) [B. & O. Board File no. IVL—38 of 1912.]

NOTE 3.—For an explanation of the difference between the meaning of the word "*kist*" as used in this section and as used in the Tauzi Manual see note under section 3 below.

3. Upon the promulgation of this Act, the Board of Revenue<sup>(1)</sup> at Calcutta<sup>(2)</sup> shall determine upon what dates all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates<sup>(3)</sup> in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder.

Rules 1, 2 and 5,  
Part III, section  
I.

And the said Board<sup>(4)</sup> shall give notice of the dates so fixed in the official Gazette, and shall direct corresponding publication to be made, as far as regards each district in the language of that district, in the office of the Collector<sup>(4)</sup> or other officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be), and *Munsifs*, and at every *thana*-station of that district;

and the dates so fixed shall not be changed, except by the said Board<sup>(4)</sup> by advertisement and notification<sup>(5)</sup> in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

NOTE.—Considerable confusion and misunderstanding has been caused by the facts that the definition of the word “*kist*” in the *Tauzi Manual* differs from the sense in which

Meaning and method of use of the terms “*kist*” and “*latest date of payment.*”

(1) As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. & O. Act 1 of 1913).

(2) The reference should now be construed as having been made to the Board of Revenue, Bihar, at Patna.

(3) As to the sale of tenures which are not estates, see the Bengal Land Revenue Sales Act, 1868 (Ben. Act 7 of 1868), sections 11 to 14.

(4) As to the Collectorate in which estates are, for the purposes of this Act, to be deemed to be included, see the Bengal Land Revenue Sales Act, 1868 (Ben. Act 7 of 1868), section 10.

(5) For a notification issued under section 3, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

it is used in section 2 of this Act and that the demands of revenue entered in the Collector's tauzi register are in general *not* the *kists* or instalments of revenue fixed at the original settlement of the estates concerned but an aggregate of several such instalments. This confusion has led to erroneous decisions by the Civil Courts of suits filed under section 33 to annul sales made under this Act. A full and clear exposition of the law has been given in the judgment of a special bench of the Patna High Court in an appeal from a decree of the District Judge of Monghyr in the case of *Jadunandan Singh versus Savitri Devi*, reported in Volume XII, I. L. R., Patna Series, page 750 (S. C. XIV P. L. T., page 247—*see* also page 29 n.). The full judgment in this case has been reproduced as Appendix G at pages 222 to 227 of this Manual. The law has also been fully stated by a Division Bench in *Nanak Prasad versus Kaseda Kumri* (16 P. L. T., page 915). Reference may also be made to *Shama Kant Lal versus Kashi Nath Singh* (7 P. L. T., page 747). For a proper understanding of the meaning and method of use of the terms "*kist*" and "*latest date of payment*" a brief sketch of the history of the evolution of the Land Revenue Sales Law and Tauzi Department practice is necessary.

Before the decennial settlement of 1789 the land revenue demand was distributed throughout the year in monthly instalments, but not always in twelve instalments, and the same distribution was observed in that settlement which was subsequently confirmed as the permanent settlement in 1793. The engagements (*dauls*) executed by landholders at the commencement of the decennial settlement included a *kistibandi* or statement of the monthly instalments in which they undertook to pay the revenue. These instalments are the *kists* referred to in section 2 of this Act. The monthly demands were adjusted according to the seasons so as to be proportionate to the rent collections of the *zamindars*. In the case of temporarily settled estates, the instalments of revenue contracted for in the agreement last executed are similarly the '*kists*' for the purposes of section 2.

Until the year 1841 the whole or any part of any monthly instalment, which was undischarged on the first day of the following month of the same era, was treated as an arrear of revenue for which the estate was liable to sale, originally at the end of the year, and subsequently at any time after the revenue had become an arrear. There was no fixity in the dates of sale which were determined by the date of publication

of the advertisement. Sales might be as frequent as once a month according as there happened to be any arrears of revenue or not. The results were not satisfactory and an attempt to improve them was made by Act XII of 1841 by which monthly sales were abolished and the Board of Revenue was authorised to fix dates for the sale of estates for arrears of revenue for the whole province. The Board in 1842 notified the 28th of June, September, December, and March as the sale dates except in certain districts. But the Act also did away with the advertisements of the estates due for sale. The Collector or the sale dates went over his books and any estate found still in arrear at sunset of the preceding day was sold. The result was that the sales did not attract many bidders and the prices realised in the auction were poor, and prejudicial to the defaulting proprietors.

Accordingly by Act I of 1845 another change was made in the Sale Law. The proprietors were allowed a period of grace in which to pay up their arrears after every instalment of revenue fell due. *The end of this period of grace* was called the latest date of payment. Instead of fixing the sale dates, the Board was authorised to fix the latest dates of payment of arrears, leaving the Collector to fix the day on which the sales were to commence so as to allow time for the estates liable to sale to be duly advertised. The Board adopted as latest dates of payment the dates already notified under the previous Act for sales. By a later instruction the Board ordered that the sales for any quarter should be completed before the next latest date of payment.

The latest dates of payment have remained unchanged since 1845, except in some minor details. They were originally adopted for facility of accounting and not in consideration of the periods of harvest; the distribution of the revenue in the monthly instalments of the original *kistibandis* had, however, been made with due regard to the principal crops of the estates. In 1886 there were attempts by the zamindars through the agency of the British Indian Association to have them altered. The Board refused to do this and its reply explained the relation of the latest dates of payment to the revenue instalments thus for areas where the Bengali or *Amlī* year prevailed :—

*Daul instalment and latest date.*

Chayet (March-April), Bysak (April-May), Joista (May-June),—28th June, as Joista ends somewhere in the middle of June.

Ashar (June-July), Sraban (July-August), Bhadra (August-September)—28th September, as Bhadra ends somewhere in the middle of September.

Aswin (September-October), Kartik (October-November), Agrahayan (November-December)—12th January, as Agrahayan ends somewhere in the middle of December.

Pous (December-January), Magh (January-February), Falgoon (February-March)—28th March, as Falgoon ends somewhere in the middle of March.

The legislation of 1845 was substantially reproduced in the present Revenue Sale Law (Act XI of 1859). As a result of this legislation, from 1841 onwards there has been a period of grace between the dates on which any monthly instalment becomes an arrear of revenue and the date on which the estate becomes liable to sale in respect of that arrear. The zamindars, taking every advantage of the privilege granted, made a habit of delaying the payment of any instalment of Land Revenue till the approach of the latest date of payment which from this cause came to be referred to, quite erroneously, as the *kist* day. The ultimate result of this habit was the practical substitution of a quarterly payment of arrears for the monthly payment of revenue due according to the original engagements. By a natural process the original and legal significance of the word "*kist*" meaning an instalment was lost in common parlance, and the word was used to denote "the period between one latest date of payment and the next."

This was ultimately adopted as the meaning of the word "*kist*" in the Tauzi Manual. Up till 1890 the Tauzi Roll contained details of the instalments of revenue, whether these were monthly, quarterly, or annual, and the Tauzi Ledger was maintained in the form of a zamindari account which showed the instalments of revenue, and the latest dates of payment as well as the collections. When the system of paying revenue and cesses was overhauled between 1892 and 1895 practical effect was given to what had then become the general custom and the details of the monthly instalments were omitted from the new registers, which since then have shown quarter by quarter only the sum of those demands in respect of which the estate would become liable to sale if they, or any part of

them still remained unpaid at sunset of the latest date of payment. A rule was inserted in the Tauzi Manual of 1895 to the effect that the word "*kist*" was used in the Manual to indicate the latest date of payment fixed under Act XI of 1859, not the *kist* of the Settlement *Dauls*. This meaning was subsequently expanded and in the present Tauzi Manual the word "*kist*" is used as indicating "the period between one latest day for payment of arrears of revenue and the next", and not the restricted meaning assigned to it in section 2 of Act XI of 1859.

In consequence of these changes the Collectorate Tauzi Department since 1895 realized Land Revenue, not according to the instalments fixed in the original agreements, but according to the amounts due as arrears on each latest date of payment. Chapter II, section 1 of the Manual describes the Tauzi Roll of a district as a list of the estates from which the land and police revenue of the district is collected, showing the revenue assessed upon each estate, divided into the amounts due on each latest day of payment. (The description is not exactly correct as these amounts are really overdue as arrears before each latest day of payment.) These instalments are carried forward to the Tauzi Ledger which is written yearly, and are shown also in Return X of the demands, collections and balances which is submitted by the Collector after the close of each *kist*. In respect of Return X it is specially enjoined in Rule 5, Chapter II, section XVIII, that the "demand" for a particular *kist* should include only those sums for the recovery of which legal steps can at once be taken on the day immediately following the latest day of payment.

The Tauzi Department practice is therefore in conformity with the Revenue Sales Law though the instalments of revenue as referred to in section 2 of Act XI of 1859 are no longer noted in its registers. The arrears of revenue which the Collector enters in his Return no. X as not having been paid on the last day of the Tauzi "*Kist*", and for which he advertises estates for sale, are *a fortiori also arrears of revenue within the meaning of Act XI of 1859* as they remained unpaid on the first of the month of the appropriate era following that on which they were due for payment according to the original agreement.

4. [*In Sylhet, personal property of defaulters may in the first instance be distrained and sold.*]—  
Repealed by Act XII of 1891, section 2.

Rule 2, section V.  
Rule 9, section  
VII.

5. Provided always that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification, in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed, for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of this Act,

in the office of the Collector, or other officer duly authorized to hold sales under this Act,

in the Court of the Judge within whose jurisdiction the land advertised lies, and

in the *Munsif's* Court and police-*thana* of the division in which the estate or share of an estate to which the notification relates, is situated, or, if the estate or share of an estate be situated within the jurisdiction of more than one *Munsif's* Court or police-*thana*, in some one or more of such Courts or *thanas*, and

also at the *cutcherry* of the *malguzar* or owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose:—

*First.*—Arrears other than those of the current year, or of the immediately preceding.

*Secondly.*—Arrears due on account of estates other than that to be sold.

*Thirdly.*—Arrears of estates under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

Rule 6, section  
V.

*Fourthly.*—Arrears due on account of *takavi*, *pulbundi* or other demands not being land revenue, but recoverable by the same process as arrears of land revenue.

NOTE 1.—The words “arrears of estates under attachment” apply to cases where a portion only of an estate is under attachment, as well as to cases in which the whole estate has been attached.—(B. L. R., Vol. XII, page 297.)

The third clause applies whether the whole or portion of an estate is under attachment.

NOTE 2.—A Commissioner of a division pointed out that great difficulty would arise, if by the above ruling of the High Court, it is meant that the mere informal affixing of a notice at the Collector's cutcherry of a simple attachment makes it incumbent on the Collector to take action under this section which requires that a notification should issue before an estate is sold when it is under attachment by order of a Civil Court. As regards the difficulty of getting formal notice of attachment from the Civil Court, the Board referred him to High Court Circular Order no. 2 of 10th January 1871, which directs that all orders by Civil Courts for the attachment of estates and shares of estates shall be immediately notified to the Collector of the district within which such estates or shares are situated, and directed that the Collector shall invariably bring the matter to the notice of the Judges, if the Civil Court did not give formal and immediate information.—(Board's Miscellaneous Proceedings of 20th September 1884, no. 162, Collection 7, File 343 of 1884.)

Duty of Civil Court to immediately notify attachment of estates or shares of estates to the Collector.

NOTE 3.—The proprietor of a share of an estate paid 5 annas regularly for three years, thinking this was the land revenue. The actual revenue was 6 annas and 1 pie. At the end of three years the share was sold for arrears of revenue amounting to 3 annas and 3 pies, of which 2 annas and 2 pies were for two previous years. It was contended by the proprietor that a notice under this section should have been issued, as the arrear was for years other than those of the current year or of the year immediately preceding. The Collector had applied the 5 annas paid as land revenue, first to liquidate the arrears and then to current demand. The Board held that the Collector was wrong in so doing, that a notice should have been issued under this section, and that the amount unpaid for each year was an arrear of that year; and as subsequent payments were made for current demand, the periods for which the several payments were made, having been clearly specified,

Notice necessary whenever the arrear is for years other than those of the current year or of the year immediately preceding.



they cannot be credited in part against the arrears.—(Board's Miscellaneous Proceedings of 7th January 1893, no. 124, Collection 7, File 2 of 1893.)

No formal attachment necessary in mortgage decrees, containing a direction to sell.  
\*O. 21, r. 87 of the C. P. Code, 1908.

NOTE 4.—Mortgage decrees, when the decree contains a direction to sell such decrees, have the force of an attachment and hence formal attachments are unnecessary. But the Revenue Courts get notice of such decrees when the sale proclamations are issued under section 289\* of the Civil Procedure Code, and should then consider the estate as being under attachment by judicial authority, and issue the notices prescribed by this section.—(Board's Miscellaneous Proceedings of 11th May 1895, no. 336, Collection 7, File 64 of 1895.)

Scrutiny of the general accounts to see whether notification necessary.

NOTE 5.—When an estate has fallen into arrears and is to be sold, the general accounts of the estate should be examined. If it is found that certain shares are in arrear for amounts exceeding the sum demandable from them for the current year, and for the year immediately preceding it, the Collector should issue a notification under this section to ensure the validity of the sale of the share or shares in arrear. Such arrears should be regarded as arrears of the shares only, and the time when any separate account began to be in arrear should be looked into with a view of determining whether or not a notice under this section is necessary.—(Board's Sale Proceedings of 2nd September 1899, no. 342, Collection 7, File 85 of 1899.)

Notification unnecessary in case of attachment under certificate procedure.

NOTE 6.—Attachment under certificate procedure is not an attachment by order of a judicial authority, and does not therefore necessitate action under clause 3 of this section. (I. L. R., Cal., Vol. XIII, page 214.)

Section 5 applies if estate under attachment when it fell in arrears.

NOTE 7.—Section 5 applies if the estate was under attachment when it fell into arrears, and this is not affected by the removal of the attachments at the time of sale. A sale in contravention of this section and section 17 is *ultra vires* and therefore void.—(I. L. R., Cal., Vol. XVII, page 398.)

But not, if attachment takes place after the latest date of payment.

NOTE 8.—In a suit to set aside the sale of an estate for arrears of revenue, one of the grounds taken by the plaintiff was that the estate which was under attachment by an order of the Civil Court at the time of the sale was sold without due observance of the formalities prescribed by section 5. The date fixed for payment of the arrears for which the estate was sold was 7th June 1890. The date of attachment was 2nd August following. *Held*, that this section provides for cases

in which the attachment has been made at least fifteen days before the last date of payment for which it is sought to bring the estate to sale, and, therefore, does not apply in cases when the attachment takes place after the latest date of payment and after the estate has become liable to sale.—(I. L. R., Cal., Vol. XXII, page 738.)

NOTE 9.—Where the share of an estate is advertised for sale the notice must be affixed either at the cutcherry of the owner of the share or at some conspicuous place upon the share advertised for sale. If the share consists of an undivided joint holding in any particular mauza, service in any conspicuous place in that mauza is good and sufficient service. (Legal Remembrancer's opinion in the Board's Sales File no. 14 of 1911.)

Place of service of notice of advertisement for sale of a share of an estate.

NOTE 10.—In a certain case the Collector, while recording no definite order of exemption under section 18, passed an order that the arrears "might be accepted" if paid on a certain date. All arrears of land revenue were paid up in full but nothing was paid towards a sum of Rs. 69-13-9 due on account of Embankment Cess, for which a certificate under the Public Demands Recovery Act had previously issued, and in respect of which proclamation of sale had already issued under that Act. - This deficit being reported to him, the Collector held that the sale must proceed, and the estate was accordingly sold. It was held by the High Court, and their order was upheld by the Privy Council, that the embankment charges ordered to be levied under the Public Demands Recovery Act were taken out of the purview of Act XI of 1859 unless and until fresh notices were issued under section 5, and they could not be treated as arrears of land revenue. The sale, therefore, not being for an arrear of land revenue, was liable to be set aside.—(I. L. R., Cal. 42, pages 765 *et seq.*)

Sale for embankment cess is liable to be set aside if held without notice under section 5.

NOTE 11.—To sell an estate for arrears under Act IX of 1859 after lulling the proprietor into a false security by failing to give him a notice which the law prescribes as a condition precedent to a sale, is of itself a very material injury, irrespective of the amount of purchase money realised, and one amply sufficient to warrant a court in annulling the sale under section 33 (15 W. R., 137).

Notice imperative and failure to give it, a material injury.

NOTE 12.—In order to come under the protection of the third clause of section 5, Act XI of 1859, it is not necessary that an estate under attachment by order of a judicial authority must also be managed by some Revenue authority, all estates

All estates under attachment entitled to the protection of section 5(3).

to the payment of any arrear of revenue that might remain due upon the estate, after sunset of the latest day of payment. This, if the deposit were made equal to one or two instalments of revenue, would secure the estate from the possibility of being sold, even if the proprietor were living in England. The deposit might be made in Government securities sufficient in amount to pay the revenue from the interest, whereby the estate might be permanently secured from sale for arrears of revenue—a provision which might be of use for peculiar properties which, from buildings having been erected upon them, gardens or orchards having been planted upon them, or from other like causes, were of great value in proportion to the revenue assessed upon them.”—(Proceedings of the Legislative Council, Vol. I, page 855.)

Refund to  
proprietor or  
co-proprietor.

NOTE 3.—A proprietor or co-proprietor of an estate paying revenue to Government is not entitled to a refund of any sum which may have been paid by him on account of the revenue of the estate of which he is proprietor or co-proprietor in excess of the amount due from the estate up to the date of such payment, unless such payment shall have been specially made as a deposit under this section.—(Board’s Circular no. 3 of February 1872.)

16. It shall be competent to the person making a deposit under the provision of the last preceding section, or his representative or assignee, at any time, to withdraw the deposit and to revoke the pledge of the same.

Withdrawal of the  
deposit.

17. \* \* \* \* no estate held under attachment by the Revenue authorities otherwise than by order of a judicial authority shall be liable to sale for arrears accruing whilst it was so held under attachment.

Estates under attach-  
ment.

And no estate held under attachment or managed by a Revenue officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management, until after the end of the year in which such arrears accrued.

NOTE 1.—Part of this section repealed by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), has been omitted. For the relevant sections of Act IX (B.C.) of 1879 and the relevant rules of the Bihar and Orissa Wards Manual, 1927, see Appendix B of this Manual.

NOTE 2.—A question arose as to whether an attachment by a Collector in a certificate case was such an attachment as would necessitate action under this section: *Held*, that the issue of a certificate against the proprietor of an estate does not operate to exempt the estate from sale under this section.—(Board's Miscellaneous Proceedings of 19th December 1885, no. 27, File 388 of 1885.)

Attachment in a certificate case does not exempt the estate from sale.

18. It shall be competent to the Collector or other officer as aforesaid, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption :

Estates may be specifically exempted from sale.

Provided, however, that the Collector or other officer as aforesaid, or the Commissioner, shall duly record in a proceeding the reason for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption.

Proviso.

NOTE 1.—A defaulting proprietor tendered arrears before the day of sale and prayed that payment might be accepted. The Collector passed an order to accept payment on payment of all Government demands. The Privy Council held that his order was not sufficient. A Collector's order under this section for exempting an estate from sale for arrears of revenue

Exemption must be absolute.

section 8, Act VII of 1868, to be drawn ". He suggests " the law ought to be recast, otherwise a revenue sale would give as insecure a title to the purchaser as a sale in execution of a decree of a Civil Court, and perhaps worse, and the general consequence would be a material deterioration of the real value of property at such sale ".

*Extract from a Resolution by the Government of Bengal, Judicial Department, dated Darjeeling, the 25th August 1885, on the Report on the Civil Litigation of Government during the year 1884-85.*

*Paragraph 4.*—The single case decided against Government in the High Court was of importance, a Full Bench ruling that where the notification for sale by the Collector of an estate or share of an estate under Act XI of 1859 has not been affixed in the way prescribed thirty clear days before the date appointed for the sale, the Collector ceases to have any jurisdiction to put up the property for sale.

What the notification should contain.

NOTE 3.—(i) There is no authority for the proposition that there are certain specifications to be given in the notice and that if by any chance one of these details is not given, the notification is not sufficient. No hard and fast rule can be laid down with regard to sufficiency of the notice, for it must vary according to the facts of each particular case.—(30 C. W. N., 1004.)

(ii) It is unnecessary to specify in the notification of sale the names of the mauzas included in the property sought to be sold. All that is necessary is to specify the estates or shares of estates and the number they bear in the Collector's office.—(I. L. R., Cal., Vol. X, page 63.)

(iii) It is not necessary that a notification should specify the owners of an estate, or the owners of a share in the estate but it need only specify the estate or shares in the estate to be sold; and in selling a share in an estate it is unnecessary to specify the shares or mauzas of which that share is composed.—(I. L. R., Cal., Vol. XII, page 208.)

(iv) Section 6 does not require the Collector to mention the arrears for which the property is put up for sale. (6 P. L. T. 738—A.I.R. 1925 Pat. 750.)

Nature and extent of shares excluded from sale as well as of the share for sale must be specified.

NOTE 4.—The sale notifications should specify the arrears due, the estate or share to be sold; and, when a separate account has been opened, the shares excluded from the sale. The law does not define the nature of the specification to be given, and it is not desirable, or indeed practicable, that the

Board should do so. District Officers must exercise a discretion in entering such particulars as are necessary for the identification of the estate or share, and fuller details will be required in some cases than in others. When an entire estate is advertised, it will generally be found sufficient to specify the number, name, pargana, and *sadr jama* of the estate, and the name of one or more of the proprietors. When only a share is to be sold, the nature and extent of the share or shares excluded from the sale, as well as of the share to be sold, must be precisely specified. In some cases the Collector may find it necessary to insert the names of all the proprietors, but this should not be done as a matter of course, or without reference to the waste of labour and space which such a practice involves when followed without discrimination.—(Board's Miscellaneous Proceedings of 28th November 1885, no. 55, Collection 7, File 203 of 1885.)

NOTE 5.—In the case of shares of estates it is not necessary that a sale should be advertised in the Gazette, if the *jama* of the share to be sold does not exceed Rs. 500. It must, however, be borne in mind that the putting up of a defaulting share to sale does not necessarily terminate the proceedings. If the highest bid for the share does not equal the arrear, and the remaining sharers decline to purchase, the entire estate must be sold, and an advertisement in the Gazette would be necessary before such sale could be held, if the revenue of the whole estate exceeds Rs. 500.—(Board's Miscellaneous Proceedings of 22nd April 1886, no. 82, Collection 7, File 203 of 1885.)

NOTE 6.—The word "estate" as used in this section ordinarily means "*mahal*"; but the term also applies to a portion of a *mahal* with regard to which a separate account has been opened, but not to an undivided portion of a *mahal* as to which separate accounts are not kept (*ibid*). The word "estate" applicable to a separate account.

NOTE 7.—When an estate is situated within the jurisdiction of two District Judges, the notice must be published in the Court of the Judge of the district of the Collector issuing the notice.—(Board's Miscellaneous Proceedings of 19th June 1896, no. 59, Collection 7, File 262 of 1896.)

NOTE 8.—This Act cannot be legally applied, either to private estates leased to farmers (the owners of which have a right of re-entry on expiry of each farm lease), or to Government estates similarly leased out.—(Board's Circular order no. 1 of October 1899.)

Proper description of share to be sold.

NOTE 9.—In a notification of sale under this section, the share of an estate intended to be put up for sale must be so described that there can be no mistake about it. Merely advertising that the "residue" of an estate is to be sold without giving further particulars and stating what that residue is cannot be considered to be a sufficient description. It is obvious that the term "residue" is a relative term only and that it means what is left after excluding from the whole certain specific shares; and that, unless those specific shares are stated, it is impossible for intending purchasers to know what is being advertised for sale, and for what they are supposed to be bidding. This section distinctly lays down that a notification of the sale of an estate or share of an estate must be published in the Gazette; and the meaning of that clearly is that the share to be put up for sale must be so described that there can be no mistake about it.—(Calcutta Weekly Notes, Vol. II, page 479.)

Non-publication of the notification in the Oriya Vernacular Government Gazette not an illegality if it was published in the Calcutta Gazette.

NOTE 10.—The provisions of section 6 of Act XI of 1859 are, for the purpose of notifying a sale for arrears of revenue under the Act, sufficiently complied with by the publication of the notification of sale in the *Calcutta Gazette* which is the "Official Gazette" within the meaning of that section on its proper interpretation. Where a sale has been so notified the non-publication of the notification of sale in the Oriya Vernacular Government Gazette is not an illegality which renders the sale "contrary to the provisions of the Act", and is therefore not a ground for setting it aside under section 33. (46 I. L. R., Cal., 255.)

Rules 9 and 10 (2) and (4), section VII.

7. Whenever an estate or share of an estate is notified for sale as provided by section 6 of this Act, the Collector or other officer as aforesaid shall affix a proclamation, in the language of the district,

in his own office, and as soon thereafter as may be in the *Munsif's* Courts and police-*thanas* within which the estate or share of an estate, or any part of it, is situated, and also at the *cutcherry* of the *malguzar* or the owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate,<sup>(1)</sup>

(1) Also at the subdivisional *cutcherry* within the jurisdiction of which the estate is situate. See the Bengal Land-revenue Sales Act, 1868 (Ben. Act 7 of 1868), s. 7.

forbidding the *railyats* and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

NOTE 1.—(i) The plaintiff sought to set aside the sale of a share in an estate on the grounds that the notices required under section 5 and this section were not duly published, and that the estate was under attachment by order of Civil Court at the time of the sale: *Held*, that there was no subsisting attachment on the property at the time it was sold, omission to issue notice under section 5 did not vitiate the sale, and that in the absence of proof that the plaintiff had sustained substantial injury on account of the omission to issue notice under this section, such omission did not invalidate the sale, the only object and effect of such a notice being to prevent the tenants from paying rent to the defaulting proprietors.—(I. L. R., Cal. Vol. XXI, page 354.)

(ii) Notices under section 7 are only for the purpose of forbidding the tenants from paying their rents to the defaulting proprietor. If such notice is not served and the tenants pay the rent due to the defaulting proprietor, then it would be a question whether the auction purchaser would again be entitled to recover that rent. It is not a question between the defaulting proprietor and the Collector as to whether notice under section 7 was served or not. It is neither an irregularity nor an illegality which can vitiate a sale if notices under section 7 are not served.—(A. I. R. 1928, Cal. 722.)

NOTE 2.—The word "thana" as used in the section does not include out-posts and notices affixed in out-posts only cannot be considered as duly served.—(Board's Sales Proceedings of 23rd March 1901, no. 10, Collection 9, File 35 of 1901.)

8. No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever, held or supposed to be held by any defaulter against

Claims against Government held by a defaulter not to invalidate a sale.

The word "thana" does not include out-posts.

notice cannot validate the sale, its only object being to prevent tenants from paying rent.

Non-service of the notice is no irregularity or illegality to vitiate a sale.



Government, shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hand bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in section 15 of this Act, the Collector shall have neglected, or refused on insufficient grounds, to transfer it in payment of the arrear of revenue due.

NOTE 1.—This section was first enacted with some slight variation in section 7 of Act XII of 1841.

Application of this section.

NOTE 2.—This section has no application unless there be (1) default in payment of the revenue, and (2) possession by the Collector of money of the defaulter indisputably placed to his credit. If any estate be supposed to be in arrears on account of erroneous debit entries, the provisions of this section are not applicable. —(I. L. R. 25 Cal. 833 = 2 W. N. 513 (P. C.).

9. The Collector or other officer as aforesaid shall, at any time before sunset of the latest day of payment determined according to section 3 of this Act, receive as a deposit, from any person not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate.

And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share from which the arrear is due or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the

said estate or share, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits.

And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor.

And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof, the amount so credited shall be added to the amount of the original lien.

NOTE 1.—This provision was first introduced into Act XII of 1841, and afterwards re-enacted with some slight alteration in Act I of 1845 for the protection of persons having contingent interests in an estate, such as mortgagees and undertenants who might perhaps have expended capital on their lands. Before that enactment they were absolutely without remedy if a *zamindar* chose to let the estate fall into arrear for the purpose of bringing it to sale.

Object and origin  
of the section

The last clause of this section was added to remedy a defect in the previous Act I of 1845. Under that Act, as now, the holder of a lien on an estate could save it from sale by depositing the amount of the arrears with the Collector, but, when that was done, he had nothing more to look to for the recovery of the amount deposited than the personal security of the defaulting proprietor. This was inequitable, and the present Act provides that the lien-holder shall have the same security over the estate for his deposit as he had by his original lien. (Grimley's Manual of Revenue Sale Law, page 38.)

Payment by a mortgagee in possession in *bona fide* belief recoverable.

NOTE 2.—Arrears of revenue paid by a mortgagee in possession, in the *bona fide* belief that he had a rightful interest in the property and would be entitled to recover the money so paid may be recovered, although the mortgagee should fail to prove the debt for which the property had been mortgaged.—(W. R., Vol. V, page 126.)

Procedure in suit for contribution of Government revenue.

NOTE 3.—In a suit for contribution of Government revenue, where the defendants plead that the plaintiff was in exclusive possession of the entire property as manager, and had paid the revenue out of it before accounting to them for the surplus profits, the Court should not proceed simply on the fact of payment by the plaintiff, but should also consider whose money was paid.—(W. R., Vol. V, 29.)

Suit for recovery of arrears of revenue paid by a party, admissible even when no privity exists.

NOTE 4.—A party paying in arrears of revenue due by a defaulting proprietor may sue to recover the amount, although there exists no privity between him and the defendant.—(W. R., Vol. XI, page 377.)

Suit cannot be maintained to make a decree a charge against the estate.

NOTE 5.—*A* was entitled to a share in an estate. Before he obtained possession, Government revenue on the whole estate fell due. *A* failed to pay his share, and his co-sharer, *B*. To save the estate, paid the whole sum due, sued *A* for the amount, and obtained a decree. Subsequently this decree became vested in *C*, and the estate came into the possession of *D*. *C* obtained an order for execution against the property of *A*, and having transferred his decree to the High Court, proceeded to enforce the decree against *A*'s widow, by attaching the family dwelling house in Calcutta. The widow brought a suit against *D* to have the share of *A* ascertained, and praying for a decree calling upon *D* to pay the amount of the value of the share in satisfaction of *C*'s decree :

*Held*, that the suit could not be maintained so far as it attempted to make the decree a charge against the estate.

Question as to part satisfaction of a decree cannot, according to clause (c), section 244 of Act X of 1877, be raised in a separate suit. That section alludes to parties to the decree or their representatives; but it is not on that account open to a plaintiff to evade the section by adding an unnecessary party to the suit :

*Held*, on appeal, that the suit was rightly dismissed.—(I. L. R., Cal., Vol. VIII, page 402.)

NOTE 6.—A *patnidar* who had made certain payments on account of Government revenue due by his superior landlords who had defaulted, although a separate account for payment had been opened, brought a suit to recover the amount so paid. In such suit it was contended that the payments were merely voluntary, and that the plaintiff could not recover them :

Deposit can be made for protecting the interest of the person depositing.

*Held*, that the plaintiff was "interested" in making the payment, and was therefore entitled to recover under section 69 of the Contract Act :

*Held*, further, that section 70 of the Contract Act applied to the case, inasmuch as the word "does" in that section includes payment of money, and also that the plaintiff was entitled to recover under this section 9, as he believed in good faith that his interest would be endangered by a sale taking place.

The liability of a landlord to recoup a person paying Government revenue for him does not depend upon the question of whether the money was originally deposited or not, but accrues upon the amount being credited in payment of the arrears.—(I. L. R., Cal., Vol. XII, page 213.)

10. When a recorded sharer of a joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect.

Separation of shares held in common by the opening of a separate account.

Rule 10(3), section VII.  
Rules 1, 2, 4 and 8, section IX.

The application must contain a specification of the share held in the estate by the applicant.

The Collector shall then cause to be published in his own office, in the Court of the Judge, Magistrate (or Joint-Magistrate, as the case may be), and *Munsifs* and in the police-*thanas* in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him.

If, within six weeks from the date of the publication of these notices, no objection is made by any other

recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

A fee of Rs. 2 should accompany each application under this section [*vide* section 70 of the Land Registration Act VII (B. C.) of 1876, as amended by Act II (B. C.) of 1906].

“ Common tenancy ”, meaning of.

NOTE 1.—The legal meaning of the words “ common tenancy ” is well expressed in Regulation XIX, 1814, section 30, to be “ where all the sharers have a common right and interest in the whole of the estate, without any separate title to distinct lands or *mahals* forming part of the estate held under one general assessment ”. It follows, therefore, that, unless all the shareholders have a common right and interest in the whole estate, a shareholder cannot have separate account opened in his name under this section. His proper course is to proceed under section 70 of Act VII (B. C.) of 1876.—(Board’s Miscellaneous Proceedings of 21st September, 1876, no. 306.)

Procedure in dealing with applications under Land Registration Act.

NOTE 2.—In dealing with an application under section 70 of Act VII (B. C.) of 1876, the Collector is not concerned to ascertain whether the amount for which the applicant asks for a separate account to be opened is in proportion to the assets of his interest. It may be that the proprietors have made some private arrangement by which the proprietor of any given share shall pay more or less than the proportionate share of revenue. The opening of an account in accordance with such an arrangement will not jeopardise the interests of the Government or the ultimate safety of the land revenue.—(Board’s Miscellaneous Proceedings of 10th May 1884, no. 207, Collection 7, File 177 of 1884.)

Suit for enhancement of rent by one of two separated co-sharers inadmissible.

NOTE 3.—Two co-sharers, joint owners of a zamindari, caused their shares to be separately registered in the Collector’s office under this section. Subsequently one of the co-sharers sued certain persons (who held *rayati* tenures in the co-sharer’s zamindari) for enhancement of rent without making the other co-sharer a party: *Held*, that no such suit would lie.—(I. L. R., Cal., Vol. VIII, page 353, *cf.* also I. L. R., Cal., Vol. IV, page 96.)

NOTE 4.—Unless the character and extent of the interest of the applicant for the opening of a separate account are specified in the Land Registration Register and in his application, no action under this section can be taken—*vide* also section 69 of the Land Registration Act, VII (B. C.) of 1876.—(Board's Budget and Accounts Proceedings of 10th June 1893, no. 227, Collection 8, File 21 of 1893.)

NOTE 5.—When a separate account has been opened under this section, the liability of all share-holders of the entire estate continues to be joint. The share, however, is not liable to sale, unless the revenue demand for the estate taken as a whole remains unsatisfied.—(Board's Sales Proceedings of 12th January 1901, no. 220, Collection 2, File 5 of 1900.)

11. When a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of *sadar jama* heretofore paid on account of it.

On the receipt of this application the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding section.

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant and shall credit separately to his share all payments made by him on account of it.

The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

A fee of Rs. 2 should accompany each application under this section (*vide* notes under section 10, page 24).

Applicability of the section.

NOTE 1.—This section refers to a distinct class of cases, in which a recorded sharer has obtained a distinct portion of the estate within a ring fence.—(Board's Miscellaneous Proceedings of 5th June 1875, no. 365.)

Civil Court's jurisdiction in suit for a declaration of the extent of share—Collector not a necessary party.

NOTE 2.—The plaintiff, *A* and *B*, were joint owners of an estate, *A* and *B* being alone recorded proprietors. *A* and *B* alienated certain specific portions of the lands to their wives, and applied to open a separate account in respect of the lands so alienated. The plaintiff objected, alleging that the lands had never been divided, but always held *ijmah*, and that *A* and *B* claimed a larger share than they owned; but his objection was rejected on the ground that he was not a recorded proprietor, and the application of *A* and *B* was granted. The plaintiff then sued for a declaration of the extent of his share, and to set aside the order of the Collector: *Held*, that the Civil Court had jurisdiction to entertain such a suit and that it was not necessary to make the Collector a party.—(B.L. R., Vol. VI, page 614.)

Copy of decree under the Land Registration Act not necessary but express mention in the application of the character and interest of the applicant under the Act essential.

NOTE 3.—An application for the opening of a separate account of an estate was rejected by the Collector as it was not accompanied by a copy of the decree passed under Act VII (B.C.) of 1876, though there is no law under which an applicant is bound to file such a copy. The Board held that there is no provision in the law which justifies the procedure, and that the Collector can only require an express mention in the petition that the application is in accordance with the character and interest of the applicant as registered under the said Act.—(Board's Miscellaneous Proceedings of 5th May 1883, no. 80, Collection 7, File 128 of 1883.)

Registration of interest in a specific portion of estate by a co-sharer—Collector's power.

NOTE 4.—The owner of a specific portion of land in a *taraf* applied to have a separate account for his share opened under this section. When the case came on for disposal the Collector rejected the petition, because the applicant was recorded as a joint and undivided sharer in the whole estate in Register A. His application for registration of the specific share had also for the same reasons been rejected. The Board held that Collectors have no power to prevent the co-sharers of any particular estate in any district from registering his interest in any specific portion of that estate if he should wish to do so.—(Board's Miscellaneous Proceedings of 1st December 1883, no. 6, Collection 7, File 382 of 1883.)

NOTE 5.—Under section 72 of Act VII (B.C.) of 1876, a Collector is empowered to close a separate account on application made to him to that effect by one or more of the recorded proprietors (Board's Land Registration Proceedings of 28th February 1885, no. 159, Collection 10, File 9 of 1885); and under section 74A of the Act as amended by section 14 of Act II (B.C.) of 1906 a Collector is empowered to close a separate account on his own motion.

Power of Collector in closing separate accounts.

NOTE 6.—The proceedings on an application for the opening of a separate account for a share in an estate should not be postponed or stopped because the estate has fallen into arrears subsequent to the application. Such proceedings should be completed when once begun, including enquiries into objections to the application properly preferred. So long as the Collector's sanction to separation of accounts has not been given, the whole estate continues liable for the revenue till the applicant for separation must look after his own interests in the way of protecting his share in such manner as the law provides.—(Board's Circular Order no. 7 of January 1891.)

Arrears accruing after the application for separate accounts not to stop proceedings as the whole estate is liable for the revenue till Collector's sanction to separation is given.

NOTE 7.—In dealing with an application, for the opening of separate accounts, the Collector has no authority to enquire into the question of assets. He has simply to record the share and the *jama* payable for it as stated in the application, if not objected to by the other recorded co-sharers. In the case of dispute the Collector cannot enquire or adjudicate, but should refer the parties to the Civil Court.—(Board's Land Registration Proceedings of 28th July 1900, no. 176, Collection 6, File 67 of 1900.)

Procedure in dealing with applications for opening of separate accounts.

12. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate, that the amount of *sadar jama* stated by the applicant to have been heretofore paid on account of such portion of land, is not the amount which has been recognized by the other sharers as the *jama* thereof, the Collector

If objection be made, parties to be referred to the Civil Court.



shall refer the parties to the Civil Court and shall suspend proceedings until the question at issue is judicially determined.

Rule 2, section V.  
Rule 5, section IX.

13. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due.

In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in section 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion, or the aggregate of the several separate portions, of *jama* assigned thereto.

The sale of a share is subject to all encumbrances.

NOTE 1.—The sale of a share under this section does not convey to the purchaser the share free from all encumbrances created by the former zamindar, but he acquires it as laid down in section 54, subject to all encumbrances.—(B. L. R., Vol. III, page 446.)

Purchaser of undivided share not entitled to exclusive possession of any specific share.

NOTE 2.—The proprietors of a joint *mahal*, the *jama* of which had been partitioned under section 10, were in possession of specific shares under a private arrangement among themselves, but had not obtained separation of shares under section 11. One of the proprietors sold his share to the plaintiff, and the shares of two other proprietors who made default in payment of the revenue were sold under this section and purchased by the defendants. In a suit for exclusive possession of the share purchased by the plaintiff: *Held*, that the defendants acquired by their purchase an interest in the property as an undivided estate, and the plaintiff was not entitled to have exclusive possession of any specific share.—(B. L. R., Vol. XIV, page 170.)

Sale of a share permissible only

NOTE 3.—Section 13, Act XI of 1859, does not say that, when an application has been made for a separate account,

but when a Collector shall have ordered a separate account, that when Collector he is to put up to sale only the share in respect of which an has ordered arrear of revenue may be due.—(7 W. R. 154.) a separate account.

14. If in any case of a sale held according to the provisions of the last preceding section the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share.

Entire estate may be sold under certain conditions.

Rule 6, section VI.

If such purchase be completed, the Collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in sections 28 and 29 of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale.

If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in section 6 of this Act.

NOTE 1.—When a co-sharer of a revenue-paying estate purchases under the provisions of this section, a defaulting share, the sale made by the Collector is a sale contemplated by section 2, Act VII (B.C.) of 1868, and consequently an appeal lies from the order of the Collector passed under this section to the Commissioner, and the sale certificates should be in the same form as in the case of other sales under this Act.—(Board's Sales Proceedings of 15th April 1899, no. 31, Collection 7, File 30 of 1899.)

The sale under section 14 is a sale contemplated by Act VII of 1868, section 2.

NOTE 2.—If in any case, each of the several co-sharers simultaneously paid into the Collectorate the entire arrears due, they should all jointly and equally be declared purchasers of the defaulting share. But if any co-sharer having made payment along with other sharers objected to share with these with others, can

In case of simultaneous payment, the co-sharer who objects to share with others, can

withdraw his money.

others, he should be given leave to withdraw his money.—(Board's Sales Proceedings of 15th April 1899, no. 31, Collection 7, File 30 of 1899.)

Period of ten days,—how to be counted.

NOTE 3.—The period of ten days laid down in this section counts from the date on which the Collector makes the declaration, and, on the analogy of section 9 of the General Clauses Act, 1897, excludes the day on which the declaration is made in open Court and includes the tenth day.—(Board's Circular Order no. 3 of March 1899 and Board's Sales Branch File 6 of 1912).—[B. & O. Board File no. IVL—38 of 1912.]

Collector's or Commissioner's discretion to exempt under section 18 applies to all sales under the Act including sales under section 14.

NOTE 4.—Notwithstanding the direction of section 14 of Act XI of 1859 that the entire estate shall be sold, on the failure of any other sharer to purchase the share by paying the arrear due to the Government, the Collector or the Commissioner is at liberty to exempt the estate from sale under section 18 of the Act. It will be observed that the same expression "shall be sold" is used in regard to ordinary sales in sections 3 and 6. The discretion to exempt from sale vested in the Collector and the Commissioner by section 18 of the Act is a general one that applies to all sales held under the Act including sales authorised by section 14.—(Board's Circular Order no. 17 of December 1902.)

Purchase complete on the payment of the whole arrear.

NOTE 5.—The words "unless the other recorded sharer or sharers, or one or more of them, shall within ten days, purchase the share in arrear by paying to Government the whole arrear due from such share" in section 14 mean that the purchase is effected by the payment of the arrears. As soon as the payment is made, the purchase is complete and there is nothing left for anyone else to buy. The Collector is bound, therefore, to recognise the depositor who first pays the whole amount, or if there are more depositors than one, to recognise as joint purchasers those whose payments first amounted to the total arrears due.—(I. L. R., Cal. XLI, 1106.)

Rules 3 and 4, section VII, Appendix E.

15. If any recorded proprietor or co-partner of an estate shall deposit with the Collector money, or Government securities endorsed and made payable to the order of the Collector and shall sign an agreement pledging the same to Government by way of security for the *jama* of the entire estate, and authorising the Collector to

Deposit for the protection of an estate from sale.

apply to the payment of any arrear of revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under section 3 of this Act the Collector shall apply to the payment of such arrear the said money or securities or such part thereof or of any interest due on the said securities, as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities, for any balance that may remain.

And so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of revenue.

All monies and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court.

NOTE 1.—For fees payable on applications, *see* section 59. Also *see* the Bengal Land Revenue Sales (Amendment) Act, 1862 (Ben. Act 3 of 1862), s. 3.

NOTE 2.—The object of this section is thus explained in the proceedings in Council, when the Bill was under consideration :—“ It occasionally might happen especially in the case of an absent proprietor, that a man’s property might be sold for arrears of revenue which accrued from no intentional default, and no negligence on his part, but from some accident or from the neglect of an agent. Now, the property might be very valuable, and if put up for sale, it might be sold for a sum very disproportionate to its value to its proprietor. To enable proprietors to secure themselves, if they choose, from any such risk, he had provided that every zamindar paying revenue directly to Government on an entire estate should have the power of lodging with the Collector a sum of money or Company’s paper for the purpose of being applied

Object of the section.

to the payment of any arrear of revenue that might remain due upon the estate, after sunset of the latest day of payment. This, if the deposit were made equal to one or two instalments of revenue, would secure the estate from the possibility of being sold, even if the proprietor were living in England. The deposit might be made in Government securities sufficient in amount to pay the revenue from the interest, whereby the estate might be permanently secured from sale for arrears of revenue—a provision which might be of use for peculiar properties which, from buildings having been erected upon them, gardens or orchards having been planted upon them, or from other like causes, were of great value in proportion to the revenue assessed upon them.”—(Proceedings of the Legislative Council, Vol. I, page 855.)

Refund to  
proprietor or  
co-proprietor.

NOTE 3.—A proprietor or co-proprietor of an estate paying revenue to Government is not entitled to a refund of any sum which may have been paid by him on account of the revenue of the estate of which he is proprietor or co-proprietor in excess of the amount due from the estate up to the date of such payment, unless such payment shall have been specially made as a deposit under this section.—(Board's Circular no. 3 of February 1872.)

16. It shall be competent to the person making a deposit under the provision of the last preceding section, or his representative or assignee, at any time, to withdraw the deposit and to revoke the pledge of the same.

17. \* \* \* \* no estate held under attachment by the Revenue authorities otherwise than by order of a judicial authority shall be liable to sale for arrears accruing whilst it was so held under attachment.

And no estate held under attachment or managed by a Revenue officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management, until after the end of the year in which such arrears accrued.

NOTE 1.—Part of this section repealed by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), has been omitted. For the relevant sections of Act IX (B.C.) of 1879 and the relevant rules of the Bihar and Orissa Wards Manual, 1927, *see* Appendix B of this Manual.

NOTE 2.—A question arose as to whether an attachment by a Collector in a certificate case was such an attachment as would necessitate action under this section: *Held*, that the issue of a certificate against the proprietor of an estate does not operate to exempt the estate from sale under this section.—(Board's Miscellaneous Proceedings of 19th December 1885, no. 27, File 388 of 1885.)

Attachment in a certificate case does not exempt the estate from sale.

18. It shall be competent to the Collector or other officer as aforesaid, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption:

Estates may be specifically exempted from sale.

Provided, however, that the Collector or other officer as aforesaid, or the Commissioner, shall duly record in a proceeding the reason for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption.

Proviso.

NOTE 1.—A defaulting proprietor tendered arrears before the day of sale and prayed that payment might be accepted. The Collector passed an order to accept payment on payment of all Government demands. The Privy Council held that his order was not sufficient. A Collector's order under this section for exempting an estate from sale for arrears of revenue

Exemption must be absolute.

must be an absolute exemption, and not an order having effect as an exemption, or not according to what may happen or be done afterwards. It must not depend on an act which may or may not be performed.—(I. L. R., Cal., Vol. XVII, page 809.)

Tender of payment may be accepted though not made by the recorded proprietor.

NOTE 2.—A Collector refused to receive a tender of arrears and to exempt an estate from sale, because the tender was not made by the recorded proprietor of the estate. The real proprietor in this case was a minor and his property was managed by his agent. The agent wilfully neglected to pay the revenue in order to purchase the estate *benami*. The Board, on appeal, *held* that the Collector should have accepted the arrears when tendered and exempted the estate from sale. They, accordingly, recommended and Government sanctioned the annulment of the sale of the estate under section 26.—(Board's Miscellaneous Proceedings of 26th July 1884, no. 141, Collection 7, File 3163 of 1882.)

Tender of payment of arrears by a co-sharer valid though the proprietors constitute one joint and undivided coparcenary.

NOTE 3.—The application of a co-sharer in an estate notified for sale to pay the arrears in full was refused by a Collector for the reason that the proprietors were one joint and undivided coparcenary, and the default had been purposely made in order to effect a sale. *Held* by the Board, on appeal, that this was not a valid reason. Not only is a Collector at liberty to help a co-sharer in protecting his own interests by paying in revenue which other co-sharers have allowed to fall into arrear, but he is bound to give his help towards such an object. It was observed that the Collector should exempt the estate from sale on the petitioner tendering all balances before the date of the sale.—(Board's Miscellaneous Proceedings of 31st March 1883, no. 355, Collection 7, File 96 of 1883.)

The considerations which should influence the Collector's discretion allowed by this section.

NOTE 4.—The considerations which should influence a Collector in the exercise of the discretion allowed him by this section are thus described by the Board:—"The law of summary sale for recovery of arrears of revenue is a necessary evil, but an evil nevertheless. One of the cardinal objections to it is that, in order to secure the public revenue, it unavoidably places in the hands of an unscrupulous proprietor the power of letting his estate go to sale for the express purpose of avoiding the tenures and liens with which he or his predecessors have encumbered it, and thus of realizing under such a sale (carrying with it the peculiarly favourable conditions of a revenue sale) a price higher than he would be likely

to obtain in the open market; in other words, of appropriating to himself a second time the market value of all interests which he has already, by his own acts, transferred to others in addition to the value of the interests which he has reserved to himself which only could be transferred by private sale, or would pass in a forced sale, held by the Civil Court, on account of the proprietor. It is the plain duty of the Revenue officers of Government to defeat any such schemes by every means which the law places at their disposal rather than to encourage and assist them."—(Board's Miscellaneous Proceedings of 9th June 1883, no. 108, Collection 7, File 172 of 1883.)

NOTE 5.—When payment of arrears is not made before sunset of the latest day, no payment should be permitted except on the order of the Collector passed on a petition presented by the defaulter. This being done, the Collector may insist on payment of cesses (now cess) as a condition of grace for exempting estates from sale.—(Board's Miscellaneous Proceedings of 28th June 1884, no. 35, Collection 7, File 73 of 1884.)

No payment after sunset of the latest day to be permitted except by order of Collector. Payment of cess as a condition of grace.

NOTE 6.—A question arose whether the Collector could legally accept payment after the sale had actually begun. *Held*, on the advice of the Legal Remembrancer, that the Collector may accept payment of arrears any time before the fall of hammer, irrespective of the fact that the biddings have commenced. Until the fall of the hammer either the vendor or the bidder may withdraw. A bid at an auction is a mere offer until it is accepted by the fall of the hammer.—(Board's Miscellaneous Proceedings of 25th October 1884, no. 170, Collection 7, File 158 of 1884.)

Acceptance of payment of arrears any time before fall of hammer.

NOTE 7.—A Collector refused to exempt an estate from sale as it had defaulted on two previous occasions. The Board *held* that the Collector would have exercised a wise discretion if he had accepted the payment when tendered, and exempted the estate from sale. The proprietors petitioned that the sale should be set aside. The Board recommended and Government sanctioned its annulment under section 26 on the ground of hardship.—(Board's Miscellaneous Proceedings of 25th October 1884, no. 171, Collection 7, File 393 of 1884.)

Discretion of Collector to accept payment though the estate defaulted on previous occasions.

NOTE 8.—The following orders of the Board of Revenue issued from time to time are of importance as indicating the



spirit in which it is intended the Sale Law should be administered :—

Spirit in which  
the Sale Law  
should be  
administered.

(i) “ The Board observe that estates are sometimes advertised for sale, and occasionally even sold, for arrears of revenue of very small amount, and that Collectors, while acting strictly within the law, bring to sale estates which a little personal attention would probably have exempted under the discretion vested in Collectors for this purpose. It is, however, an unreasonable and harsh procedure to sell any property in regard to which short payment is clearly the result of an oversight which would have been remedied if it had been brought to the notice of the proprietor or his agent. The Board, therefore, call the attention of Collectors to the occurrence of such cases, and desire that they will enquire personally into the circumstances of such petty defaults with a view to the avoidance of sale, before passing the usual orders for selling the estate.”—(Board’s Circular Order no. 4 of July 1881.)

(ii) “ If the sum bid for any estate, or share of an estate which has been sold, is sufficient, after meeting all arrears of land revenue, and all other Government demands due in respect of such estate or share, to liquidate the arrear due on any other estate or share of an estate, belonging to the same recorded proprietors, which has also been lotted and advertised for sale, the Collector should exempt such other estate or share from sale, provided that the whole body of proprietors make a joint written application to that effect, expressly authorising the Collector to apply the surplus sale-proceeds to the liquidation of the arrears of land revenue and other Government demands due in respect of the estate or share which is to be so exempted from sale. The attention of Collectors is drawn to the last lines of section 31, Act XI of 1859, from which they will see that it will be necessary for them to act promptly on the authority given by the proprietors so as to apply the surplus sale-proceeds, inasmuch as the receipt of a precept from the Civil Court, while the surplus proceeds are still in deposit, might have the effect of preventing their so applying the money.”—(Board’s Circular Order no. 7 of March 1884.)

(iii) “ Instances have come before the Board, in which after an estate, or share of an estate, has been advertised for sale according to the provisions of this Act, tender of payment of the arrears, or of part of the arrears due, has been made to the Collector, under circumstances which either leave no doubt, or create the presumption, that the object of the tender

is to obtain exemption of the property from sale. In such cases Collectors have occasionally directed that the tender be accepted without recording any order as to whether the property will be exempted from sale or not, or with some such remark as that proper orders will be passed after the money tendered has been actually paid in. Eventually exemption from sale is refused.

“ Although the acceptance of a tender of payment after the last day allowed by the law may not legally invalidate a sale, the Board altogether disapproved of such a course as being calculated to mislead the party who tenders payment.

“ Collectors are referred to rule 7, section III, which enjoins that if a Collector, for the convenience of a defaulter, accepts such tender of payment, otherwise than with the intention of exempting the property from sale, he should clearly explain to the party that the law will be allowed to take its course notwithstanding.

“ The Board now direct that whenever a Collector passes an order for the acceptance of any such tender, he shall at the same time expressly record either that the property advertised will be exempted from sale, or that the tender is accepted at the wish of the party who makes it expressed to the Collector, after it has been distinctly explained that the property will not be exempted from sale, notwithstanding the acceptance of the payment tendered.”—(Board’s Circular Order no. 10 of March 1884.)

(iv) “ A practice having recently been introduced by a District Collector of insisting, in cases where estates had become liable to sale for arrears of revenue, on an advance payment of revenue as a condition of exemption, Government has intimated disapproval of such a procedure, and desired the Board to circulate, for the information and guidance of Collectors, the following extract from a letter issued by them last year, which contains some observations as to the spirit in which the Sale Law should be administered.”—(Board’s Circular Order no. 2 of May 1885.)

*Paragraph 2.*—\* \* “ I am to request that you will intimate to the Collector that the matter is one in which the law allows him a discretion, and with this discretion the Board do not desire to interfere except by laying down broad rules to indicate the spirit in which the law ought to be administered. The Board have never said that the tender of payment

before sale should be an invariable ground of exemption. In the particular case referred to, the Board characterised the Collector's action as harsh and injudicious, not merely because the money had been tendered, but because the circumstances of the default afforded sufficient reason for thinking that the neglect to pay on the due date arose merely from accident and misfortune. An officer of the position and standing of a District Collector may fairly be expected to exercise a reasonable discretion in such a matter, and to accept the responsibility of passing such orders as are in accordance with the spirit of the general instructions which have been laid down for his guidance. Again, it is obviously impossible to define within fixed limits what shall be considered a trivial or a substantial arrear. In one estate an arrear of a few annas may form a large proportion of the entire revenue; in another an arrear of Rs. 10 may be insignificant. The Collector must exercise his discretion, and must be prepared to justify the action he takes."

\*Vide note (i)  
on page 36.

*Paragraph 3.*—"It is not the wish of the Board to withdraw or modify their Circular no. 4 of July 1881.\* It is the object of that circular to warn Collectors that the law (which is one of extreme stringency) is not to be administered in a harsh or inconsiderate manner. The occurrence of a small arrear affords a *prima facie* presumption that the default has probably been due to some accident or mistake, and the circular instructs the Collector to enquire into the circumstances of the case before he enforces the strict penalty authorised by the law. On the same principle it is the duty of the Collector in all cases of default to administer the law discreetly and leniently."

Collector's or  
Commissioner's  
discretion under  
section 18 to  
exempt from sale  
applies to all sales  
under the Act.

NOTE 9.—Notwithstanding the direction of section 14 of Act XI of 1859 that the entire estate shall be sold, on the failure of any other sharer to purchase the share by paying the arrear due to the Government, the Collector or the Commissioner is at liberty to exempt the estate from sale under section 18 of the Act. It will be observed that the same expression "shall be sold" is used in regard to ordinary sales in sections 3 and 6. The discretion to exempt from sale vested in the Collector and the Commissioner by section 18 of the Act is a general one that applies to all sales held under the Act, including sales authorised by section 14.—(Board's Circular Order no. 17 of December 1902.)

19. Sales shall ordinarily be made by the Collector  
Sales where to be made. or other officer as aforesaid in  
the Land-revenue office at the  
*sadr* station of the district :

Provided, however, that it shall be competent to the Commissioner to prescribe a place for holding sales other than such office whenever he shall consider it beneficial to the parties concerned.

NOTE.—The words “ Commissioner ” and “ he ” were substituted for the words “ Board of Revenue ” and “ they ”, respectively, by the Decentralization Act, 1914 (4 of 1914), section 2, Schedule.

20. In case the Collector or other officer as  
Adjournment of sales. aforesaid shall be unable, from  
sickness, from the occurrence of a  
holiday or from any other cause, to commence the sale  
on the day of sale fixed as aforesaid, or if, having  
commenced it, he be unable, from any cause, to  
complete it, he shall be competent to adjourn it to the  
next day following, not being Sunday or other close  
holiday, recording his reasons for such adjournment,  
forwarding a copy of such record to the Commissioner  
of Revenue and announcing the adjournment by  
written proclamation stuck up in his *cutcherry*; and  
so on, from day to day, until he shall be able to  
commence upon or to complete the sale; but with the  
exception of adjournments so made, recorded, and  
reported, each sale shall invariably be made on the  
day of sale fixed in the manner aforesaid.

NOTE.—Instances have come to the notice of the Board in which the sale of an estate for arrears of revenue was postponed by a Collector solely on the ground that an appeal was pending against his order refusing to exempt the estate from sale on payment of arrears of revenue tendered after the latest day of payment. This practice has been held by the Board to be improper. No sale should be postponed unless under the most exceptional circumstances.—(Board's Circular Order no. 2 of August 1875.)

Sale not to be postponed unless under most exceptional circumstances.

Rule 18,  
section III.  
Appendix A.

21. On the day of sale fixed according to section 6 of this Act, sales shall proceed in regular order; the estate to be sold bearing the lowest number on the *tauzi* or register in use in the Collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in section 22 of this Act.

Order of selling.

Rule 3, section VI.

22. The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate or share as the Collector or other officer as aforesaid may think necessary, either in cash, Bank of Bengal \* \* \* post bills, currency notes or Government securities, to be valued at the market rate of the day, duly endorsed, twenty-five *per cent* on the amount of his bid, and in default of such deposit the estate or share shall forthwith be put up again and sold.

NOTE.—The words “ notes or,” which were repealed by the Repealing and Amending Act, 1903 (I of 1903), are omitted. The words “ currency notes ” were inserted by the same Act, Schedule II.

23. The full amount of purchase-money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth; and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be resold, and the

Full payment of purchase-money.

defaulting purchaser shall forfeit all claim to the estate or share or to any part of the sum for which it may subsequently be sold.

And, in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorised for realizing an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof.

NOTE 1.—On an enquiry from a Commissioner as to whether it is competent to a Collector to sell, for arrears, an estate on which an arrear may have accrued, and a latest date of payment passed during the 30 days' grace allowed to an auction-purchaser by this section, the Board *held* that the proper course in such cases is to sell the estate at the risk of the bidder at the first sale, and then to proceed against him for the amount by which the sum realized at such second sale might have fallen short of his bid at the first sale, and afterwards, if necessary, to proceed under section 15, Act VII (B.C.) of 1868 [now section 5, Act I (B.C.) of 1895] against the original proprietor for the difference between the total amount realized and the original arrear.—(Board's Miscellaneous Proceedings of 29th July 1870, no. 101.)

Procedure in case an arrear accrues and a latest day of payment passes during the 30 days' grace.

NOTE 2.—A share of an estate was put up for sale for arrears of revenue. In the absence of bidders at the sale, the Collector put up the entire estate to sale. The purchaser in this sale failed to make good the balance of the purchase-money within the time allowed by law. The estate thus became liable to re-sale. Meanwhile another instalment had become an arrear. In putting up the estate to sale, the Collector added the demand of this arrear to the original arrear. *Held*, that the Collector was wrong in so doing.—(Board's Miscellaneous Proceedings of 14th June 1884, no. 105, Collection 7, File 161 of 1884.)

In a re-sale an arrear accruing subsequent to the first sale cannot be added to the original arrear.

NOTE 3.—The purchaser of an estate sold for arrears of Government revenue failed to make good the full amount of the purchase-money before sunset of the thirtieth day from

Payment by the auction-purchaser of the balance of

the purchase-money after the statutory period of 30 days inadmissible.

the date of sale. The former proprietor of the estate did not exercise his right of redemption within the three days allowed by section 24. The estate thus became liable to re-sale. The Commissioner, however, recommended that the purchaser might be allowed to pay in the balance of purchase-money and have the sale confirmed in his favour as a matter of grace. *Held*, on the advice of the Advocate-General, that Government has no power to allow the auction-purchaser to pay in the balance of the purchase-money, after the expiration of the statutory period of 30 days, and that there must be a re-sale. On the recommendation of the Board Government sanctioned the refund of 90 per cent of deposit made by him.—(Board's Miscellaneous Proceedings of 22nd August 1885, no. 124, Collection 7, File 1882 of 1885.)

The difference of the amounts of the first and second sales is not to be levied by the Collector *suo motu*.

NOTE 4.—A question arose whether the difference of the amounts of the first and second sales should be realized under this section on the application and at the expense of the defaulting proprietors, or whether the recoveries of the difference should be made at the expense of Government. The Board *held* that this section does not require the Collector to levy the difference *suo motu*. When the law declares the difference to be leviable as an arrear of revenue, this merely defines the procedure by which it can be levied and does not amount to an instruction to the Collector to levy it.—(Board's Miscellaneous Proceedings of 2nd March 1889, no. 68, Collection 7, File 94 of 1889.)

Refund of the entire earnest money forfeited under the law.

NOTE 5.—The purchaser of an estate sold for arrears of Government revenue failed to make good the full amount of the purchase-money before sunset of the thirtieth day. He, however, presented a petition that he had sent the money by postal money order in proper time, but the post office delayed it. The Board recommended and Government sanctioned the refund of the entire earnest money which under the law is forfeited, as the delay appeared to be due to faults in the post office.—(Board's Miscellaneous Proceedings of 27th February 1897, no. 64, Collection 7, File 58 of 1897.)

Refund of 80 per cent of the earnest money.

NOTE 6.—The purchaser of an estate sold for arrears of revenue deposited 25 per cent of the purchase-money, but by missing the train, he could not deposit the balance on the thirtieth day from the sale day, and tendered the money next day for credit into the Treasury which was refused and the earnest money paid before was forfeited. The matter having

come up to the Board on appeal, they recommended and Government sanctioned the refund of 80 per cent of the deposit, 20 per cent being deducted for his (the purchaser's) carelessness in missing the train.—(Board's Sales Proceedings of 4th February 1899, no. 327, Collection 7, File 11 of 1899.)

NOTE 7.—The provisions of the law are imperative. The right to re-sale being the right of the former proprietor, it is not in the power of Government to abstain from a re-sale of the estate, though it may waive its right to the forfeiture of the deposit.—(Board's Proceedings no. 307 of June 1885.)

The requirements of the section imperative.

24. When default is made in the payment of purchase-money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in section 6 of this Act, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred; and if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due, shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding section shall be applicable to every such re-sale :

Provided that, if default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized.

NOTE 1.—An estate was sold for arrears of revenue. The auction-purchaser failed to deposit the balance of the purchase-money within the prescribed period. The estate thus became liable to re-sale. Another man offered within three days of the default to pay the arrears due to Government on account of the estate. *Held* that the tender not being made by or on

Tender not by or on behalf of the proprietor cannot bar re-sale.



behalf of the proprietor, could not bar re-sale.—(Board's Miscellaneous Proceedings of 22nd December 1896, no. 71, Collection 7, File 286 of 1896.)

Estate in the hands of second auction-purchaser cannot be re-sold for the first arrear except when Government is the purchaser at the second sale.

NOTE 2.—An estate was sold for arrears, but a suit was brought to set aside the sale. Meanwhile the estate fell again into arrears, and it was proposed to put it up for sale again. A doubt arose as to how the arrears, for which the estate was first sold, would be recovered. It was held that if the first sale be set aside after another sale of the estate has been held for a subsequent arrear of Government revenue, the estate in the hands of the second auction-purchaser cannot be re-sold for the first arrear. There would be, however, no bar to a re-sale if Government was the purchaser at the second sale and was in possession as purchaser at the time of the re-sale.—(Board's Sales Proceedings of 3rd September 1898, no. 89, Collection 7, File 5 of 1898.)

Rules 12, 13 and 15, section VII.

\*Act VII (B.C.) of 1868.

25. It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act\* or the said Act XI of 1859, so that such appeal be preferred to such Commissioner on or before the sixtieth day from the date of sale, reckoning as in section 23 of the said Act XI of 1859, or be presented to the Collector or other officer duly authorised to hold sales under the said Act for transmission to the Commissioner, on or before the forty-fifth day from the day of sale, reckoning as aforesaid, and not otherwise. And the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act\* or Act XI of 1859, which shall appear to him not to have been conducted according to the provisions of the said Acts, awarding at the same time to the purchaser a payment from the proprietor of compensation for his loss, if the sale shall have been occasioned by the neglect of the proprietor, such compensation not to exceed the interest, at the highest rate of the current Government Securities, on the amount of deposit or balance of purchase-money during the period of its being retained in the Collector's office; and the order of the Commissioner shall in such cases be final.

NOTE 1.—Inserted by section 2, Act VII (B.C.) of 1868.

NOTE 2.—Appeals can be brought by the defaulting proprietors, and they are entitled to appeal even though their names are not recorded under Act VII (B.C.) of 1876.—(Board's Miscellaneous Proceedings of 7th January 1888, no. 131, Collection 7, File 491 of 1887.)

Defaulting proprietors entitled to appeal even though their names not recorded.

NOTE 3.—A reversioner cannot be regarded as the defaulting proprietor and has no right of appeal under this section.—(Board's Miscellaneous Proceedings of 13th February 1897, no. 33, Collection 7, File 547 of 1896.)

Reversioner has no right of appeal.

NOTE 4.—Appeals against a sale for arrears of revenue must be accepted if presented at any time before the close of office hours of the sixtieth day from the date of sale.—(Board's Miscellaneous Proceedings of 10th July 1897, no. 280, Collection 7, File 317 of 1897.)

Appeals must be accepted if presented before the close of the office hours of the 60th day.

NOTE 5.—The right to set aside a sale for arrears of Government revenue under this Act is not confined to proprietors alone, but extends to all persons, such as mortgagees, having an interest in the property antecedent to its sale.—(I. L. R., Cal., Vol. XVII, page 398.)

Persons who have a right to set aside a sale.

NOTE 6.—The word "final" in section 25 of Bengal Act XI of 1859, means at least "not open to review".

What the word "final" means.

A Commissioner or any revenue authority has no power to review his order annulling a sale held for arrears of Government revenue.—(I. L. R., 34 Cal., 677.)

A Commissioner or any revenue authority has no power to review his order annulling a sale.

26. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who \* \* \* may annul the sale and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

Annulment of sale in special cases.

Rules 7 and 8, section VI. Rules 8 and 15, section VII.

NOTE 1.—The words “ if they see cause, may recommend to the local Government to annul the sale; and the local Government in any such case ” were omitted by the Decentralisation Act, 1914 (4 of 1914), s. 2, Schedule.

Form of notice to auction-purchaser.

NOTE 2.—For the form of notice to auction-purchaser—see rule 8, section VI, part III of this Manual.

Condition under which a sale can be annulled by the Board and Government.

NOTE 3.—The competency of the Board and Government to take action for annulling a sale under this section depends on the Commissioner having suspended the passing of final orders in any case of appeal before him and having presented the case to the Board. Such a representation can only be made if an appeal against the sale is pending before the Commissioner.—(Board's Miscellaneous Proceedings of 9th June 1883, no. 108, Collection 7, File 172 of 1883.)

Sale cannot be annulled after it has become final and conclusive.

NOTE 4.—An estate was sold for arrears of revenue. After the sale had become final and conclusive, the proprietors presented an appeal saying that the demand of the *kist* for which the estate was sold, had actually been paid within the *kist*, and produced *chalans* in support of their statement. The Commissioner recommended the annulment of the sale on the ground of hardship. *Held*, by the Board, that as no appeal was preferred in the case and the sale had become final and conclusive before any representation was made to the Collector to have it cancelled, it was not in the power of Government to cancel it. It was a grave case of hardship, but the Revenue authorities were powerless to interfere. The former proprietor was left to seek his remedy in the Civil Court.—(Board's Miscellaneous Proceedings of 15th November 1884, no. 177, Collection 7, File 188 of 1884.)

Finality of the sale if the appeal for the annulment of sale is dismissed by the Commissioner.

NOTE 5.—If the Commissioner does not think fit to exercise his power under this and dismisses the appeal for the annulment of the sale of an estate, the sale becomes final, and neither the Board nor the Government has any jurisdiction to interfere with it.—(Board's Miscellaneous Proceedings of 4th July 1885, no. 299, Collection 7, File 249 of 1885.)

Remittance of land-revenue by money order.

NOTE 6.—Parties who remit their land revenue by money order are bound to do so in sufficient time to ensure their reaching the Collector in time. It is not enough for them to say that they sent the money order in what they thought was sufficient time. The Collectors have discretion under section 18 to accept such remittances if they come late, but unless it

can be shown that the money order was sent in due or reasonable time, but that it had been lost, mislaid, miscarried or delayed beyond ordinary time taken for a money order to reach, no hardship can be alleged. Each case must be dealt with on its own merits under section 18 or this section.—(Board's Sale Proceedings of 14th July 1900, no. 20, Collection 10, File 48 of 1900.)

NOTE 7.—In case of restoration to proprietors of estates purchased by Government application to the Commissioner should be made to have such sales cancelled on the ground of hardship in the usual way.—(Circular order no. 10 of June 1907.)

Restoration to proprietors of estates purchased by Government.

NOTE 8.—The Board have regarded as genuine cases of hardship sales which has been occasioned by—

Genuine cases of hardship.

- (a) mistakes or irregularities of Government servants;
- (b) mistakes of proprietors or their agents, not the result of gross carelessness: in particular, mistakes in chalans or money-order forms;
- (c) delays in the post office;
- (d) refusal of Collector to accept payment of arrears after latest day for payment of arrears of revenue in cases in which previous defaults or the extent of the default does not raise the presumption that the default was intentional, or refusal to exempt after payment of arrears has actually been accepted;
- (e) ignorance on the part of proprietors of change in instalments;
- (f) fraud committed by agents of proprietors by not crediting the dues into the treasury;
- (g) collusion on the part of co-sharers in bringing the estate to sale.

9. Ordinarily, the Board have refused to regard inadequacy of price as hardship, but in one or two cases this plea seems to have been admitted (when coupled with other circumstances probably), and estates and tenures which have been bought in

Inadequacy of price—how far a hardship.

by Government have in several instances been restored to the proprietors as an act of grace on the ground that the price paid by Government was a small one.

Habitual defaulters and those careless in the matter of payment.

10. In general, too, the Board have declined to move Government to set aside sales on behalf of proprietors who are habitual defaulters or who have not used due care and caution in connection with the payment of their dues.

11. A few instances under each of the above heads are given below :—

(a) *Mistakes or irregularities of Government servants.*

Mistake of the tauzi-navis.

1. Government annulled the sale of estate Shyampur Imad, tauzi no. 678, in Bhagalpur, on the ground that the estate was sold on account of the mistake of the tauzi-navis in not properly certifying that all arrears due have been paid.—(Collection 7, File 60 of 1895, serial nos. 3-4.)

Wrong information given by tauzi-navis.

2. Government set aside the sale of estate no. 12406, in Dacca, on the ground that the sale was caused by wrong information given by the tauzi-navis to the proprietor.—(Collection 7, File 105 of 1896, serial nos. 3-4.)

Mistake of the Tauzi Department.

3. Government set aside the sale of separate account no. 8 in estate no. 224, in Monghyr, on the ground that the estate was sold on account of mistake made by the Tauzi Department.—(Collection 7, File 99 of 1897, serial nos. 5-6.)

Sale annulled on account of shortness of time allowed to execute agreement, authorising Collector to credit to revenue out of a deposit.

4. In Patna, estate no. 18 was sold for arrears of revenue, as the proprietress, who was permitted by the Collector to pay in the arrears on condition that she deposited Rs. 200 under section 15 of the Sale Act as security against future defaults, failed to execute the agreement authorizing the Collector to credit to revenue when necessary. The Commissioner recommended annulment on the ground of hardship, as very short time was allowed for the execution of the agreement. Government accordingly reversed the sale.—(Collection 7, File 121 of 1899, serial nos. 3-4.)

Notice issued by Collector misleading.

5. Government reversed the sale of estate Naraon, tauzi no. 2864, in Shahabad, on the ground that the terms of the notice issued by the Collector as regards payment of arrears were misleading.—(Collection 7, File 123 of 1899, serial no. 3, and Collection 7, File 22 of 1900, serial no. 1.)

6. Government sanctioned the annulment of sale of *tauzi* Hossen Jiban Amir no. <sup>1553</sup> ~~1557~~ <sup>1227</sup> in Chittagong, on the ground Tauzi-navis credit-  
ing remittance to  
the next *kist*  
though no mention  
of *kist* made  
in the money-  
order. that the money order remittance made by the proprietor did not mention the *kist* to which the amount was to be credited, and the *tauzi-muharir*, contrary to the rules, posted the amount to the next *kist*.—(Collection 3, File 63 of 1902.)

7. Government annulled the sale of holding no. 71A, sub-division VI, division II, Government estate Panchannogram, in the 24-Parganas, as, by some mistake in the Collectorate, the proprietor's name was changed in the Government registers from Peari Lall *Daw* to Peari Lall *Khan*.—Mistake in the  
Collectorate in  
changing the pro-  
prietor's name in  
Government  
registers.—(Collection 8, File 25 of 1903.)

(b) *Mistakes of proprietors or their agents, not the result of gross carelessness: in particular mistakes in chalans or money order forms.*

1. The sale of *lakhiraj* resumed taluk Ram Chandra Bhattacharjee, no. 29448, in Chittagong, was annulled by Government, as the proprietor paid the whole arrear, but by mistake entered a wrong *tauzi* number in the *chalan*.—Mention of wrong  
*tauzi* number in  
the *chalan*.—(Collection 7, File 199 of 1895, serial nos. 2-3.)

2. The sale of estate Raghunathpur, *tauzi* no. 5945, in Burdwan, was set aside by Government on account of a mistake on the part of the proprietor's servant in sending the money due to Bankura instead of to Burdwan. —Mistake of prop-  
rietor's servant  
in sending money  
to Bankura in-  
stead of to  
Burdwan.—(Collection 7, File 28 of 1885, serial nos. 2-3.)

3. Government annulled the sale of *lakhiraj* resumed taluk Sureswari, *tauzi* no. <sup>26669</sup> ~~31634~~, Chittagong, because the proprietor's agent, who was also the agent for another estate, no. 33311, remitted the amounts due from these two estates in one money order, but by mistake entered no. 33311 only, omitting all mention of no. 31634. —(Collection 7, File 82 of 1895, serial nos. 5-6.)

4. Government set aside the sale of estate Dusanna Buzurg, *tauzi* no. 3097, in Muzaffarpur, on the ground that the sale was due to a simple blunder on the part of the defaulting proprietor, who, instead of depositing the arrear with the *Nazir* (who receives the money up to the commencement of sales), paid it into the Treasury and did not appear with his *chalans* until the estate was knocked down. —(Collection 7, File 87 of 1896, serial nos. 5-6.)

- Ignorance of the proprietress of the order granting her request for separate account. 5. Government annulled the sale of the separate account share no. 5 of estate no. 9634, in Dacca, on the ground that the proprietress, who had applied for the separate account, was unaware of the order granting her request, and therefore paid her portion of the demand to the account of estate no. 9634.—(Collection 7, File 356 of 1896, serial nos. 3-4.)
- Wrong credit of the arrear due to a mistake in the tauzi number. 6. Government set aside the sale of the residuary share of taluk Ram Lochan Dass, no. 3126, in Dacca, as the proprietor paid in the amount due in time, but it was wrongly credited owing to a mistake in the tauzi number.—(Collection 7, File 60 of 1896, serial nos. 3-4.)
- Mistake in the money order in mentioning the tauzi number. 7. The Commissioner of Chittagong recommended the annulment of sale of the lakhiraj resumed taluk Mangal Chand, no. 20193, in Chittagong, on the ground that the amount due was remitted by money order but through oversight the number of the taluk was written as 2019, and as there was no mahal with that number, the money was put in deposit and the remitter informed accordingly. The remitter being an illiterate man, did not understand this intimation and the mahal thus got sold. Government set aside the sale.—(Collection 7, File 220 of 1896, serial nos. 3-4.)
- Estate under settlement. 8. Government set aside the sale of estate Arazi Barari Piparia, tauzi no. 988, in Monghyr, on the ground that the estate being under settlement, the proprietors did not know what the demand would turn out to be, and that it was hardship on the proprietors to lose the estate after having incurred all the expenses in getting possession.—(Collection 7, File 548 of 1897, serial nos. 4-5.)
- Mistaken supposition by the proprietors that the sale day was a holiday. 9. Government sanctioned the cancelment of sale of Noabad taluks nos.  $\frac{782}{2466}$  and  $\frac{763}{2447}$ , in Chittagong, on the ground that the arrears were not paid on the sale day, as the proprietors were under the mistaken supposition that that day was a holiday on account of *Jagadhatri Puja*.—(Collection 3, Files 65 and 66 of 1899, serial nos. 3-4.)
- Proprietors overlooking the change in the name and the number of the estate caused by partition. 10. The sale of estate no. 14044, in Dacca, was set aside by Government, on the ground that there was no default as regards payment of revenue, the sale being due to the proprietors having overlooked the change in the name and number of their estate caused by partition.—(Collection 5, File 4 of 1903.)

11. A proprietor remitted the revenue of two estates by separate money orders. He made the mistake of specifying both estates in each money order, and on this account the amount was placed in deposit. As the revenue was not paid, the estates were sold for arrears. The Board recommended that the sales be cancelled on the ground of hardship.

Remittance of revenue of two estates by money orders but specification of both estates in each money order.

NOTE.—Collectors should see that, when money remitted as revenue is credited to deposit on account of some error in a money order, any clue which the circumstances afford may be examined with a view to identifying the estate for which the sum was intended; and that, if such estate is placed on the arrear list, the facts be brought to notice before the order for sale is passed. In the instance mentioned above, the Collector, had he been aware of the facts, would presumably have exempted the estate from sale.—(Board's Circular order no. 3 of March 1901.)

Collectors to find out clues to identify the estate when there is error in the money order.

(c) *Delays in the post office.*

1. The sale of estate no. 5134, in Muzaffarpur, was annulled by Government, as the revenue had been paid by money order which, however, got delayed in reaching the treasury in time.—(Collection 7, File 78 of 1900, serial nos. 7-8.)

Money order delayed in reaching the treasury.

2. Government annulled the sale of the residuary share of estate no. 2576, taluk Pachu Hore, in Faridpur, on the ground that two sums remitted by two separate money orders were sent by a mistake of the post office to Jessore where it was credited to an estate with which remitters had no concern.—(Collection 5, File 31 of 1902.)

Mistake of the post office in sending money orders to another place.

3. The sale of estate no. 9847, in Muzaffarpur, was set aside by Government on the ground that the money order remitting the revenue got delayed in reaching the Collector, and that the arrear statement given by the Collectorate was incorrect.—(Collection 7, File 19 of 1900, serial nos. 3-4.)

Money order delayed in reaching the Collector and the arrear statement incorrect.

(d) *Refusal of Collector to accept payment of arrears after the latest day for payment of arrears of revenue in cases in which previous defaults or the extent of the default does not raise the presumption that the default was intentional or refusal to exempt after payment of arrears has actually been accepted.*

1. Government annulled the sale of a separate share of 17g. 3c. 2½d. in estate no. 3565, in Mymensingh, on the ground that the Collector's order declining to exempt the

Refusal of Collector to exempt estate



- although the arrear was received by him before the day of sale. estate from sale, although he received the arrear before the day of sale, has caused hardship to the proprietors.—(Collection 7, File 341 of 1894, serial nos. 2-3.)
- Annulment of sale sanctioned as the Collector had unconditionally accepted the transfer to land revenue of a sum held in deposit and did not record any order for payment of dak cess as a condition for exemption. 2. The sale of the separate 12-anna share of Mauza Shunkerpur Gossaindaspur in estate no. 335, in Bhagalpur, was set aside by Government, on the ground that, as the Collector unconditionally accepted the transfer to land revenue of a sum held in deposit, and did not record any order for the payment of the dak cess as a condition for exempting the property from sale, it was a hardship to sell the separated share of the above estate for arrears of dak cess due from the *entire* estate.—(Collection 7, File 117 of 1895, serial nos. 4-5.)
- Rejection of the tender of arrears on account of misunderstanding. 3. Government sanctioned the annulment of the sale of estate Phulwaria no. 496, in Gaya, on the ground that the proprietor's tender of arrears was rejected by the Collector on account of a misunderstanding, and that the arrear was small.—(Collection 7, File 89 of 1899, serial nos. 3-4.)
- Smallness of the arrears and proprietor not a wilful defaulter. 4. The sale of estate Pia Kalam Haftana, tauzi no. 5716, in Shahabad, was annulled by Government, on the ground that the arrear was small; that the appellant, who was an old man, dependent on the property largely for his maintenance was not a wilful defaulter, and that he did all he could to save the estate from sale when he learnt that it was advertised for sale.—(Collection 7, File 11 of 1903.)
- Vagueness of the Collector's order. 5. Government annulled the sale of separate account no. 2 of tauzi no. 2134, in Shahabad, on the ground that the Collector's order "accept" on the appellants' petition to pay the arrears of revenue was indefinite, and therefore appellants did not understand that the cess arrears, for which the Collector sold the separate account, should be paid as well.—(Collection 7, File 29 of 1900, serial nos. 6-7.)
- (e) *Ignorance on the part of proprietors of change in instalments.*
- Ignorance of change made in the instalments. 1. Government annulled the sale of estate Mankubar, tauzi no. 726, in Hoogly, as the proprietors, who were *pardanashin* ladies, were ignorant of the change made in the instalments.—(Collection 7, File 84 of 1895, serial nos. 2-3.)

2. The sale of estate no. 1582, in Shahabad, was annulled by Government, on the ground of change of *kist* which was not notified to the proprietors and great carelessness on the part of the Tauzi Department.—(Collection 7, File 66 of 1900, serial nos. 5-6.)

Failure to notify the change of *kist* and carelessness of the Tauzi Department.

3. Government annulled the sale of separate accounts nos. <sup>3842</sup>1 and <sup>3842</sup>joint of estate Madangopalpur, in Shahabad, on the ground that the Collector's order altering the *kists* was not notified to the proprietors through the carelessness of the tauzi-muharirs, and that this caused the separate accounts to be sold for default of payment.—(Collection 7, File 59 of 1900, serial nos. 5-6.)

Carelessness of the Tauzi Department in not notifying the Collector's order altering the *kists*.

4. The sale of Noabad taluk no. <sup>3951</sup>28041, in Chittagong, was annulled by Government, on the ground that the sale was due to arrears caused by the proprietors paying the rents at the old rates, as they got no notice intimating that the rents have been enhanced.—(Collection 3, File 18 of 1900, serial nos. 3-5.)

Failure to give notice of enhancement of rent.

5. Government annulled the sale of estate no. 3238-1, Bil Nalia, in Jessore, as the default occurred owing to a misunderstanding on the part of the proprietors of an order of the Collector as regards the alteration of the *kists* and as the auction-purchaser also consented to the cancellation of the sale.—(Collection 8, File 56 of 1901.)

Misunderstanding of order regarding alteration of *kists*.

(f) *Fraud committed by agents of proprietors in not crediting the dues into the Treasury.*

1. Government set aside the sale of taluk Ram Prosad Sadhaya, tauzi no. 6281, in Mymensingh, on the ground that the arrear, which was very small, was due to fraud by the mukhtear of the proprietress, who was a *pardanashin* lady.—(Collection 7, File 54 of 1898, serial nos. 2-3.)

Arrear due to fraud of proprietor's mukhtear.

2. Government annulled the sale of the separate account no. 4 of estate no. 2175, in Shahabad, on the ground that the sale was caused by fraud and defalcation on the part of the proprietor's agent, who afterwards bought it at the sale.—(Collection 7, File 5 of 1900, serial nos. 3-4.)

Fraud and defalcation of proprietor's agent.

3. Government set aside the sale of the lakhiraj resumed taluk no. <sup>7069</sup>6340 <sup>6238</sup>, in Chittagong, as it was brought about fraudulently by the ward's mukhtear, who then purchased it at the sale.—(Collection 3, File 104 of 1900, serial nos. 4-5.)

Sale brought about by ward's mukhtear.

Misappropriation by the proprietor's mukhtear.

4. Government annulled the sale of estate Parsanni, tauzi no. 5166, in Muzaffarpur, because the defaulting proprietor paid the amount due to his mukhtear who did not credit it into treasury. The mukhtear was prosecuted for misappropriating the sum and sentenced to six months' rigorous imprisonment.—(Collection 7, File 20 of 1898, serial no. 5 and Collection 7, File 8 of 1899, serial no. 6.)

Fraud and defalcation of the proprietor's servant.

5. Government annulled the sale of Noabad taluk Bapsi Takurani and others, tauzi no.  $\frac{5731}{9661}$ , in Chittagong, on the ground that the default was due to the fraud and defalcation by a servant of the proprietor entrusted to pay the Government revenue.—(Collection 3, File 54 of 1901.)

Collusion of the proprietor's agent with the auction-purchaser.

6. Government annulled the sale of estate Balaund, tauzi no. 1865, in Saran, on the ground that the sale was fraudulently brought about by the mukhtear of the proprietor in collusion with the auction-purchaser.—(Collection 7, File 51 of 1901.)

Default owing to the fraudulent act of the manager.

7. The sale of 9-anna share of estate no. 130, separate account no. 1 in Dinajpur, was annulled by Government, on the ground that the person who managed the estate for the proprietors, most of whom were minors and widows, fraudulently allowed the estate to default to serve his own interests.—(Collection 9, File 56 of 1902.)

*(g) Collusion on the part of co-sharers in bringing the estate to sale.*

Collusion on the part of co-sharers.

1. The sale of the diara-resumed estate no. 6377, in Backergunge, was set aside by Government, as it was brought about by collusion on the part of the co-sharers of the estate.—(Collection 7, File 9 of 1895, serial nos. 3-4.)

Fraud or mistake of co-sharer.

2. The Commissioner recommended the annulment of sale of the separated share no. 2 of estate no. 5250, in Mynensingh. The proprietors, who were minors and represented by their mother as guardian, sold a portion of their separated share to another, who either by accident or design paid his proportionate share of Government revenue to the joint or residuary share instead of to the separated share, which on being sold was purchased by him *benami*. Government accordingly annulled the sale.—(Collection 7, File 304 of 1897, serial nos. 2-3.)

3. Government set aside the sale of estate no. 3809, in Jessore as it had not been in arrears before, and the proprietors were orphans, and as the sale was brought about by the richest co-sharer of the estate, who bought it *benami*, and thus fraudulently deprived the minors of their share.— (File 37 of 1900, serial nos. 4-5.)

Fraudulent action of co-sharer.

4. In Chittagong the sale of Noabad taluk Kamdar, tauzi no. <sup>1056</sup>/<sub>25644</sub> was cancelled by Government, on the ground that the default was due to fraud on the part of one of the co-sharers.—(Collection 3, File 55 of 1901.)

Fraud of co-sharer.

*Refusal to regard inadequacy of price as hardship.*

1. The Commissioner recommended the annulment of sale of estate no. 1958, in Burdwan, on the ground that the sale was due to the default of one of the co-sharers, and that the price obtained was insignificant. The Board refused to recommend the case to Government, as the reference showed no hardship, and as inadequacy of price had over and over again been ruled to be no ground for annulling a sale.— (Collection 7, File 188 of 1895, serial nos. 1 and 4.)

Inadequacy of price, no ground for annulling sale.

2. The Board declined to recommend to Government the annulment of the sale of estate no. <sup>9974</sup>/<sub>11224</sub>/<sub>10384</sub> in Chittagong, as the ground of hardship, viz., inadequacy of price, urged in the case, did not come within the meaning of section 26.— (Collection 3, File 70 of 1899, serial nos. 1 and 8.)

Ditto.

3. The Board declined to recommend to Government the annulment of sale of the separate accounts nos. 24 and 25 of estate no. 2492, in Saran, on the ground that inadequacy of price was not a hardship under section 26.—(Collection 7, Files 102 and 103 of 1899, serial nos. 1 and 3 and 1 and 2, respectively.)

Inadequacy of price is no hardship under section 26.

4. The Board not accepting the Commissioner's recommendation that the sale fetched a ridiculously low price for the annulment of sale of khas taluk Amud Ali, no. <sup>4183</sup>/<sub>4962</sub>, in Chittagong, did not send up the case to Government.— (Collection 3, File 52 of 1901, serial nos. 1-2.)

Ridiculously low price no ground for annulment.

5. A Commissioner recommended the annulment of the sale of an estate under this section, on the ground that the price fetched was inadequate : *held* by the Board that to admit the plea that the price offered is below the market value and

Plea of inadequacy of price not to be entertained.

to cause enquiry to be instituted to test whether the plea is true or otherwise would be to throw an uncertainty about the finality of all such sales, such as would most injuriously affect, not only the interest of Government, but those of the proprietors whose estates are brought to hammer. They accordingly declined to recommend the annulment of the sale of the estate on the ground of hardship.—(Board's Miscellaneous Proceedings no. 223 of 16th January 1875.)

*In general, too, the Board have declined to move Government to set aside sales on behalf of proprietors who are habitual defaulters or who have not used due care and caution in connection with the payment of their dues.*

Sale not annulled though there was excess payment to the credit of estate owing to want of care and caution on the part of proprietors.

1. The Commissioner recommended annulment of sale of estate no.  $\frac{554}{1}$ , in Bankura, on the ground that there was an excess payment to the credit of the estate, for the transfer of which an application was sent; that the difference between the land revenue and the amount in deposit was sent by money-order and that the appellant was a *purdanashin* female who should get the benefit of any doubt. The Board declined to move Government to cancel the sale, and observed that it was for proprietors to exercise due care and caution in the management of their estates.—(Collection 7, File 551 of 1897, serial nos. 1 and 4.)

Sale not annulled owing to many previous defaults.

2. The Commissioner of Dacca recommended the annulment of sale of the residuary share of estate no. 408 in Dacca. The Board declined to go up to Government, as there were many previous defaults, and inadequacy of price, assuming it to be inadequate, was not a hardship within the meaning of section 26.—(Collection 7, File 384 of 1896, serial nos. 1 and 3.)

Sale not annulled owing to the proprietors being habitual defaulters.

3. The Board declined to recommend the annulment of sale of taluk no. 1446, in Noakhali, as the cesses (now cess) on account of the taluk were never recovered without recourse to coercive measures and as the late proprietors were habitual defaulters in the payment of revenue.—(Collection 7, file 23 of 1892, serial nos. 1 and 4.)

Sale not annulled owing to the carelessness of the appellant.

4. The Commissioner recommended that the sale of tauzi no.  $\frac{28598}{33940}$  in Chittagong, be set aside, on the ground of smallness of arrear, and that the appellant was not aware of its existence. As it appeared that the sale was due to

the appellant's carelessness, the Board did not send up the case to Government.—(Collection 3, file 75 of 1899, serial nos. 1 and 3.)

5. The Commissioner recommended the annulment of sale of the residuary share in estate no.  $\frac{10618}{1}$ , Mahadeo Adit Narayan, in Muzaffarpur, as the arrear was trifling and was tendered before the date of sale. The Board were unable to recommend the cancellation of the sale on the ground of hardship. The Collector had power to exempt the estate from auction only for reasons to be recorded by him. He did not do so, because there had been constant defaults. To recommend the cancellation of the sale would constitute a precedent to the effect that no auction can be held in future, however numerous the previous defaults may have been, if the last default be for a small amount.—(Collection 7, file 34 of 1901, serial nos. 1 and 5.)

When trifling arrears cannot be regarded as hardship.

6. Sale is the legal consequence of default; and, if the default was avoidable and due to culpable negligence, there is no room for hardship.—(Board's Miscellaneous Proceedings of 31st December 1891, no. 21, Collection 7, file 420 of 1891.)

No room for hardship if default was avoidable and due to culpable negligence.

7. A Commissioner recommended annulment of the sale of a share of an estate on the ground that the sale was fraudulently brought about by one of the co-sharers in collusion with the auction-purchaser. The other co-sharers had paid their full share of the revenue. The Board declined to recommend the case to Government, as the co-sharers had neglected to take the precautionary measures provided for them by the law to protect their shares by opening separate accounts.—(Board's Miscellaneous Proceedings of 28th May 1892, no. 82, Collection 7, file 96 of 1892.)

Neglect of the co-sharers to take precautionary measures to protect their shares by opening separate accounts.

27. All sales of which the purchase money has been paid up as prescribed in section 23 of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days.

Rule 8, section VII.

And sales against which an appeal may have been preferred and dismissed by the Commissioner shall be final and conclusive from the date of such

dismissal, if more than sixty days from the day of sale, or if less, then at noon of the sixtieth day as above provided.

NOTE.—The words “ sixtieth ” and “ sixty ” were substituted for the words “ thirtieth ” and “ thirty ” respectively, by the Bengal Land-revenue Sales Act, 1868 (Ben. Act 7 of 1868), s. 4.

Rules 6, 7  
and 9,  
section VII.

28. Immediately upon a sale becoming final and conclusive, the Collector Certificate of sales. or other officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act.

And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified.

And the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the *Munsifs* and police-*thanas* within whose jurisdictions any part of the estate or share sold shall be situated.

NOTE 1.—As to the effect of this certificate, see the Bengal Land-revenue Sales Act, 1868 (Ben. Act 7 of 1868), sec. 8.

Right of a widow  
to her husband's  
property.

NOTE 2.—A sued the widow of Z, as widow of Z and guardian of Z's son, for arrears of rent due by Z, and obtained a decree against the widow as Z's representative, but it was declared that Z's son having been adopted into another family was not liable. In a regular suit, A obtained a decree declaring Z's son to be the heir of his natural father Z. Certain estates of the deceased were then put up for sale under this Act, in execution of A's decree for rent, and A became the purchaser. The certificate stated that the sale was of the right and interest of the widow, and that it took place under the decree in the regular suit. B, the holder of a prior decree for rent against Z, having failed to obtain execution against the same property, then sued A and Z's son for a declaration that he was entitled to sell the property, on the ground that it had come to Z's son as Z's heir, and that only the interest of the widow (who had no

interest) had been purchased by A: *Held* (reversing the decisions of the High Court), that A was entitled to the property.—(B. L. R., Vol. X, page 294.)

NOTE 3.—In a suit to set aside the sale of an estate, one of the grounds taken by the plaintiff was that the defendant was placed in possession of the property within sixty days, the usual time prescribed by section 27 for the confirmation of the sale: *Held*, that a certificate of title under this section and section 11 of Act VII (B. C.) of 1868, issued before the expiry of the period of sixty days from the date of sale is not a certificate duly issued under the provisions of these Acts.—(I. L. R., Cal., Vol. XVIII, page 125.)

NOTE 4.—On an enquiry from a Commissioner whether auction-purchasers at revenue sales should be compelled to take out certificates of sales under this Act, the Board held that the law does not compel the purchaser to take out a certificate.—(Board's Miscellaneous Proceedings of 11th August 1883, no. 45, Collection 7, file 253 of 1883.)

NOTE 5.—Copies of certificates of sale granted under this section should be received and filed in Registration offices up to the 1st December 1892, and such copies are to be written on paper of the same size as that used for Book I in which the copies will be filed.—(Board's Circular Order no. 3 of April 1895.)

29. The Collector or other officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum or in such other mode as may be customary, at some convenient place or places; and by affixing a copy of the certificate at the *mal cutcherry* or in some conspicuous place of the estate or share of an estate purchased.

NOTE 1.—The Collector has no power, and is not bound, to define specifically boundaries of the estate of which he gives possession to an auction-purchaser under this section. The form of specification of the estate sold provided by the

Certificate issued before the expiry of the period of sixty days from the date of sale is invalid.

Auction purchasers cannot be compelled to take out certificates.

Copies of certificates of sale to be filed in Registration offices.

Rules 6 and 9, section VII.

Powers of Collector regarding delivery of possession.



Act requires only the description of the estate by its name and number, the name of its former proprietor, and the account of the *sadr jama* without reference to its boundaries. No power is given by the Act to the Collector to make a survey, though by the old Sale Law, Regulation XI of 1822, such powers were reserved under a procedure prescribed. The power of ejectment of persons who may refuse to vacate the estate which has been sold must be understood as referring to persons who hold under a title obviously voided by the sale, viz., the late proprietors and persons claiming under or through them. This cannot affect persons claiming under a title entirely distinct from that of the late owners.—(Board's Miscellaneous Proceedings of 1st May 1886, no. 59, Collection 7, File 112 of 1883.)

Difference between the old regulations and the present Act in the matter of delivery of possession.

NOTE 2.—Section 28 of Regulation XI of 1822 prescribed an elaborate procedure for giving possession of estates. In the subsequent Sale Laws (Acts XII of 1841 and I of 1845) the provision for giving possession was entirely omitted, and the Collector was only required to issue a proclamation. Under this Act he is authorized to remove persons who may refuse to vacate the estate or share, but if it had been intended to give him power to define the lands, the description and area of the lands would have been entered in the specifications annexed to the certificate given in Schedule A. The certificate, however, only states that A. B. has purchased the mahal specified below, and the specification gives nothing more than the number and name of the mahal, the name of the former proprietor, and the *sadr jama*.—(Board's Miscellaneous Proceedings of 4th July 1885, no. 299, Collection 7, File 249 of 1885.)

Limitation of suit by the purchaser to restore the estate to its original condition.

NOTE 3.—The purchaser has a right to restore the estate to the condition in which it was when originally settled. But he can do this only by suit, and he is allowed 12 years from the date of his purchase to bring his suit. If the Government is the purchaser, the term is 60 years. It cannot be supposed that the legislature intended the Collector to try summarily, and with no prescribed method of procedure, a number of questions involving civil rights.—(Board's Miscellaneous Proceedings of 27th February 1886, no. 109, Collection 7, File 112 of 1886.)

No limitation in asking for possession.

NOTE 4.—There is no limitation of the period in which the purchaser may require possession of the estate to be given him under this section. He may apply at any time after

receipt of the certificate of sale prepared under section 28.—  
(Board's Miscellaneous Proceedings of 10th November 1894,  
no. 37, Collection 7, File 430 of 1894.)

30. The party certified as the proprietor of an estate or share of an estate by purchase under this Act shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid.

NOTE.—The liability of an auction-purchaser to pay the instalments of Government revenue described in section 30 commences from the date of the sale and not from the date of the sale certificate.—(I. L. R., 33 Cal., page 1193.)

31. The Collector shall apply the purchase-money, first, to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and secondly, to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the district: holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate sold, or their heirs or representatives, to be paid to his or their receipt on demand in manner following: to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

And, if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

NOTE 1.—When any person other than the recorded proprietor claims the surplus sale-proceeds, he is bound to

Liability of the auction-purchaser to pay instalments of revenue commences from the day of sale.  
Rule 5, section VI. Rule 11, section VII.

Application of purchase-money.

establish his title thereto in a suit against the recorded proprietors or representatives of the recorded proprietors.—(Board's Miscellaneous Proceedings of 18th April 1889, no. 105, Collection 7, File 131 of 1889.)

NOTE 2.—An appeal will be on a question of costs where a matter of principle is involved.

An assignee of the proprietor is not his representative.

This section must be read strictly. An assignee of the recorded proprietors is not their representative within its meaning, and the Collector is justified in refusing to pay to such assignee, claiming, on his own behalf, money held in deposit on account of the recorded proprietors.—(I. L. R., Cal., Vol. XI, page 359.)

Right of a mortgagee in possession to recover a share of the sale-proceeds.

NOTE 3.—A mortgagee in possession is not entitled to recover any share of the sale-proceeds of the mortgaged property sold for arrears of Government revenue, except to the extent that he shows that the usufruct of the property, while he held the mortgage, has not satisfied his debt.—(W. R., Vol. I, page 270.)

Mortgage of a mauza after hypothecating it as security to Government

NOTE 4.—A mortgagor, a few days after hypothecating a mauza as security to the Government, mortgaged it with other property to the plaintiff. The deed of mortgage was immediately registered. The security deed was not registered till long afterwards. The mauza having been sold by the Collector on account of a sum due under the security deed, it was held that though the purchaser took the mauza subject to the prior registered mortgage, yet the mode in which the property had been dealt with by the mortgagor entitled the purchaser to require that the other property should first be applied in satisfaction of the mortgage debt.—(W. R., Vol. I, page 553.)

Limitation of a suit for the residue of the sale-proceeds.

NOTE 5.—In a suit brought for the residue of the sale-proceeds of an estate sold for arrears of Government revenue, the period of limitation is six years under Article 120, Schedule II of the Limitation Act. Limitation begins to run from the date a regular claim is made. Section 10, Limitation Act, does not apply.—(Legal Remembrancer's opinion, dated 28th August 1910, in Sales file 20 of 1910.)

Rules 8 and 9, section VII.

32. The annulment by a Commissioner or by the Board of Revenue of a sale made under this Act shall be publicly notified by the Collector or other officer as aforesaid, in the same

Notification of annulment of sale.

manner as the becoming final and conclusive of sales is required to be notified by section 28 of this Act; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser with interest thereon at the highest rates of the current public securities: which shall be paid by the Government, unless the proprietor shall have become liable for the same under the provisions of section 2 of the Bengal Land Revenue Sales Act, 1868, or section 26 of this Act.

NOTE 1.—The words “the Board of Revenue” were substituted for the word “Government” by the Decentralisation Act, 1914 (4 of 1914), section 2, Schedule Part I.

NOTE 2.—It is clear from the wording of this section that Payment of it is not in the power of a Commissioner, when setting aside interest to the a sale for arrears of revenue, to refuse to award to the auction-<sup>interest to the</sup> purchaser interest on the purchase-money. The law only <sup>auction-</sup> purchaser. gives the Commissioner a discretion to decide whether the interest shall be paid by the Government or by the restored proprietor. The Commissioner can, if he thinks fit, make it a condition of his annulling the sale, that the restored proprietor shall pay the interest, but, if he does not prescribe such a condition, the interest must be paid by Government. The Commissioner has no power to enforce the payment of interest by a proprietor, unless such payment is made a condition of the annulment of the sale. A Commissioner, who has erroneously refused to award interest, cannot therefore subsequently revise his order, so as to require the proprietor to pay the interest, but he can legally revise it so as to make the interest payable by Government.—(Board’s Miscellaneous Proceedings of 10th May 1885, no. 74, Collection 7, File 145 of 1885.)

83. No sale for arrears of revenue or other demands realisable in the same manner as arrears of revenue are realisable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon

Jurisdiction of Civil Courts in suits to annul sales.

such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under section 2 of the Bengal Land Revenue Sales Act, 1868; and no suit to annul a sale made under this Act shall be received by any Court of Justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in section 27 of this Act: and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money:

Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

Proviso.

Action lies against individual wrong-doer.

NOTE 1.—This section contemplates an action against the individual wrong-doer, irrespective of Government and co-parceners.—(W. R., Vol. X, page 442.)

No suit for damages can lie as between joint-owners.

No suit for damages as between joint-owners of undivided estates will lie, in consequence of the sale of the whole estate through the default of one or more of such owners in paying their shares of the Government revenue.—(I. L. R., 1 Cal. 406.)

Effect of failure to give notice prescribed by the law to the proprietor.

NOTE 2.—To sell an estate for arrears after lulling the proprietor into a false security by failure to give him a notice which the law prescribes as a condition precedent of a sale, is of itself a very material injury irrespective of the amount of purchase-money realized, and one amply sufficient to warrant a Court in annulling the sale under this section.—(W. R., Vol. XV, page 138.)

Maintainability of suit brought by the aggrieved co-sharer after the period of limitation, in case of fraud.

NOTE 3.—When one of the several co-sharers fraudulently contrived to have an estate brought to sale for arrears, and purchased it in the *benami* of his son,—*held*, that another co-sharer aggrieved by the sale could maintain a suit to have the property reconveyed, though the period limited by this section, and Article 14 of Schedule II of Act IX of 1871 for a suit to set aside the sale, had expired.—(I. L. R., Cal., Vol. III, page 300.)

NOTE 4.—This section should not be read as meaning that under *no possible circumstances* can a suit be brought to set aside a sale on the ground of fraud.—(I. L. R., Cal., Vol. X, page 63.)

Meaning of the section.

NOTE 5.—A Collector had sold an estate, purporting to act under this Act for a supposed arrear of revenue. There was, however, only an erroneous debit in the books against the estate, in excess of the revenue actually assessed upon it, chargeable against it and due from it. On appeal, the Privy Council *held* that the sale was without authority, that the Civil Court had jurisdiction to declare the sale void, and that the provisions of this section did not exclude their jurisdiction.—(I. L. R., Cal., Vol. XXV, page 833.)

Jurisdiction of Civil Court with regard to the sale of an estate for a supposed arrear.

NOTE 6.—A non-compliance with the provisions of section 6 is not a mere irregularity, and is not one of those errors in procedure which are intended to be cured by section 8 of Act VII (B. C.) of 1868. Where a sale for arrears of revenue has been held, and non-compliance with section 6 has been found, such a sale is null and void, as not being a sale under the provisions of this Act.—(I. L. R. (F. B.), Cal., Vol. XI, page 201); *semble*.—That no positive rule can be laid down permitting an inference to be drawn in all cases that the inadequacy of the price realized by a sale is due to the irregularity of the sale proceedings.—(*Ibid.*)

Non-compliance with the provisions of sec. 6 renders a sale null and void.

NOTE 7.—A suit to set aside a sale for arrears of road and public work cesses (now local cess) will lie, although no previous appeal to the Commissioner has been made under this section; such a sale is not one for "arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable" within the meaning of this section.—(I. L. R., Cal., Vol. XXV, page 85.)

Suit for annulment of sale for arrear of cess.

NOTE 8.—A suit may be brought in the Civil Court to set aside a sale held under this Act on the ground that no arrears were due, although such ground was not declared and specified in an appeal to the Commissioner as provided for in this section.—(I. L. R., Cal., Vol. XXV, page 876.)

Suit to set aside sale admissible on the ground no arrears due, though such ground not specified in the appeal to Commissioner.

See also Full Bench decision, Baijnath Sahay v. Lala Sital Prasad (W. R. (F. B.), Vol. X, page 66).

34. If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof; otherwise the party in whose favour such decree was passed shall lose all benefit therefrom.

Effect of annulment by decree of Court of sales under this Act.

And no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase-money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of the current Government securities.

And, if such party shall neglect to pay any amount so recoverable within six months from the date of such final decree, he shall lose all benefit therefrom.

Effect of a decree—no special declaration of annulment of sale necessary.

NOTE.—The sale of an estate where no arrears exist is null and void, even though it is regularly conducted and the purchase is made *bona fide*. Where the original owner sues to recover possession and obtains a decree, the decree is sufficient for the purpose of this section without a special declaration that the sale is annulled; and the order for refund of the purchase-money must be made in execution of the decree.—(W. R., Vol. XII, page 276.)

35. In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase-money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.

If sale be annulled, purchase-money to be refunded.

No protection in respect of costs of litigation and claims for mesne profits.

NOTE.—In *Mahabir Parshad Singh and others v. the Collector of Tirhut and another* (15 W. R., 137), Anlie, J. observed:—“I have not overlooked the provisions of section 35, Act XI of 1859, which, it is urged, afford a purchaser at a sale under the Act such ample protection that the risk of the sale being set aside would not materially influence his biddings. The section, however, offers no protection in respect

of costs of litigation and claims for mesne profits, both of which (especially the latter) are formidable items to be taken into account."

36. Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Suit brought to oust a purchaser on the ground that the purchase was made for another person to be dismissed.

NOTE 1.—A certified purchaser suing to recover possession of land from which he has been ousted is not debarred from the benefit of this section unless he has acknowledged himself to be a *benamidar*.—(W. R., Vol. V, page 56.)

A certified purchaser, who has been ousted, is not debarred from the benefit of this section.

NOTE 2.—A purchase by a managing member of a joint Hindu family in his own name, at a revenue sale, is not affected by this section. A suit by one of the members for recovery of possession of his share of the property purchased by the managing member in his own name, but for the use of the family, is not a suit to oust a certified purchaser, and therefore not affected by this section.—(B. L. R., Vol. V, page 546.)

Purchase by a managing member of a joint Hindu family not affected by this section.

NOTE 3.—The object of this section is to prevent the true owner from disputing the title of his *benamidar* (certified purchaser), and not to preclude a third party from enforcing a claim against the true owner in respect of the *benami* property.—(I. L. R., Cal., Vol. XII, page 302.)

Scope of the section.

NOTE 4.—A co-sharer sued to recover her share from the certified purchaser (M), himself one of the original owners. Her case was that she provided a portion of the purchase-money, but that her name was not registered on account of M's having no written authority to act on her behalf. M, however, executed an *ekrarnamah* in which he admitted receipt of the purchase-money of plaintiff's two annas share, and covenanted to give her possession. Defendant denied having received any contribution or money from the plaintiff, though admitting execution of the *ekrarnamah*.



A former proprietor or co-sharer can be a purchaser of his estate.

Suit to oust a certified purchaser on the ground that part of the purchase was made on behalf of another is barred.

*Held*, that there is nothing in the Act which makes it illegal for a former proprietor or co-sharer to be a purchaser of his estate at a sale for arrears due on that estate.

*Held*, that no separate title was given to plaintiff by the *ekrarnamah* and that the suit was substantially one to oust a certified purchaser on the ground that part of the purchase was made on behalf of another person and plaintiff was therefore barred by this section.

*Held*, that even if the *ekrar* fully and unequivocally admitted payment of the consideration-money, that would not be conclusive evidence of payment as against the defendant, and proof would have to be given.—(W. R., Vol. XI, page 265.)

37. The purchaser of an entire estate in the permanently-settled districts of Bengal, Bihar and Orissa, sold under this Act for the recovery of arrears due on account of the same shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement; and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants, with the following exceptions:—

Rights of a purchaser of a permanently-settled estate sold for its own arrears.

*First.*—*Istimrari* or *mukarrari* tenures which have been held at a fixed rent from the time of the permanent settlement.

*Secondly.*—Tenures existing at the time of settlement which have not been held at a fixed rent:

Provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

*Thirdly.*—*Talukdari* and other similar tenures created since the time of settlement and held immediately of the proprietors of estates, and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

*Fourthly.*—Leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise :

Provided always that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any *raiyat*, having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such *raiyat* otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

NOTE 1.—The portion of an estate for which a separate account is opened under sections 10 and 11 of the Act and the portion from which it is separated, are equally " shares " within the meaning of section 10. The latter (though it may for convenience's sake be termed the parent estate) cannot be considered an *entire* estate within the meaning of this section, but is still a share and liable to all the incidents of a share.— section 10. (W. R., Vol. I, page 27.)

NOTE 2.—The object of section 5, Regulation XLIV of 1793, taken together with section 7, was not the destruction of the under-tenures upon the sale of the parent estate for arrears of Government revenue. It only empowers the purchaser at such sale to avoid the subsisting engagements as to

rent, and to enhance the rent to that amount at which, according to the established uses and rates of the *pargana* or district, it would have stood had the cancelled engagement so avoided never existed.

*Quære*.—Whether such a power is given only to the purchaser or to him and his heirs, or whether it is a power attaching to the zamindari and passing to subsequent purchaser.—(W. R. P. C., Vol. II, page 14.)

When a tenant cannot be ejected.

NOTE 3.—The title of a purchaser to avoid an under-tenure and eject the tenant will depend upon whether the tenure is protected under any of the clauses of this section, and whether the tenant has a right of occupancy. If the tenant can prove such a right, he cannot be ejected.—(W. R., Vol. XII, page 123.)

Rights of a purchaser at a sale for arrears of revenue.

NOTE 4.—A purchaser at a sale for arrears of revenue with a permanent title under this section acquires the estate free from any encumbrance which accrued thereupon from the laches of former proprietors in the same way as he would have acquired it free from any encumbrance created by sale, lease or mortgage. In the absence of any proof to the contrary such purchaser must be assumed to be the owner.—(W. R., Vol. XV, page 552.)

Rights of an auction-purchaser of a fractional share of an estate.

NOTE 5.—An auction-purchaser of a fractional share of an estate for which a separate account has been opened under section 11 of the Act does not acquire it free of encumbrances under this section but acquires it (according to section 54) subject to all encumbrances and acquires no rights not possessed by the previous owner.—(W. R., Vol. XX, page 234.)

Transferability of the rights of a purchaser.

NOTE 6.—The right conferred upon a purchaser at a sale for arrears of revenue under this section are capable of being transferred to another person, if the transfer follows immediately upon the sale or within a reasonable time thereafter.—(W. R., Vol. XXII, page 29.)

Rights of an auction-purchaser in respect to a garden planted on the land.

NOTE 7.—This section cannot prevent an auction-purchaser from taking possession of a garden planted on the land; there being no authority for the contention that, if a zamindar chooses to plant gardens of mango and other trees upon any portion of his estate, he becomes his own raiyat, in respect of those plantations, and is protected under this section.—(W. R., Vol. XXIII, page 387.)

NOTE 8.—Where by an old *pattah* lands of a zamindari were leased at a specified rent, but without mention of the hereditary and *istimrari* character of the tenure, *held*, that the absence of such mention was supplied by evidence of long and uninterrupted enjoyment, and of the descent of tenure from father to son, whence that hereditary and *istimrari* character might be legally presumed.

What establishes the legal presumption of hereditary and *istimrari* character of tenure.

The zamindari was sold for arrears of Government revenue under Regulation XI of 1882. The purchaser's representative sued to enhance the rent of the under-tenure. *Held*, that they had no right to enhance. The rights of the purchaser were defined by sections 30—33 of Regulation XI of 1822, which were repealed by Act XII of 1841, and that Act, with the exception of the 1st and 2nd sections, was again repealed by Act I of 1845. Neither of the two last-mentioned statutes contains any saving of right acquired under the statutes which it repealed, but expressly limited the enlarged powers which it gave to purchasers at sales for revenue arrears to purchasers at future sales. A sale for arrears of revenue cannot of itself merely, and without any act, proceeding, or demonstration of will on the part of purchasers, alter the character of an under-tenure.

Enhancement of rent of under-tenures.

*Semble*.—Section 5, Regulation XLIV of 1793, is now of no force for any purpose, but that of declaring the general principles upon which all the subsequent legislation has proceeded, viz., that of putting a purchaser at a sale for arrears of revenue in the position of a party with whom the perpetual settlement of the estate was made. Where an under-tenure existed at the time of the Decennial Settlement, the only right which the zamindar could exercise over it was that conferred by section 51 of Regulation VIII of 1793.—(B. L. R., P. C., Vol. II, page 23; W. R., P. C., Vol. XI, page 10.)

Section 5 of Regulation XLIV of 1793 merely serves as a declaration of the general principles upon which all the subsequent legislation has proceeded.

NOTE 9.—A in November 1862 purchased a portion of an estate sold in execution of a decree against the then proprietor. This sale was not confirmed till the 9th February 1863. Default occurred in the payment of the revenue in January 1863, and the entire estate was put up for sale and purchased by A on the 29th March 1863. *Held*, that A at the time of his second purchase was an unrecorded co-partner within the meaning of section 53 of this Act, and therefore took the entire estate subject to all the encumbrances existing at the time of the sale.—(I. L. R., Vol. IV, page 607.)

A purchaser who can be regarded as an unrecorded co-partner takes subject to all encumbrances.

Procedure prescribed in Bengal Act VIII of 1869 applies to claims of enhancement by a purchaser.

NOTE 10.—The procedure prescribed in Bengal Act VIII of 1869, applies to claims of enhancement by a purchaser at a revenue sale, and the rights of any such purchaser are, therefore, subject to all the modifications contained in sections 4 and 17, which form a presumption in favour of tenures of all classes held at an unchanged rent for a period of 20 years before the commencement of a suit, that such holdings have run on at the same rate from the time of the Permanent Settlement.—(I. L. R., Cal., Vol. IV, page 793.)

Benefit of the fourth exception—who is entitled to it and what are its limitations.

NOTE 11.—A person holding land, which is not protected by any of the first three exceptions, is yet entitled to the benefit of the fourth exception in respect of any of the items mentioned therein which may have been established on the land, and there is nothing in the words of the exception confirming the benefit of it to tenure or under-tenure-holders and excluding the raiyats from it.

The benefit of the fourth exception must be limited to improvements effected *bona fide*, and to permanent buildings erected before the revenue sales, and should not be conceded to anything subsequently constructed, or which appears to have been constructed merely for the purpose of defeating the rights of an auction-purchaser. Subject to this reservation, it does not matter whether the improvements have been effected by the present holder or some previous occupier.—(I. L. R., Cal., Vol. III, page 293; I. L. R., Cal., Vol. VIII, page 110.)

The sale does not *per se* avoid the under-tenures.

NOTE 12.—The sale of the estate does not *per se* avoid the under-tenures, but only renders them voidable at the option of the purchaser.—(I. L. R., Cal., Vol IX, page 683.)

Protection of leases of land on which gardens have been made.

NOTE 13.—Leases of land, which may not have been expressly leased for the purpose of making gardens thereon, but on which gardens have subsequently been made, are, under the provisions of clause 4 of this section, protected from avoidance by a revenue auction-purchaser.—(I. L. R., Cal., Vol. XII, page 327.)

Right to be exercised by all the purchasers jointly where there are more than one purchaser.

NOTE 14.—The right that is given by this section to the auction-purchaser of an entire estate in the permanently-settled districts of Bengal, Bihar and Orissa, sold for arrears of revenue, to avoid and annul an under-tenure is a right that must be exercised by all the purchasers jointly where there are more purchasers than one.—(I. L. R., Cal., Vol. XXIV, page 534.)

NOTE 15.—A new estate created upon a partition by the Collector comes within the meaning of "entire estate" in this section, and the words "time of settlement" mean the time when the contract was made with Government, and in the case of a permanently-settled estate mean the time of Permanent Settlement. A partition by the Collector merely apportions the amount of revenue; there is no *settlement* of the revenue in any sense at the time of such partition.—(I. L. R., Cal., Vol. XXIV, page 887.)

NOTE 16.—A mahal was purchased by Government at a revenue sale. It was subsequently found out that certain plots belonging to the mahal had been in undisturbed possession of the proprietor of a neighbouring mahal for more than 12 years. The claim of Government to these plots was opposed by the proprietor, on the ground that it was barred by limitation. The Collector took this view to be correct and held that the purchaser was the representative in title of the former proprietor and merely stepped into his rights. The Board repudiated this doctrine and referred the Collector to Article 145, Schedule II of Act IX of 1871 (now Article 144, Schedule II of Act XV of 1877\*), which provides that the period of limitation begins to run from the time, "when the possession of the defendant became adverse to the plaintiff" which can only be from the date of the revenue sale becoming final.—(Board's Survey and Settlement Proceedings of 22nd December 1883, no. 40, Collection 8, File 231 of 1883.)

NOTE 17.—Section 37 applies to the sale of an entire estate for recovery of arrears due on account of an entire estate, as well as to a sale for recovery of arrears due on account of a share only, provided the entire estate is sold under the provisions of section 14 of the Act. So long as it is the entire estate which is sold and the arrears are due on account of the estate itself and not on account of an estate other than that which is sold, section 37 applies.

The benefit of the 4th exception to section 37 is limited only to such portions of land as are covered by buildings, tanks, etc., and cannot be extended to cover those lands included in the lease on which no permanent works have been constructed (*vide* I. L. R., Vol. XLVI, pages 730—738).

\* Article 144, Schedule II of Act XV of 1877 is now Article 144, Schedule I of Act IX of 1908.

Rule 1, section X.

38. The following rules for the registration of *talukdari* and other similar tenures created since the time of settlement, and held immediately of the proprietors of estates, and of farms for terms of years so held, shall be observed.

Registration of certain tenures created after settlement and held for terms of years.

39. There shall be two sets of registers—one for common registry and one for special registry.

Common registry shall secure such tenures and farms against any auction-purchaser at a sale for arrears of revenue except the Government.

Special registry shall secure such tenures and farms against any auction-purchaser at a sale for arrears of revenue including the Government.

Registration in common registry is no evidence of the existence of the tenure.  
Rule 1, section X.

NOTE 1.—The fact that a tenure is registered in the common registry under this section, is not itself *prima facie* evidence that such a tenure exists. (I. L. R., Cal., Vol. IX, page 116.)

40. The holder of any *talukdari* or other similar tenure, such as is described in section 38 of this Act, desirous of registering it, shall apply by petition to the Collector of the district to which the estate belongs.

Application for registry.

The application shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable:—

(1) the *pargana* or *parganas* in which the tenure is situated;

(2) the nature of the tenure;

(3) the name or names of the village or villages whereof the land is composed, or wherein it is situated;

(4) the area of the land comprised in the tenure, with its boundaries in complete detail;

(5) the amount of rent payable annually for the tenure and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it;

(6) the date of the deed constituting the tenure, or the date when the tenure was created;

(7) the name of the proprietor who created the tenure;

(8) the name of the original holder of the tenure;

(9) the name of the present possessor, and, if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in the said section may apply in like manner for registry of the same.

The application shall contain such of the foregoing particulars as are applicable to farms.

NOTE 1.—As to fees payable on applications, *see* section 59. For limitation of time for making applications for registry of tenures under sections 40, 43 or 44, *see* the Bengal Land-revenue Sales (Amendment) Act, 1862 (Ben. Act 3 of 1862), s. 2.

NOTE 2.—In the case of a tenure consisting of six villages, lying five in one estate and the sixth in another, without any apportionment of the rent either on the five villages jointly or severally or in the one remaining village, the Board rejected the application for registration, as the fifth condition of this section had not been complied with. It might be a case of hardship, the Board remarked, but it would lead to much inconvenience to have a tenure protected and the rent not stated, as in the event of a sale for arrears of revenue of one of the two estates, the purchaser would have to bring an action for the settlement of the amount of rent due on the portion of the protected tenure within his new acquisition; and although the law was passed mainly in the interest of the owners of under-tenures still it never could have intended to subject new purchasers to such hardship and inconvenience as would result from the state of things above indicated.—(Board's Miscellaneous Proceedings of 31st March 1865, no. 42.)



Omission to mention particulars in conditions 3 and 4 not to bar registration.

NOTE 3.—A question was raised whether a tenure can legally be registered under section 41, if the particulars comprised in conditions 3 and 4 of this section are not given; the Board *held* that the omission should not bar registration.—(Board's Miscellaneous Proceedings of September 1868, no. 242.)

Persons who have the right to protect themselves by common registry.

NOTE 4.—A Commissioner of a division enquired whether a two-anna *patni* or farm of an undivided estate can be considered such a tenure as is contemplated in this section and therefore entitled to apply for common or special registration. The Board replied in the affirmative and observed that it is not only *patnidars* of the whole estate or of a specific portion of the land of an estate but all persons possessing "*talukdari* and other similar tenures, created since the time of settlement and held immediately of the proprietors of the estate" have a right to protect themselves if they can by common registry under the following section irrespective of the fact that the proprietor from whom they derive their rights holds his share in common tenancy or not.—(Board's Miscellaneous Proceedings of 14th August 1880, no. 92, Collection 7, File 2438 of 1880.)

41. When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed, and shall cause a notice, with a copy of the application annexed, to be affixed in his office, and at the *mal-cutcherry* of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application.

If within the limited time no objection is made the Collector shall register the tenure or farm.

If within the limited time an objection is made by any recorded proprietor, or by any party interested not

being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and, if it shall appear to him that such person has probable ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall grant the application.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

42. When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding section.

Procedure on application for special registry.

If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue to be made; and, if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application; otherwise the application shall be rejected.

If within the limited time any recorded proprietor or any party interested not being a proprietor object to the registry, the Collector shall examine the person so objecting or his authorized agent, and, if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

43. Leases of lands of the description specified in the fourth exceptional class in section 37 may be registered, at the option of the holders in the manner and under the rules hereinbefore provided for the registry of *talukdari* and other similar tenures.

Registration of leases  
of certain lands.

As to fees payable on applications, *see* section 59.

44. Tenures of the first and second exceptional classes in section 37 may be registered at the option of the holders; and when so registered shall be entered only in the special register.

Registration of old  
tenures.

Application for such registry shall contain the particulars specified in section 40 so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in section 41.

If within the limited time no objection is made by any recorded proprietor or by any party interested not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy him as to the validity of the tenure; and, if the result be to satisfy him that the tenure is valid, he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register; otherwise the application for registry shall be rejected.

If within the limited time any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting or his authorized agent, and, if it shall appear to him that such person has probable ground of objection, shall suspend proceedings and refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above

provided for cases in which no objection is made within the limited time :

Provided always that nothing contained in this section shall be understood as rendering registration necessary for the protection of *bona fide* tenures of the description herein referred to.

Proviso.

As to fees payable on applications, *see* section 59.

45. \* \* \* \*

Applications for the registry of tenures created after the passing of this Act must be made within three months of the date of the deed constituting the tenure.

Limitation.

This section has been substituted for the original section by section 2 of Act III (B.C.) of 1862, of which the first two paragraphs were repealed by the Repealing and Amending Act, 1903 (I of 1903).

On a reference from the Commissioner of Bhagalpur asking whether tenures created before the passing of this Act could still be registered the Legal Remembrancer answered that no tenure can now be registered unless the application is made within three months of the date of the deed constituting the tenure.

46. The actual expenses of any measurement, survey, or local enquiry made under sections 42 and 44 of this Act, shall be borne by the party who applies for the registry of his tenure or farm; and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary.

Expenses of measurement, survey, or local enquiry.

47. No Civil Court shall be competent to order the Revenue Authorities to enter any tenure or farm in the special register :

Civil Court not competent to order entry in the special register.

Provided always that the refusal of the Revenue Authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be.

48. Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm may file a suit for the cancelment of the same.

Suit for the cancelment of the registry of a tenure or farm.

49. In the execution of their functions in the registration of tenures and farms under this Act, all subordinate Revenue Authorities shall proceed in accordance with the general instructions which they may receive from the superior Revenue Authorities to whom they are subordinate, and from the local Government; and all orders passed under the sections aforesaid shall be open to appeal in usual course.

Proceedings of Revenue Authorities in the registration of tenures, etc.

The order of a Commissioner for the special registry of a tenure under the provisions of this Act, shall be open at any time within one year from the date of registry to revision by the Board of Revenue \* \* \* \* \* on the ground of the Government revenue not having been sufficiently secured, or of the invalidity of the tenure, as the case may be.

NOTE.—The words “ or the Local Government ” were repealed by the Decentralisation Act, 1914 (IV of 1914), section 2, Schedule.

50. Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless, in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue, a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue :

Effect of entry in the special register.

Provided that a tenure or farm in the hands of a *bonâ fide* purchaser for value shall not be avoided by reason of such fraud.

But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable

at the time of the special registry thereof—such amount to be fixed by the Collector.

51. Tenures and farms of the third exceptional class described in section 37 of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the inquiry prescribed in section 42; shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such inquiry, and shall be protected eventually by registration, if the final award of the Revenue Authorities upon such application be in favour of the claimant.

Protection of talukdari tenures pending enquiry, in case of sale of parent estate for arrears of revenue.

52. The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with raiyats or the like, settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying grounds have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect :

Rights of purchaser of an estate not permanently settled, sold for its own arrears.

Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the *pargana*, *mauza*, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

A *mukarrari mauzasi junglebari* tenure not protected.

NOTE.—The plaintiff was the purchaser at a sale under this Act for arrears of revenue of an estate in the 24-Parganas portion of the Sundarbans in which the defendant was holder of a *mukarrari mauzasi junglebari* tenure, under which he was to clear away the jungle and then to cultivate the land with paddy. In a suit after notice to quit to eject the defendant and obtain possession of the land or to have the defendant's tenure annulled *held*, that the defendant's tenure was not protected as being one of "land whereon plantations have been made" within the meaning of this section.—(I. L. R., Cal., Vol. XIV, page 440.)

53. Excepting \* \* \* sharers with whom the Collector, under sections 10 and 11 of this Act, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner, or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act, and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale,

Rights of a purchaser being a sharer in any estate.

And of a purchaser of an estate not sold for its own arrears.

and shall not acquire any rights in respect to under-tenants or *railyats* which were not possessed by the previous proprietor at the time of the sale of the said estate.

Part of this section repealed by the Repealing and Amending Act (XII of 1891), section 2, has been omitted.

NOTE 1.—Any co-proprietor purchasing an estate sold for arrears of Government revenue re-purchases it subject to all encumbrances existing at the time of sale, even if the purchaser is a non-defaulting proprietor and the encumbrances were made by defaulting proprietors. Re-purchase by a co-proprietor is subject to all encumbrances.

Such co-proprietor so purchasing it is in the same position whether he purchases *benami* through a third party, or purchases it from the third party after the latter has purchased it for himself.—(W. R., Vol. XVI, page 136.)

NOTE 2.—Under this section a *benami* purchaser, on behalf of the old proprietor, is not entitled to get rid of the encumbrances created, or allowed to remain, by the old proprietors before the sale.—(W. R., Vol. XVI, page 138.) Benami purchaser on behalf of the old proprietor can not get rid of the encumbrances.

NOTE 3.—Under this section the terms of the certificate given under Schedule A are limited, and a purchaser acquires the estate subject to all encumbrances *existing at the time of the sale* whether created before or after the default and even up to the date of the sale; but there is no such limitation to the terms of a certificate given to a purchaser under the following section, and all encumbrances created after the date on which a purchase takes effect, that is, after the date on which the default was committed are void.—(I. L. R., Cal., Vol. XVIII, page 148.) Difference between the rights of purchasers under sections 53 and 54.

NOTE 4.—A proprietor who is not a recorded sharer of a joint estate held in joint tenancy within the meaning of section 10 of the Revenue Sale Law, nor a recorded sharer whose share consists of a specific portion of the lands of the estate within the meaning of section 11, but is recorded as proprietor of an undivided interest held in common tenancy of a specific portion of the lands of the estate, but not extending over the whole estate within the meaning of section 70 of the Land Registration Act, is not entitled to acquire the estate purchased by him at a sale, held for arrears of revenue, free of encumbrances.—(I. L. R., 39 Cal., 353).—[B. & O. Board—File No. IVL—38 of 1912.] Class of proprietors who cannot acquire the estate purchased at a revenue sale free of encumbrances.



54. When a share or shares of an estate may be sold under the provisions of section 13 or section 14, the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

Only *bona fide* encumbrances protected.

NOTE 1.—The object of this section is to protect, not every encumbrance which may be set up, but only *bona fide* encumbrances not executed in contemplation of an impending sale, or in fraud of a possible purchaser. Where surrounding circumstances suggest such creation, it is for the party setting up the encumbrance to establish its *bona fide* character.—(W. R., Vol. V, page 1.)

A lease of a share protected.

NOTE 2.—A lease of a share is protected.—(W. R., Vol. VII, page 295.)

Rights of purchaser of a share sold under section 13.

NOTE 3.—A, in exchange for his *lakhiraj* land, obtained in 1791 from his zamindar 441 bighas of *mal* land which the zamindar thereupon created rent free. The zamindar fell into arrears, and the zamindari was sold. Subsequently, three persons, who had become owners of the zamindari, applied to the Collector under section 11 of this Act, and the Collector opened separate accounts with each of them for the revenue of their respective shares. The revenue due from one of them fell into arrears, and his share, which included the 441 bighas, was sold under section 13 and purchased by the plaintiff, who sued the descendants of A to recover possession. *Held* that a sale of a share of a zamindari under section 13 does not convey to the purchaser the share free from all encumbrances created by the former zamindar, but he acquires the share, as laid down in this section, subject to all encumbrances.—(B. L. R., Vol. III, page 446.)

A mortgage created after default is of no effect as an encumbrance.

NOTE 4.—A share of a taluk admitted to special registration under sections 10 and 11 was advertised for sale in default of payment of the June *kist* of Government revenue. On the 25th July the recorded sharer mortgaged his interest in that share to the plaintiff. The sale took place on the 26th September, and the share was purchased by the defendant who obtained a sale certificate under section 28 declaring that his title accrued from the 29th June, the day after the latest date of payment for the June *kist*. *Held*, that the mortgage was of no effect as an encumbrance under this section.—(I. L. R., Cal., Vol. XVIII, page 148.)

NOTE 5.—A share of an estate held by a Hindu widow was sold for arrears of revenue. It was contended that, under this section, the estate acquired by the purchaser lasted only during the lifetime of the widow; *Held* that the purchaser did not take any interest, limited to the life of the widow, but that the entire share passed by the sale.—(I. L. R., Cal., Vol. XXII, page 641.)

NOTE 6.—A decree was obtained for the sale of a mortgaged property, being a share of an estate, on the 31st August 1899. In execution of that decree, the property was purchased by the plaintiff on the 11th December 1891, and the sale was confirmed on the 5th March 1892. Meanwhile, pending the execution proceedings, a larger share of the estate, including the share mortgaged, was purchased by the defendants at a revenue sale on the 30th September 1891, which sale was confirmed on the 11th March 1892. In a suit instituted by the plaintiff for the possession of the property purchased by them, the defendants having questioned the validity of the mortgage decree, and contended that they were not bound by it, not being parties thereto, and having in the alternative claimed the right to redeem the mortgaged property: *Held* that the defendants having purchased a share of an estate at a revenue sale, held under the provisions of section 13 and this section, acquired it subject to the mortgages which they were bound in law to discharge before the sale in execution of the mortgage decree had actually taken place, or before at any rate, that sale had been confirmed on the 5th March 1892, and that having failed to do so, and there being no equities to the contrary, their right of redemption was extinguished.—(I. L. R., Cal., Vol. XXVI, page 966.)

NOTE 7.—*A*, *B* and *C* recorded proprietors of an estate opened a separate account no. 1 in respect of their share. At an execution sale in August 1894, *D* purchased the share of *A*. The entire separate account was sold in December 1894 for arrears of revenue and purchased by *E*. *D* sued *E* to recover possession of *A*'s share which he had purchased before the revenue sale. It was urged in favour of *D* that under section 54 the purchaser at a revenue sale acquires only the rights possessed by the previous owner or owners at the date of sale.

*Held* (i) that *D*'s purchase does not amount to an encumbrance protected by section 54; and (ii) that the words "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners" occurring in that section,

The interest of the purchaser of a share of an estate held by a Hindu widow is not limited to the life of the widow.

Right of redemption of the purchaser of a share subject to a mortgage—how extinguished.

Purchaser acquires no right not possessed by previous owner.

mean that the purchaser shall not acquire any rights not possessed by the previous owner or owners at some time or another, and shall acquire no more than what was the property of the previous owner or owners; they do not mean any right not possessed by the previous owner or owners at the date of the sale.—(I. L. R., Cal., Vol. XXIX, pages 223 and 224.)

Sale in execution of a mortgage decree takes effect from the actual date of sale and not from its confirmation.

NOTE 8.—A held a mortgage over a certain share in 4 out of 71 villages comprised in an estate and, in execution of a decree which he obtained on his mortgage, purchased the mortgaged property at a sale held on the 19th March 1900. This sale was confirmed on the 23rd April of the year. Meanwhile on the 28th March an instalment of Government revenue on the 71 villages fell into arrear, and the whole estate, including the 4 villages purchased by A, was sold on the 6th June 1900 for arrears of revenue and purchased by B. A had not attempted to obtain exemption of the property from sale by paying any of the revenue due.

*Held* by the Privy Council that the sale in execution of the mortgage decree took effect from the actual date of the sale, and not from its confirmation, and, therefore, from 19th March 1900, the mortgage became extinct and A by his purchase became the complete proprietor of the mortgaged share. He was, therefore, responsible for his share of the revenue falling due after that date and was not in a position at the same time to keep his mortgage alive against the purchaser at the revenue sale. To keep an incumbrance alive under such circumstances would introduce confusion into the mechanism of transfer and insecurity into the rights in immoveable property, which were not warranted by the Act.—(I. L. R., 40 Cal., page 89.)

What the purchaser of a share sold under section 13 acquires.

NOTE 9.—In a case reported in I. L. R., 43 Cal., page 46, it was held, following and explaining the decision referred to in Note 7, and following the case mentioned in note 5 and a case in 14 B. L. R., page 170, that the words "shall not acquire any rights" in this section refer to the acquisition of rights in respect of interests such as encumbrances or the like which are referred to in the previous phrase of the section.

At a sale under section 13 it is not the right, title and interest of the previous owner of the share which pass to the purchaser under section 54, but the share as recorded in the Collector's book, on which the revenue is assessed. The policy of the revenue law is to protect the revenue and make the

share, on which the revenue is assessed, available for the arrears of revenue due upon it.

NOTE 10.—The existence of a *mukarrari* created by grant by the proprietor, does not bar the proprietor from creating an intermediate tenure between himself and the *mukarraridars*; where the proprietor, therefore, granted to his wife, the right of collecting rent in lieu of Dower from the *mukarraridar*, held, the grant was an encumbrance within the meaning of s. 54. (I. L. R. 1 Pat. 38-3 P. L. T. 816.)

Right granted by proprietor of collecting rent from *mukarraridar* is an encumbrance.

NOTE 11.—Where a separate share of an estate is sold for arrears of revenue and the share is subject to a mortgage all that passes to the purchaser is the equity of re-demption.—(I. L. R. 8 Pat. 569.)

Purchaser of a share subject to a mortgage acquires only the equity of redemption.

55. Arrears of rent which on the latest day of payment may be due to the defaulter from his under-tenants or *rai-yats* shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

Recovery of arrears due to defaulters.

56. Any Collector or other officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open *cutcherry* or office for the time being, by fine to an extent not exceeding two hundred rupees, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector or other officer as aforesaid shall carry his sentence into effect:

Punishment for contempt.

Provided that an appeal from any order passed under this section shall lie to the Revenue Commissioner, whose decision shall be final.

NOTE.—A person failing to complete a sale is guilty of contempt and punishable under sections 184 and 185 of the Indian Penal Code (Act XLV of 1860). (3 W. R. Cr. 33.)

Failure to complete sale punishable under the Indian Penal Code.

57. A default to make good a bid by making the deposit required by section 22 of this Act shall be held to be a contempt.

Rule 4, section VI.

58. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on account of the Government for one rupee, or if the highest bid be insufficient to cover the said arrears and those subsequent accruing up to the date of sale, the Collector or other officer as aforesaid may take or purchase the estate on account of the Government at the highest amount bid; in both which cases the Government shall acquire the property subject to the provisions of this Act.

59. The Collector on the part of the Government shall be entitled to demand from applicants under . . . . † sections 15 and 16, sections 40, 43 and 44 of Act XI of 1859, fees not exceeding the rates specified in the Schedule to this Act annexed, which Schedule shall be taken as part of this Act; and applications under the said sections shall not be received unless the said fees are tendered therewith.

#### SCHEDULE OF FEES.

† \* \* \* \*  
2. For filing an application for a deposit of money or Government securities under section 15 of the said Act.—Half per cent on the amount deposited.

For any interest on Government securities so deposited, drawn by the Collector.—Half per cent on the amount drawn.

† The words and figures "sections 10 and 11" and consequently clause I of the Schedule were repealed by section 16(4) of the Bengal Land Registration (Amendment) Act II (B. C.) of 1906.

For filing an application for withdrawal of a deposit under section 16 of the said Act.—Half per cent on the amount withdrawn.

3. For filing an application, under sections 40, 43, or 44 of the said Act, for the registration of an under-tenure or farm—

If the annual rent of the under-tenure or farm do not exceed 1,000 rupees.—At the rate of 5 *per cent* on the rent :

If the annual rent of the under-tenure or farm exceed 1,000 rupees.—At the above rate up to 1,000 rupees, and at 1 *per cent* on all above that amount.

NOTE.—This section has been substituted for the original section by section 3 of Act III (B.C.) of 1862.

60. The provisions of Regulation VII, 1822, and Regulations VII, Regulation IX, 1825, to be in force in certain estates. 1822, and IX, 1825, to be in force in certain estates. of which a measurement, survey, or local enquiry may be made under this Act, and in every estate purchased or taken on account of Government under this Act.

61. In the construction of this Act the word "Collector" shall include a Deputy Collector or other officer exercising, by the authority of Government, the powers of a Collector or Deputy Collector.

Interpretation.

NOTE.—*Cf.* the definition of "Collector" in the Bengal Land-revenue Sales Act, 1868 (Ben. Act 7 of 1868), s. 1. That definition and the definitions of "proprietor", "revenue", estate", "tenure", and "jurisdiction" (of a Collector) contained in that section, apply to the present Act.

62. The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal<sup>[1]</sup> as are or shall be subject to the general Regulations of that Presidency.

NOTE.—*See* the foot-notes under the heading "Local extent" *ante*, p. 2.

[1]This includes the present province of Bihar and Orissa except the district of Sambalpur.

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 SCHEDULE A.

Rule 5, sect. on  
VII.

I certify that A. B. has purchased, under Act no. XI of 1859, the *mahal* (or share of a *mahal*) specified below, standing in the *tauzi* of the district of \_\_\_\_\_ and that his purchase took effect on the day of \_\_\_\_\_ (*being the day after that fixed for last day of payment*).

(Signed) D. E.,  
Collector.

---

 SPECIFICATION.

(*If of an entire mahal.*)

*Tauzi* number

Name of *mahal*

Name of the former proprietor

*Sadar jama*

(*If of a share of a mahal.*)

*Tauzi* number of the entire *mahal*

Name of the entire *mahal*

*Sadar jama* of the entire *mahal*

Description of the share sold

Subordinate *tauzi* number of the share sold

Name of the former proprietor of the share sold

*Sadar jama* for which the share sold is separately liable.

**ACT VII (B. C.) OF 1868.**

**(The Bengal Land-revenue Sales Act, 1868).<sup>[1]</sup>**

PASSED BY THE LIEUTENANT-GOVERNOR OF  
BENGAL IN COUNCIL.

(Received the assent of the Lieutenant-Governor on the 16th  
July 1868, and of the Governor-General on the 10th August  
1868.)

*An Act to make further provision for the recovery  
of arrears of land revenue and public demands  
recoverable as arrears of land revenue.*

WHEREAS it is expedient to amend and extend the  
law for the recovery of arrears of  
land revenue and of public  
demands recoverable as arrears of land revenue, it is  
declared and enacted as follows:—

Preamble.

NOTE.—Since this Act is to be read with and taken as part of the Bengal Land-Revenue Sales Act, 1859 (11 of 1859), it has the same local extent as that Act.

The Act has been extended, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 5, to the following Scheduled Districts, namely:—

the districts of Hazaribagh, Ranchi, Palamau, Manbhum and Pargana Dhalbhum and the Kolhan in the district of Singhbhum in the Chota Nagpur Division.

It is in force in the Santal Parganas; but its application is barred in the district of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3(2).

1. In this Act and in Act XI of 1859 (*to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), the words in this section mentioned shall have the meanings therein attributed to them, respectively—

Interpretation.

<sup>[1]</sup> This short title was given by the Amending Act, 1903 (1 of 1903), Sch. 1.



The word “ proprietor ” includes any tenant by whom any estate or tenure is held directly under Government.

“ Proprietor.”

NOTE.—A tenant or farmer in a Government khas mahal paying rent direct to Government is considered the proprietor of the tenure.

The word “ revenue ” includes every sum annually payable to Government by the proprietor of any estate or tenure in respect thereof, and every sum payable to Government in respect of *takavi*, or of any money advanced by Government to proprietors of land for making or repairing embankments, reservoirs, or water-courses, or other improvements, on the land held by them.

“ Revenue.”

The word “ estate ” means any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the register known as the General Register of all revenue-paying estates, or in respect of which a separate account may, in pursuance of section 10 or section 11 of the said Act XI of 1859, have been opened.

“ Estate.”

The word “ tenure ” includes all interests in land, whether rent-paying or *lakhiraj* (other than estates as above defined), and all fisheries, which, by the terms of the grants creating the same, or by the custom of the country, are transferable, whether such tenures are resumable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been specially reserved by stipulation in any instrument.

“ Tenure.”

The word “ jurisdiction ” of a Collector means the district to which such Collector is appointed, or throughout which any officer vested with the powers of a Collector is authorised to exercise such powers.

“ Jurisdiction.”

**Sec. 2.]                      ACT VII (B.C.) OF 1868.                      [Part I.**

The word "Collector" includes any person vested with the powers of a Collector. Rule 1, section VI.

\*                      \*                      \*                      \*

[The remainder of this section, repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880) is omitted.]

2. It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act or the said Act XI of 1859, so that such appeal be preferred to such Commissioner on or before the sixtieth day from the day of sale, reckoning as in section 23 of the said Act XI of 1859, or be presented to the Collector or other officer duly authorised to hold sales under the said Act for transmission to the Commissioner on or before the forty-fifth day from the day of sale, reckoning as aforesaid, and not otherwise;

And the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act or Act XI of 1859, which shall appear to him not to have been conducted according to the provisions of the said Acts, awarding at the same time to the purchaser a payment from the proprietor of compensation<sup>[1]</sup> for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed the interest at the highest rate of the current Government Securities on the amount of deposit or balance of purchase-money during the period of its being retained in the Collector's office; Rules 12, 13 and 15, section VII.

And the order of the Commissioner shall in such cases be final.

NOTE 1.—Certain words of this section, repealed by Act VII (B.C.) of 1880, are omitted.

[<sup>1</sup>] As to the recovery under the certificate procedure of sums awarded as compensation under this Act, see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914), s. 3(6) and sch. I.

**Part I.]                      ACT VII (B.C.) OF 1868.                      [Secs. 3-4.**

Commissioner has no power to review his decision.                      NOTE 2.—A Commissioner has no power to review his decision under this section—(Board's Miscellaneous Proceedings of 24th January 1885, no. 100, Collection 7, File 409 of 1884.)

Defaulting proprietor's right to appeal though his name not recorded under Act VII of 1876.                      NOTE 3.—Appeals can be brought by the defaulting proprietors, and they are entitled to appeal even though their names are not recorded under Bengal Act VII of 1876. (Board's Miscellaneous Proceedings of 7th January 1888, no. 131, Collection 7, File 547 of 1896.)

Reversioner has no right of appeal.                      NOTE 4.—A reversioner cannot be regarded as the defaulting proprietor and has no right of appeal under this section—(Board's Miscellaneous Proceedings of 13th February 1897, no. 33, Collection 7, File 547 of 1896.)

Appeals to be accepted if presented before the close of office hours of the 60th day.                      NOTE 5.—Appeals against a sale for arrears of revenue must be accepted if presented at any time before the close of office hours of the sixtieth day from the date of sale—(Board's Miscellaneous Proceedings of 10th July 1897, no. 208, Collection 7, File 317 of 1897.)

Persons having an interest in the property antecedent to sale can appeal.                      NOTE 6.—The right to set aside a sale for arrears of Government revenue under Act XI of 1859 is not confined to proprietors alone, but extends to all persons, such as mortgagees having an interest in the property antecedent to its sale—(I. L. R., Cal., Vol. XVII, page 398).

The meaning of the word "final".                      NOTE 7.—The word "final" in this section means at least "not open to review."

A Commissioner or any revenue authority has no power to review his order annulling a sale held for arrears of Government revenue. (I. L. R., 34 Cal., 667.)

3. \* \* \* \* \*<sup>1</sup> The word "thirty" shall be substituted for the word "fifteen" in section 6 of the said Act XI of 1859. \* \* \* \* \*<sup>[1]</sup>

4. \* \* \* \* \*<sup>[1]</sup> The words "sixtieth" and "sixty" shall be substituted for the words "thirtieth" and "thirty" respectively, wherever the said words occur in section 27 of the said Act XI of 1859.

<sup>[1]</sup> The words, which were repealed by the Repealing and Amending Act, 1903 (I of 1903), are omitted.

5. Every notice in and by this Act, or by the said Act XI of 1859, directed to be served, shall be served by delivering to the person to whom it may be directed a copy thereof attested by the Collector, or by delivering such copy at the usual place of abode of such person, to some adult male member of his family, or, in case it cannot be so served, by posting such copy upon some conspicuous part of the usual or last known place of abode of such person.

In case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such way as the Collector issuing such notice may direct.

6. It shall be lawful for the Lieutenant-Governor of Bengal, by an order published in the *Calcutta Gazette*, to empower all Collectors in any district in such order mentioned, if they shall think fit, to cause such notices as shall be in such order specified to be served upon any proprietors, \*

\* \*<sup>[1]</sup> before proceeding, under the provisions of the said Act XI of 1859 or of this Act, to realize from such proprietors, \* \* \*<sup>[1]</sup> any arrears of revenue \* \* \*<sup>[1]</sup> which may be due from such proprietors, \* \* \*<sup>[1]</sup>

And the costs of serving any such notices as shall be served under the power conferred by any such order, not exceeding such sums as shall in such order be specified, shall be added to any arrears of revenue \* \* \*<sup>[1]</sup> which may be due from such proprietors, \* \* \*<sup>[1]</sup> and shall be recoverable as if the same were a portion of such arrears of revenue \* \* \*<sup>[1]</sup>

And every such order may from time to time be altered, varied, or revoked by any other order of the

[1] The words, which were repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), are omitted.

**Part I.] ACT VII (B.C.) OF 1868. [Secs. 7-9.**

said Lieutenant-Governor to be from time to time in like manner published.

Object of the section.

NOTE.—This section was introduced with reference to a certain class of cases in Cuttack, where the holders of small tenures or holdings had been in the habit of paying arrears of revenue demands yearly, in consequence of there being no effective process for the recovery of revenue by instalments, and it merely gave legislative sanction to what had been the established practice for many years and had been found to work well, namely, the practice of issuing notices at certain times. It is only fair and reasonable that the cost of serving these notices within certain limits should be made a portion of the amount to be realized.—(Proceedings of the Bengal Council).

7. In addition to the notices in and by section 7 of the said Act XI of 1859 directed to be posted, a similar notice shall be posted at the subdivisinal *cutcherry* within the jurisdiction of which the estate to which such notice refers, or some portion thereof, is situate.

Notices to raiyats to be posted in subdivisinal *cutcherry*.

8. Every certificate of title which may be given to any purchaser under the provisions of section 28 of the said Act XI of 1859, or of section 11 of this Act shall be conclusive evidence, in favour of such purchaser and of every person claiming under him, that all notices in or by this Act, or by the said Act XI of 1859, required to be served or posted have been duly served and posted;

Certificate to be conclusive evidence of regularity in service of notices.

And the title of any person who may have obtained any such certificate shall not be impeached or affected by reason of any omission, informality, or irregularity as regards the serving or posting of any notice in the proceedings under which the sale was had at which such person may have purchased.

9. [Sales of *lakhiraj* valid] Repealed by the Amending Act, 1903 (I of 1903).

10. Every estate shall, for the purposes of this Act and of the said Act XI of 1859, be deemed to be within the Collectorate of the Collector upon whose General Register the revenue thereof may be borne, although the whole or any portion of the lands comprised in such estate may be without the local limits of his jurisdiction; but all lands and tenures shall be deemed to be within the jurisdiction within the local limits of which they may be situate, although the estate of which they form a part may, under the provisions of this section, be deemed to be within the Collectorate of any other Collector.

Collectorate to include all estates borne on its roll.

NOTE.—If a tenure is transferred from one Collectorate to another, and the holder of the tenure after receiving notice of the transfer continues to pay his revenue into the former Collectorate, he is not entitled to take credit for such payment. But if he pays before notice and obtains a receipt, such receipt is a quittance as against Government. (113 W. R., 336.)

Payment of revenue after transfer of tenures from one Collectorate to another.

11. Whenever any revenue payable to Government in respect of any tenure not being an estate, shall be in arrear after the latest day of payment fixed in the manner prescribed in section 3 of Act XI of 1859, the Collector to whom such revenue is payable may cause the tenure to be sold in the manner and subject to the provisions in and by the said Act XI of 1859 provided for the sale of estates for the recovery of arrears of revenue;

And the Collector shall apply the purchase-money arising from such sale according to the provisions of section 31 of the said Act XI of 1859, except that the residue, if any, shall be held in deposit on account of the holder of the tenure and not on account of the proprietor of the estate;

And every such Collector shall upon every such sale of any tenure being final and conclusive give to

the purchaser thereof such certificate of title thereof as is provided in section 28 of the said Act XI of 1859 with respect to estates :

Provided that no tenure shall be sold for the recovery of arrears of revenue other than those of the current year or of the year immediately preceding, nor for the recovery of arrears of revenue due by tenures under attachment by order of any judicial authority, unless and until after a notification in the language of the district, specifying the nature and amount of the arrear and the latest date on which payment thereof shall be received, shall have been fixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of Act XI of 1859, in the office of the Collector or other officer duly authorised to hold sales under this Act, in the court of the Judge within whose jurisdiction the land advertised lies, and in the Munsif's court and police thana of the Division in which the tenure to which the notification relates is situated, or, if the tenure be situated within the jurisdiction of more than one Munsif's court or police thana, in some one or more of such courts or thanas, and also at the cutcherry of the malguzar or owner of the tenure, or at some conspicuous place upon the tenure, the same to be certified by the peon or other person employed for the purpose.

NOTE 1.—This section was substituted for the original section by the Bengal Land-revenue Sales (Amendment) Act, 1871. (Ben. Act 2 of 1871).

Applicability  
of the  
sunset law to  
sales of tenures.

NOTE 2.—This section makes the sunset law as enacted in section 6 of Act XI of 1859 applicable to sales of tenures under this Act. The refusal, therefore, of the Collector to accept payment of the amount due when tendered after sunset on the latest day for payment does not make the sale under this Act illegal.—(I. L. R., Cal., Vol. XXI, page 360.)

Notification fixing  
the latest day of  
payment in res-  
pect of tenures  
not necessary.

NOTE 3.—A question arose whether the issue of a notification under this section, fixing the latest day of payment of revenue in respect of tenures was necessary. The Legal Remembrancer gave his opinion that rent of a tenure is due on the *kist* day (latest day for payment of arrears of revenue)

of the locality. It becomes an arrear on the first of the following month, and if not paid by the latest date fixed for estates, it may be recovered by the sale procedure. There is no necessity, therefore, for the issue of a notification under this section fixing the latest day of payment in respect of tenures.—(Bbard's Miscellaneous Proceedings of 17th October 1890, no. 171, Collection 7, File 351 of 1890.)

12. The purchaser of any tenure sold under the provisions of section 11 of this Act shall acquire it free from all encumbrances which may have been imposed upon it after its creation, or after the time of settlement, whichever may have last occurred, and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions:—

*First.*—*Istimrari* or *mukarrari* tenures which have been held at a fixed rent from the time of the permanent settlement.

*Secondly.*—Tenures existing at the time of permanent settlement, which have not been held at a fixed rent:

Provided always that the rent of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

*Thirdly.*—Tenures created or recognised by the settlement proceedings of any current temporary settlement as tenures bearing a rent which is fixed for the period of such settlement.

*Fourthly.*—Tenures of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made.

NOTE.—A person seeking to obtain the benefit of this section must give some *prima facie* evidence to show that the encumbrance which he seeks to avoid is an encumbrance.

Some *prima facie* evidence necessary to avoid an encumbrance.



falling within the terms of that section; that is, an encumbrance imposed on the tenure by some one who previously held it.

If a person claiming under a *badshahi lakhiraj* grant made before the 1st December 1790 can show that he has held the land as *lakhiraj* since the 1st December 1790, this will be a conclusive bar to a suit for resumption, whether brought by the Government, or by a purchaser at a revenue sale, or by any other person. That is in order to prove a grant anterior to the 1st of December 1790, it is sufficient to give evidence of possession dating back to the 1st of December 1790.

A person seeking to resume *lakhiraj* land must give *prima facie* evidence to show that rent has been paid for that land at some time since the 1st of December 1790.—(I. L. R., Cal., Vol. VIII, page 230.)

13. Every purchaser of a tenure under section 11 of this Act shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made if he can prove the same to have been held at what was originally an unfair rent, unless the same shall have been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

14. Provided always that nothing hereinbefore contained shall be construed to entitle any such purchaser under section 11 of this Act to eject any raiyat having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

*Sections 15 to 28 inclusive were repealed by Act VII (B. C.) of 1880, and section 29 by Act XII of 1873.*

**Sec. 30.]            ACT VII (B.C.) OF 1868.            [Part I.**

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30. This Act shall be read with, and taken as  
Construction of Act. part of the said Act XI of  
 1859, as modified by Act III  
 of 1862<sup>[1]</sup> of the Lieutenant-Governor of Bengal in  
 Council.

NOTE.—No distinction can be drawn between the provisions of Act XI of 1859 and those of Act VII (B.C.) of 1868 with reference to procedure for sale and with reference to what constitutes arrears. [Haji Buksh Elahi v. Durlabh Chandra Kar, 16 C. W. N. 842)].

No distinction between Act XI of 1859 and Act VII of 1868 regarding procedure for sale and meaning of arrears.

SCHEDULES A, B, C, D.

*Repealed by the Amending Act, 1903 (I of 1903).*

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SCHEDULE E.

*Repealed by the Repealing Act, 1873 (12 of 1873).*

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[1] The Bengal Land-revenue Sales (Amendment) Act, 1862.

**PART II.**  
**PATNI SALE LAW.**

**REGULATION VIII OF 1819.**

(PASSED BY THE GOVERNOR-GENERAL IN COUNCIL ON THE 3RD SEPTEMBER 1819.)

*A Regulation to declare the validity of certain tenures, and to define the relative rights of zamindars and patni talukdars; also to establish a process for the sale of such taluks in satisfaction of the zamindar's demand of rent \* \* [1]*

1. By the rules of the perpetual settlement  
Preamble. proprietors of estates paying  
revenue to Government, that is,  
the individuals answerable to Government for the  
revenue then assessed on the different *mahals*, were  
declared to be entitled to make any arrangements for  
the leasing of their lands in *taluk* or otherwise that  
they might deem most conducive to their interests.

By the rules of Regulation XLIV<sup>[2]</sup>, 1793, however, all such arrangements were subjected to two limitations; first that the *jama* or rent should not be fixed for a period exceeding ten years; and, secondly, that in case of a sale for Government arrears, such leases or arrangements should stand cancelled from the day of sale.

The provisions of section 2, Regulation XLIV,<sup>[2]</sup> 1793, by which the period of all fixed engagements for rent was limited to ten years, have been rescinded by section 2, Regulation V, 1812, and in Regulation XVIII of the same year, it is more distinctly declared that *zamindars* are at liberty to

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[1] Words repealed by the Repealing and Amending Act, 1891 (12 of 1891), are omitted.

[2] Repealed by Act XXIX of 1871.

grant *taluks* or other leases of their lands, fixing the rent in perpetuity at their discretion, subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government revenue in the same manner as heretofore.

In practice, the grant of *taluks* and other leases at a rent fixed in perpetuity had been common with the *zamindars* of Bengal for some time before the passing of the two Regulations last mentioned, but, notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all intention or desire to have it enforced as a security to the Government revenue in the manner originally contemplated, it was omitted to declare in the rules of Regulations V and XVIII of 1812, or in any other Regulations, whether tenures at the time in existence and held under covenants or engagements section 2, Regulation XLIV, 1793, [A] should, if called in question, be deemed invalid and void as heretofore.

This point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity, or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements, and declaring null and void any granted in contravention thereto, was in force.

Furthermore, in the exercise of the privilege thus conceded to *zamindars* under direct engagements with Government, there has been created a tenure which had its origin on the estates of the *Raja* of Burdwan, but has since been extended to other *zamindaris*; the character of which tenure is that it is a *taluk* created by the *zamindar*, to be held at a rent fixed in perpetuity by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused

[1] Repealed by Act XXIX of 1871.

from this obligation at the *zamindar's* discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the *zamindar*.

By the terms also of the engagements interchanged, it is amongst other stipulations provided that, in case of an arrear occurring, the tenure may be brought to sale by the *zamindar*, and, if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

These tenures have usually been denominated *patni taluks*, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons, who on taking such leases went by the name of *darpatni talukdars*: these again sometimes similarly underlet to *sepatnidars*; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder.

In these engagements, however, it is not stipulated whether the sale thus reserved to himself by the grantor is for his own benefit, or for that of the tenant; that is, whether in case the proceeds of sale should exceed the *zamindar's* demand of rent, the tenant would be entitled to such excess; neither is the manner of sale specified, nor do the usages of the country nor the Regulations of Government afford any distinct rules by the application of which to the specific cases the defects above alluded to could be supplied or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner.

The tenures in question have extended through several *zilas* of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action

for the guidance of the Courts of Civil Judicature in regard to them have been productive of such confusion as to demand the interference of the legislature: it has accordingly been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a *patni taluk* as above described, also to declare the legality of the practice of underletting in the manner in which it has been exercised by *patnidars* and others, establishing at the same time such provisions as have appeared calculated to protect the under-lessee from any collusion of his immediate superior with the *zamindar* or other, for his ruin, as well as to secure the just rights of the *zamindar* on the sale of any tenure under the stipulations of the original engagements entered into with him.

It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale, and the form and manner of conducting such sale; and

whereas the estates of *zamindars* under engagements with Government are liable to be brought to sale at any time for an arrear in the revenue payable by monthly *kists*\* to Government, it has seemed just to allow any *zamindar* who may have granted tenures with a stipulation of the right to sell for arrears the opportunity of availing himself of this means of realising his dues in the middle of the year, as well as at the close, instead of only at the end of the Bengal year,<sup>(1)</sup> as heretofore allowed by the Regulations in force; it has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though, in conformity with the Regulations heretofore in force, the stipulation for sale contained in the engagements interchanged may

\* Note.—Evidently the word "kist" has been used here in its original sense of "instalment".

(1) i.e., the middle of *Chaitra*, which corresponds with the last part of March and the first part of April.

have restricted such sale to the case of a demand of rent remaining unpaid at the close of the Bengal year.

\* \* \* \* \* [1]

The following rules have accordingly been enacted by His Excellency the Most Noble the Governor General in Council, to take effect from the date of their promulgation throughout the several districts of the province of Bengal, including Midnapore.

2. It is hereby declared that any leases or engagements for the fixing of rent now in existence that may have been granted or concluded for a term of years or in perpetuity by a proprietor under engagements with Government, or other person competent to grant the same, shall be deemed good and valid tenures, according to the terms of the covenants or engagements interchanged notwithstanding that the same may have been executed before the passing of Regulation V, 1812, and while the rule of section 2, Regulation XLIV, 1793<sup>[2]</sup>, which limited the period for which it was lawful to grant such engagements to ten years, and declared all that might be entered into for a longer term to be null and void, was in full force and effect; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question :

Provided, however, that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to Government from the liability to be cancelled on sale of the said estates for arrears of the said revenue, \* \* \* \* \* <sup>[3]</sup> unless specially

[1]The words which were repealed by the Repealing and Amending Act, 1891. (12 of 1891), are omitted.

[2]Repealed by Act XXIX of 1871.

[3]The words and figures which were repealed by the Repealing Act, 1874 (16 of 1874), are omitted.

exempted from such liability by the rule in question, or by any other specific rule of the Regulations in force.

3. *First.*—The tenures known by the name of *patni taluks*, as described in the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared that they are capable of being transferred by sale, gift or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the Courts of Judicature, in the same manner as other real property.

*Second.*—*Patni talukdars* are hereby declared to possess the right of letting out the lands composing their *taluks* in any manner they may deem most conducive to their interest; and any engagement so entered into by such *talukdars* with others shall be legal and binding between the parties to the same, their heirs and assignees:

Provided, however, that no such engagements shall operate to the prejudice of the right of the *zamindar* to hold the superior tenure answerable for any arrear of his rent, in the estate in which he granted it, and free of all incumbrance resulting from the act of his tenant.

*Third.*—In case of an arrear occurring upon any tenure of the description alluded to in the first clause of this section, it shall not be liable to be cancelled for the same; \* \* \* [1] but the tenure shall be brought to sale by public auction, and the holder of the tenure will be entitled

[1] The words and figures which were repealed by the Repealing Act, 1874 (16 of 1874), are omitted.



to any excess in the proceeds of such sale beyond the amount of the arrear of rent due, subject, however, to the provisions contained in section 17 of this Regulation.

NOTE 1.—A Commissioner of division enquired as to whether a *patni taluk*, which is a permanent tenure, can be created in a temporarily-settled estate. The Board referred him to section 2, Regulation XVIII of 1812, which implies that a proprietor is not competent to enter into engagements with dependent *talukdars* for any period beyond the term of his own engagement with Government. The proprietor of a temporarily-settled estate may create a permanent tenure, because his own proprietary right is permanent, but he cannot create a permanent tenure at a fixed rent, because his own engagement with Government as regards the amount of his assessment, is not a permanent one. A *patni taluk* is defined in this Regulation as a *taluk* created by the *zamindar* to be held at a rent fixed in perpetuity by the lessee and his heirs for ever. The proprietor of a temporarily-settled estate is, therefore, not competent to create a *patni taluk*.—(Board's Miscellaneous Proceedings of 13th August 1881, no. 196, Collection 7, File 2883 of 1881.)

NOTE 2.—A *patni taluk* belonging to a trust estate was sold for arrears of rent and was purchased on behalf of the estate. Subsequent to the sale, the *patnidar* paid in the arrears due from him as well as the costs of bringing the *patni* to sale and asked that the *patni* might be restored to him. The Collector and the Commissioner recommended that the sale might be considered null and void, and the *patnidar* remain in possession as before. The Legal Remembrancer who was consulted expressed his opinion that the *patni taluk* had merged in the proprietary right by the purchase on behalf of the estate and that the old *patnidar* could not be reinstated without a fresh *patni* lease.—(Board's Miscellaneous Proceedings of 17th August 1889, no. 151, Collection 7, File 282 of 1889.)

4. If the holder of a *patni taluk* shall have

Inferior tenures under similar title-deeds confer similar interest to that provided for *patni taluks* in section 3.

underlet in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation, the holder of such a

tenure shall be deemed to have acquired all the rights and immunities declared in the preceding section to attach to *patni taluks*, in so far as concerns the grantor of such under-tenure.

The same construction shall also hold in the case of *patni taluks* of the third or fourth degree.

5. The right of alienation having been declared to vest in the holder of a *patni taluk*, *Zamindar* not entitled to refuse to give effect to a transfer. it shall not be competent to the *zamindar* or other superior to refuse to register, and otherwise to give effect to such alienations, by discharging the party transferring his interest from personal responsibility, and by accepting the engagements of the transferee.

In conformity, however, with established usage, the *zamindar* or other superior shall be entitled to exact a fee upon every such alienation; and the rate of the said fee is hereby fixed at two *per cent* on the *jama* or annual rent of the interest transferred, until the same shall amount to one hundred rupees, which sum shall be the maximum of any fee to be exacted on this account.

The *zamindar* shall also be entitled to demand substantial security from the transferee or purchaser, to the amount of half the *jama* or yearly rent, payable to him from the tenure transferred; the condition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure.

The above rules shall apply equally to the case of a sale made in execution of a decree or judgment of Court, as to all other alienations, but it shall not apply to the case of sale for an arrear in the rent due to the *zamindar* or other superior, under the rules hereinafter contained.

The purchaser at such a sale shall be entitled to have his name registered, and to obtain possession without fee, though of course liable to be called on to give security under the conditions of the tenure purchased.

NOTE.—A *zamindar*, on trying to recover the rent due from a *patni taluk*, another man came forward and tendered payment, representing that he had purchased the *patni*. The *zamindar*, however, declined to receive payment from this man. The Deputy Collector who was conducting the sale finding that on previous occasions this man's tenders had been received, directed the *zamindar's* agent to receive the balance from him. On the agent declining to do so, the Deputy Collector abstained from selling the tenure and left the *zamindar* to recover as he could. The Commissioner held that the provisions of section 13 of this Regulation appeared to bear out the Deputy Collector's proceedings, and as regards his own action in rejecting the appeal made to him, observed that summary appeals in such cases were only admissible on the ground of irrelevancy of the law. The Board directed that for the future it was to be understood that as the Collector sold *patni* tenures on the responsibility of the *zamindar* according to lists the correctness of which he had no power to impugn, and as he could not stay the sale of any tenure included therein on the representation of another party, he had no option but to proceed to sale if a balance was declared to be due, and the *zamindar* insisted upon the sale. He could not accept a deposit. Under the law, a *patnidar* may dispose of his tenure without the permission of the *zamindar*, but until the new purchaser has applied to have his name registered in the *zamindar's serishta*, paid the fee, and given the security, if demanded under this section, the *zamindar* will look to the registered *patnidar* for his rent and not recognize the private transfer. If after such application, the *zamindar* refuses to register, the purchaser may have recourse to the Civil Court to compel him.—(Board's Miscellaneous Proceedings of 12th May 1858, no. 56.)

6. It shall be competent to the *zamindar* or other superior to refuse the registry of any transfer until the fee above stipulated be paid, and until substantial security to the amount specified be tendered and accepted :

*Zamindar* may refuse sanction to transfer till fee and security tendered.

Provided, however, that if the security tendered by any purchaser or transferee should not be approved by the *zamindar*, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the *zamindar* to accept it and give effect to the transfer without delay.

It is hereby provided that the rules of this and of the preceding section shall not be held to apply to transfers of any fractional portion of a *patni taluk*, nor to any alienation other than of the entire interest; for no apportionment of the *zamindar's* reserved rent can be allowed to stand good unless made under his special sanction.

NOTE.—On an appeal from the order of a Commissioner relating to the registry of a *darpatni* tenure, the Board held that while each underholder has a right to demand registration in the office of his superior, that superior has *per contra* the right to demand the prescribed fee and substantial security.—(Board's Miscellaneous Proceedings of May 1866, no. 24.)

7. In case of the sale of a *patni* tenure in execution of a judgment of Court, if the purchaser do not, within the period of one month from the sale, conform to the rules of section 5 of this Regulation, in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the *zamindar* or other superior shall be entitled, of his own authority, to send a *sazawal* to attach and hold possession of the tenure until the forms prescribed be observed.

In case also of the sale of a *patni* tenure for arrears of the rent due upon it, under the rules of this Regulation, if security be required by the *zamindar* and the purchaser fail to furnish the same within one month of the date of sale, the *zamindar* shall similarly be entitled to send a *sazawal* to attach and hold possession of the interest which may have passed on

the sale, to the exclusion of the purchaser, until the prescribed security be given.

Attachments made under this section shall be regarded as trusts for the benefit and at the risk of the purchasers: consequently, after deducting the rent due and the expense of attaching, any surplus that may be yielded by the collections shall be held in deposit for such purchaser: but, if the collections for the time fall short of the rent, the tenure and person of the proprietor shall be liable in the same manner as if no attachment had been made, and accounts produced by the *zamindar* or other superior making attachment shall be received as *prima facie* evidence to warrant process for an arrear so accruing.

NOTE.—A person who has purchased a *patni* holding at a sale in execution of money decree, but has not had his name registered in the landlord's *sherista* is bound by a subsequent decree for arrears of rent obtained by the landlord against the registered *patnidar* and by the sale in execution of such decree, and is, therefore, a "representative" of the judgment-debtor within the meaning of section 244 of the Civil Procedure Code. (I. L. R., Cal., XXXII, 1031.)

Rule 1, section VIII.

8. *First.*—*Zamindars*, that is, proprietors under direct engagements with the Government, shall be entitled to apply in the manner following for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure.

The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.

*Second.*—On the first day of *Bysakh*,<sup>(2)</sup> that is, at the commencement of the following year from that of which the rent is due, the *zamindar* shall present a petition \* \* \*<sup>(1)</sup> to the Collector, containing a specification of any balances that may be due to him on account of the expired year, from all or any *talukdars* or other holders of an interest of the nature described in the preceding clause of the section.

Rules 2 and 3,  
section VIII.

The same shall then be stuck up in some conspicuous part of the *cutcherry* with a notice that, if the amount claimed be not paid before the first of *Jeth*<sup>(3)</sup> following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

Should, however, the first of *Jeth*<sup>(3)</sup> fall on a Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead; a similar notice shall be stuck up at the *sadr cutcherry* of the *zamindar* himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the *cutcherry* or at the principal town or village upon the land of the defaulter.

The *zamindar* shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the *mufassal* shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same, or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth of the

(1) The words which were repealed by the Repealing Act, 1874 (16 of 1874), are omitted.

(2) The month of *Baisakh* corresponds with the last part of April and the first part of May.

(3) The month of *Jeth* corresponds with the last part of May and the first part of June.

month of *Bysakh* (1) it shall be sufficient warrant for the sale to proceed upon the day appointed.

In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the *cutcherry* of the nearest *munsif*, or if there should be no *munsif*, to the nearest *thana*, and there make voluntary oath of the same having been duly published; certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

Rules 2 and  
3, section  
VIII.

*Third.*—On the first day of *Kartik*,<sup>(2)</sup> in the middle of the year, the *zamindar* shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of *Asin*,<sup>(4)</sup> and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of *Aghan*<sup>(3)</sup> unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of *Kartik*<sup>(2)</sup> to less than one-fourth or a four-anna proportion of the total demand of the *zamindar*, according to the *kistbandi*, calculated from the commencement of the year to the last day of *Kartik*<sup>(2)</sup>.

Clause (2) of this section has been modified by Act XXXIII of 1850, section 1.

Certain words of this clause (2) repealed by Act XVI of 1874, section 1, have been omitted.

NOTE 1.—Where a tenure has once been sold for its own arrears, it cannot be again put up to sale for the arrears due on account of a previous period.—(I. L. R., Cal., Vol. XII, page 597.)

(1) *Vide* footnote p. 113 *ante*.

(2) The month of *Kartik* corresponds with the last part of October and the first part of November.

(3) The month of *Aghan* corresponds with the last part of November and the first part of December.

(4) The month of *Asin* corresponds with the last part of September and the first part of October.

NOTE 2.—By the words “residing in the neighbourhood” in this section the law does not make it imperative that the attesting witnesses shall be residents of the village, but may be taken to include men living within a short distance of the *cutcherry*—(W. R., 1864, page 382.)

NOTE 3.—With reference to the provision in clause 2 of this section, that the service of notice of sale of a *patni taluk* shall be attested by three substantial persons,—held that the word “substantial” must be understood in its ordinary sense, *i.e.*, men who have some stake in the community, men of local influence or importance and respectability, and not be taken to mean simply men who can readily be found.—(W. R., Vol. XII, page 188.)

NOTE 4.—The provisions of clause 2 of this section, with regard to the notification of the sale of a *patni taluk* for the arrears of rent under the Regulation, that the serving peon shall “bring back the receipt of the defaulter or of his manager for the same, or in the event of inability to procure this, the signature of three substantial persons residing in the neighbourhood in attestation of the notice having been brought and published on the spot” are merely directory, and where there is proof that the notice was in fact served, the sale will not be vitiated by non-compliance with any of these provisions, *e.g.*, as where one of the witnesses attesting the service of the notice turns out not to be “substantial.” A respectable man, of good character, living and well known in the neighbourhood, may properly be considered a “substantial person” within the meaning of clause 2 of this section. It is too limited a construction of that clause to hold that the word “substantial” must be taken to mean a wealthy man, from whom damages could be recovered by the *patnidar*, supposing the attestation to be false.—(B. L. R., Vol. XIV, page 394.)

NOTE 5.—In a suit to set aside the sale of a *patni* for arrears of rent under this Regulation, on the ground that proper notices were not sent, served, and published under clause 2 of this section the objection in order to succeed must be one of substance and not merely of form. The requirements of this Regulation as to the service of the *istahar*, and the signing of the receipt by substantial persons, may be held to have been substantially performed where the persons signing are such as are usually expected to attest such a document, persons who are treated with consideration, *e.g.*, *amins*, *mukhtears*, *chaukidars*.—(W. R., Vol. XXIV, page 129.)



NOTE 6.—Where a Court finds that the notice prescribed in clause 2 of this section, has been duly served, it need not find whether the peon who served the notice complied with all the directions of the Regulation as to what should be done in verification of such service. Omission to comply with these directions does not vitiate a sale under the Regulation, provided notice is duly served.—(W. R., Vol. IX, page 242.)

NOTE 7.—Although the provisions of clause 2 of this section, specifying the manner in which proof should be given of service of notice of sale, are merely directory, it is nevertheless essential to the validity of a sale under this Regulation that the notice of such sale should be served in strict compliance with the directions given in clause 2 of this section.—(I. L. R., Cal., Vol. IV, page 41.)

NOTE 8.—The fact of no notice having been served in the mufassal is sufficient ground for setting aside a sale for arrears of rent.—(W. R., Vol. XV, page 17.)

NOTE 9.—In a case of sale under this regulation, where the *patni* was a small piece of land, upon which there was no town or village or *cutcherry* of any kind, and the peon stuck up the notice in the Collector's office and also at the *sadr cutcherry* of the zamindar, and obtained the receipt of the defaulter in the latter place, he was held to have carried out substantially, as far as he could, the provisions of the law regarding notice.—(W. R., Vol. XIV, page 36.)

NOTE 10.—It was held to be a far more exact compliance with the spirit of this regulation to serve the notice which it enjoins at the place in which the defendant's *gomashita* was transacting and did habitually transact business, than at the *cutcherry* which had not been in use.—(W. R., Vol. XX, page 132.)

NOTE 11.—In the case of a sale of a *patni taluk* for arrears of rent, so long as the *cutcherry* at which notice on the defaulter as required by clause 2 of this section, is an adjacent one in which all the business of the defaulting *patni* is carried on and is on land belonging to the defaulter, publication at that *cutcherry* is a sufficient publication.—(W. R., Vol. XXI, page 369.)

NOTE 12.—Where there is a *cutcherry* upon the land of a defaulting *patnidar*, the notice required by this section must be served there; but where there is no such *cutcherry* the notice should be published in the manner required by this section at the principal town or village within the *taluk*.—(I. L. R., Cal., Vol. IX, page 931.)

NOTE 13.—Clause 2 of this section, which provides that a notice of sale under this Regulation shall be stuck up in the *cutcherry* of the *zamindar*, is not complied with by serving the notice upon the *zamindar* himself or his agent. The object of this Regulation is to make known to the holders of under-tenures and *raiya*s and the residents of the place that the *patni* will be sold if the arrears are not paid off within the time specified, and if the notice is not stuck up in the *cutcherry*, as prescribed by the Regulation, there is such a material irregularity in the publication as will avoid the sale.—(I. L. R., Cal., Vol. IX, page 172.)

NOTE 14.—A *patni* sale under this regulation is invalid if there was no arrear of rent at the date of sale, whether notice of the fact had been given to the Collector or not at the time of the sale.—(W. R., Vol. VII, page 219.)

NOTE 15.—Where a *zamindar* puts up a *patni* for sale, knowing that the rent due to him has been paid into Court by the *patnidar*, the sale is invalid, even if the notice served on the *zamindar* was illegally served.—(W. R., Vol. XXIV, page 63.)

NOTE 16.—Inadequacy of price is no ground for setting aside a sale regularly held for arrears of rent under the *patni* law.—(W. R., Vol. XXI, page 369.)

NOTE 17.—All the requirements in clause 2 of this section must be imported into clause 3 *mutatis mutandis*. Where therefore the *zamindar* is proceeding under clause 3 to obtain a mid-year sale for six months' arrears of rent the service of notice of sale is a condition precedent to the sale being held. Such notice must show, as provided by that clause, that the sale may be prevented by payment of the whole of the balance due or of *three-fourths* of such balance. In such a case a notice which stated that the sale would take place unless the whole of the balance was paid, as if the *zamindar* was proceeding under clause 2 of the whole year's arrears, was held to be a bad notice and a non-compliance with a substantial requirement of the regulation such as to justify the reversal of the sale. The publication of the petition to the Collector containing a specification of the balance of rent due, by sticking it up in some conspicuous part of the *cutcherry* as required by clause 2 of this section, is not a substantial portion of the process to be observed by the *zamindar* previous to a sale for arrears of rent; non-compliance with that provision, therefore, is not a ground for setting aside the sale. For the same reason the non-presentation of the petition on

the precise day (1st *Kartik*) specified in clause 3 of this section affords no ground for setting aside the sale. The presentation of the petition on the 2nd *Kartik* when the 1st was a Sunday, was held to be a sufficient compliance with the section. The words "certificate to which effect" in the portion of clause 2 of this section relating to the procedure in case of refusal by the village people to attest the publication of the notice of sale, mean a certificate to the effect that the peon did come before the Munsif or police officer as the case may be, and did make voluntary oath as to the service of notice. Where the peon, after serving the notice, made an affidavit before the Munsif, to whom it was read and who then signed it, there was held to be a sufficient certificate to satisfy the requirements of this section.—(I. L. R., Cal., Vol. XVII, page 474.)

NOTE 18.—It is imperative that the notices referred to in clause 3 of this section be published previously to the 15th *Kartik*. Non-compliance with such direction is a "sufficient plea" within the meaning of section 14 of this Regulation for reversal of a sale held thereunder.—(I. L. R., Cal., Vol. XVIII, page 363.)

NOTE 19.—The sticking up or publication in a conspicuous part of Collector's *cutcherry* of a notice in accordance with the provisions of clause 2 of this section is essential to the validity of a sale of a *patni* tenure under this Regulation. Where a notice of sale, instead of being stuck up and published in some conspicuous part of the Collector's *cutcherry* as required by law, was, in accordance with the practice which prevailed in a certain district, kept by the *nazir* with other petitions for sale and notices relating to them in a bundle, which was at night locked up for safe custody and in the day time kept in a conspicuous place near his seat, at the entrance to the *cutcherry*; any person who chose to ask for it, or wished to see it being at liberty to inspect the whole bundle:—*Held* that this was not a publication of the notice within the meaning of clause 2 of this section and that it was a "sufficient plea" for the defaulting *patnidars* within the meaning of section 14 to have the sale set aside.—(I. L. R., Cal., Vol. XXIX, page 703.)

NOTE 20.—Publication of the notice of sale of a tenure under this Regulation is required to be in the manner prescribed in clause 2 of this section; and personal service on

the defaulter is not sufficient. The object of directing local publication of the notice, *viz.*, to warn the under-lessees of the sale proceedings and also to advertise the sale to those who might bid, would be frustrated if it were sufficient to publish the notice at a distant *cutcherry* or to serve it personally. If there is a *cutcherry* on the land of the defaulting *patnidar*, meaning the land which is to be sold for arrears of rent, the copy or extract of such part of the notice of sale as may apply to the tenure in question, must be published at that *cutcherry*, and if there is no such *cutcherry* on the land held by the defaulter, the copy or extract must be published at the principal town or villages on the land. In the description of this notice in clause 2 as "the notice required to be sent into the *mufassal*" the word "*mufassal*" is opposed to the *sadr cutcherry* of the *zamindar*, and refers to the subordinate estate, which is the subject of the sale proceedings. Where a *zamindar* selling the tenure of a defaulting *patnidar* had caused to be stuck up the requisite petition and notice at the Collector's *cutcherry*, and the notice at the *zamindar's cutcherry* but not the copy or extract which is directed by this regulation to be similarly published at the *cutcherry*, nor had published it at any other place upon the land of the defaulter: Held that the *zamindar* had not observed a substantial part of the prescribed process, and that this was for the defaulting *patnidar* a "sufficient plea" within the meaning of this Regulation.—(I. L. R., Cal., Vol. XIV, page 365.)

NOTE 21.—A proposal for the extension of the provisions of this Regulation to *lakhiraj* lands was rejected by Government on the ground that it was unreasonable that Government should give the labour and time of its officers in order to collect the *zamindar's* rent on lands which pay no revenue to the State.—(Board's Miscellaneous Proceedings of 24th September 1824, no. 123.)

NOTE 22.—A reference was made to the Board by a Commissioner as to whether in a district, where both the *Amlī* and *Fasli* years are used, it is legal to advertize *patni taluks* for sale on the 1st of *Aswin* and *Cheyṭ*, instead of on the 1st of *Bysakh* and *Kartik* in those *parganas* where the *Fasli* era is current. The Board, after enquiring what months were mentioned in the *patni* engagements of the district and what the practice has been as to time of sale since the passing of the Regulation, ruled that, reading the preamble in connection with clause 2 of this section as it

was clearly the intent of the law that sales of *patni taluks* should be held at the beginning and middle of the year, so in a district where the Fasli year prevails the selling at the beginning and middle of the *Fasli* year is within the meaning of the law.—(Board's Miscellaneous Proceedings of 29th July 1840, no. 46.)

NOTE 23.—A *patni taluk* was attached under Act IV of 1840 and was managed by the Collector. The rents were collected but not paid to the *zamindar*. At the half-yearly sales the *zamindar* applied for the sale of the *patni taluk*, and it was accordingly sold, though the Collector had in his hands at the time of sale an amount sufficient to reduce the *zamindar's* claims to less than a quarter. The Commissioner enquired of the Board whether he could interfere in the matter of the sale as it was in contravention of clause 3 of this section. On the case being referred to Government, it agreed with the Board that the interference of the Commissioner in this case was barred by law.—(Board's Miscellaneous Proceedings of 9th February 1847, no. 83.)

NOTE 24.—*Zamindars* in applying for sales of *patni* tenures for arrears of rent were required to present a petition to the Civil Court of the district and a similar one to the Collector; but on the passing of Regulation VII of 1832, no petition was made in several cases to the Civil Court, and the *Sadr* Court ruled in 1849, that both petitions were still necessary, notwithstanding the transfer of the duties immediately connected with the sales themselves, from the Judge to the Collector. To legalize past sales, Act XXXIII of 1850 was passed under which one petition only to the Collector is deemed sufficient.—(Board's Miscellaneous Proceedings of 16th August 1850, no. 47.)

NOTE 25.—The question whether fractional portions of *patni taluks* can be sold under the provisions of this Regulation was referred to the Legal Remembrancer, who held that a fractional portion could not be sold unless there was a distinct stipulation to that effect in the engagement interchanged at the creation of a *patni* tenure. Where, however, an estate is held in *patni* from more than one *zamindar* under different deeds, each deed may be held to have created a separate *patni* and may be sold without reference to the tenures of the other fractional portions of the parent estate.—(Board's Miscellaneous Proceedings of 29th April 1857, no. 62.)

NOTE 26.—A petition was presented to the Board against the orders of the Collector and the Commissioner ordering the registration of the name of certain persons as the proprietors of a *mahal*, and striking off the case instituted by the petitioners for realization of *patni* rent. The Board observed that the *patni* law was not relevant to the question of title between the two *zamindars* claiming the right to have the notices issued for the sale of the *patni* tenure and ruled that the Collector was not warranted or empowered by law to entertain and decide such questions on the day of sale, that he should have issued the notice on the petition of both the parties and if he could not decide the mutation case pending before him, previous to the date of sale, he should, if any objection had been offered by the *patnidar* to the demand of either claimant, have called for the *kabuliyats* and other proof, and by a summary enquiry have regulated the ulterior process of sale. If no objection had been made to the demand of either party and the arrears still remained due, the Collector should have proceeded to sell on the petition of the party registered in his office as the proprietor, leaving the question as to the right of sale, etc., to be contested and settled in the Civil Court.—(Board's Miscellaneous Proceedings of 19th February 1858, no. 13.)

NOTE 27.—Although section 16, Regulation VII of 1832, by which the power of holding *patni* sales was transferred from the Civil Court to the Collector, has been repealed by Act X of 1861, the power to order sales is still vested in the Revenue Officers under Act XXXIII of 1850, provided all the preliminaries under clause 2 of this section have been observed.—(Board's Miscellaneous Proceedings of 26th June 1863, no. 28.)

NOTE 28.—A person who had purchased a six-anna share of an estate, and let it out in *patni*, applied for the sale of the *patni* tenure for arrears of rent, in accordance with the stipulation in the *kabuliyats*. The Collector, after holding a summary enquiry, declined to sell on the ground that the petitioner was a sharer and, therefore, the tenure could not be sold unless the other proprietors in the share joined him. The Commissioner dismissed the appeal against the Collector's proceedings. The Board, on appeal, *held* that the orders passed by the local authorities were correct.—(Board's Miscellaneous Proceedings of 18th March 1876, no. 189.)

NOTE 29.—A, a *zamindar*, purchased by private sale a *pargana* of which some villages had already been let in *patni*

by the former proprietors and the other villages were in *khas* possession. He executed a deed by which he created in favour of *B*, a *patni taluk* of the villages in *khas* possession, and by the same instrument he gave *B* a *sarbarakari* lease of all the *patni mahals* previously created. The deed reserved certain rents and declared that the two interests thus created should be inseparable and that *B* should have no power to transfer the one without the other. But it was declared that the whole united interest was transferable, and that on any default being made by *B* in payment of the reserved rent *B*'s interest should be liable to sale under this Regulation. On *B*'s applying to bring the *patni* tenures to sale for arrears, the Collector held that *B* could not do so, as he was neither the authorized agent of *A* nor was he (*B*) the *zamindar*. The Board, on appeal, held that under this section no other person than the *zamindar*, as defined in this Regulation, can exercise the right of causing a *patni* tenure to be sold. In the proceedings the *zamindar* (subject to the ordinary rights and obligations of principal and agent) may be represented by an agent acting in his behalf, but by no one else. But as *B* did not profess to have been authorized to act as such agent on behalf of the *zamindar*, but claimed to be vested with the right of causing such tenures to be sold on his (*B*'s) own behalf, the *zamindar* having divested himself of his rights in that respect and transferred them to *B*, the appeal was rejected. It was observed that the right in question is inherent in the position of *zamindar* and cannot be exercised against the *patnidar* by any person other than the *zamindar*.—(Board's Miscellaneous Proceedings of 10th March 1882, no. 166, Collection 7, File 3124 of 1882.)

NOTE 30.—*A*, the *zamindar* applied for the sale of the *patni* created in favour of *B*, the appellant in the above case. The Collector refused his application. The appeal to the Commissioner was also rejected. On the case coming up to the Board, on appeal, they on the advice of the Legal Remembrancer held that the interest assigned to *B* by the lease is not a tenure within the meaning of clause 1 of this section and consequently the stipulation that it shall be liable to sale under this Regulation is of no effect. The words "tenure" and "taluk" are identical and mean lease of lands. When a *patni* already exists the *zamindar* cannot again give a lease of the lands.—(Board's Miscellaneous Proceedings of 2nd September 1882, no. 128, Collection 7, File 3124 of 1882.)

NOTE 31.—The Board have laid it down as an instruction to all Commissioners and Collectors that the practice which has hitherto generally prevailed of including interest and cesses (now local cess) in the petition filed under this section should be allowed to continue. The recovery of the demands under the Regulation must be held to be admissible by the Revenue Authorities, unless and until the Civil Court decides otherwise. This order was circulated with the Board's memo. no. 838½A., dated the 15th November 1901.—(Board's Sales Proceedings of 16th November 1901, no. 182, Collection 2, File 83 of 1901.)

NOTE 32.—The sticking up of certified copies instead of the original petition and notice is a material irregularity and vitiates the sale.—(I. L. R., Cal., XXXII, page 953.)

NOTE 33.—Where pending proceedings under Regulation VIII of 1819 to set aside the sale of a *patni taluk*, a second sale under the Regulation took place owing to default in payment of rent, *held* that if the first sale be set aside as invalid, the second sale cannot stand.—(I. L. R., Cal., XLVII, page 782.)

9. All sales of saleable tenures applied for under  
Sales how conducted. the rules of this Regulation shall  
be made in public *cutcherry*  
\* \* \*<sup>1</sup>; the land shall be sold to the highest bidder,  
and every one, not the actual defaulter, shall be free  
to bid, not excepting the person in satisfaction of  
whose demand the sale may be made, nor the under-  
tenants of the defaulter; fifteen *per cent* of the pur-  
chase-money shall be paid immediately the lot is  
knocked down, and the officer conducting the sale  
shall be competent to refuse to accept a bid, or to  
knock down a lot to any bidder, unless he has  
assurance to his satisfaction that the amount required  
to be deposited is in hand for the purpose, or will be  
produced within two hours.

If the fifteen *per cent* be not paid in cash, or in  
currency notes, within two hours of the sale, or an  
equivalent amount in Government securities be not  
lodged, the lot shall be resold on the same day, and,

<sup>1</sup>The words which were repealed by the Repealing Act, 1874 (16 of 1874), are omitted.



if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the *bazar* of the *sadr* station of the *zila*, after which the lot shall be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen *per cent* already made, \* \* \*<sup>(1)</sup> and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

NOTE 1.—The purchaser of a *patni taluk* sold for arrears of rent failed to make good the full amount for the purchase-money within the time prescribed by the law owing to his missing the train. The earnest money deposited by him was, therefore, forfeited to Government under this section. The Commissioner was of opinion that the forfeiture need not be ordered immediately on default made at noon on the eighth day, but that it should follow the resale of the estate on the ninth day. He, therefore, proposed to cancel the order of forfeiture passed by the Collector. The Board agreed with the view taken by the Commissioner, and approved of his proposal to cancel the order of forfeiture.—(Board's Miscellaneous Proceedings of 12th July 1894, no. 71, Collection 2, File 300 of 1894.)

NOTE 2.—The purchaser of a *patni taluk* sold for arrears of rent had deposited the earnest money, but did not make good the full amount of the purchase-money. The earnest money was thus forfeited to Government. The *patni taluk* was then notified for resale. On the date of resale the *zamindar's* mukhtear amicably accepted the arrear rent from the defaulting *patnidar* and the *patni* was not put up for

<sup>(1)</sup> The words which were repealed by the Forfeited Deposits Act, 1850 (25 of 1850), are omitted.

As to the application of forfeited deposits, see section 2 of that Act, printed on p. 311 of the B. & O. Code, Vol. I, 1932.

sale. After a lapse of nearly two years the auction purchaser applied for the refund of the earnest money. The Commissioner informed the Collector that the auction purchaser's prayer should be rejected on the ground (1) that he had made no attempt to pay in the purchase-money on the day of the order of resale, and (2) that he had failed to take any steps to have the order of forfeiture set aside for a period of nearly two years. The Board, on appeal, *held* that the forfeiture is incurred when the default is made, that the *zamindar* has no longer a right to come to any agreement with the purchaser or the debtor such as could do away with the forfeiture. The law lays down that the defaulting purchaser *shall* forfeit the advances and shall further be answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one. The latter of these liabilities is thus described as prospective; if there be no deficiency there will be no additional liability; if there be a deficiency, the defaulting purchaser will be answerable for it. It is plain that the liabilities rest on him as soon as he has defaulted. The appeal was accordingly dismissed.—(Board's Miscellaneous Proceedings of 18th January 1896, no. 280, Collection 2, File 300 of 1894.)

NOTE 3.—Not merely recorded shareholders, but all actual defaulters (such as joint *patnidars*) are prohibited from being purchasers of *patni*.—(W. R., Vol. V, page 106.)

NOTE 4.—The purchaser of a tenure at a sale for arrears of rent was held to be liable for rent from the date on which the sale was confirmed, for until confirmation he could not obtain the certificate of purchase.—(W. R., Vol. XXI, page 367.)

10. At the time of the sale the notice previously stuck up in the *cutcherry* shall be taken down, and the lots be called up successively in the order in which they may be found in that notice.

Forms to be observed on selling.

A person shall attend on the part of the *zamindar*, with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the

mufassal, nor shall any lot be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate *rubakari* to be held upon each lot sold.

If the sale be of the description provided for in the third clause of section 8 of this Regulation, the *kistbandi* of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained.

The *zamindar* shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.

NOTE 1.—A notice not containing any order as to the lots to be sold is not in proper form.—(I. L. R., Cal., XXXII, page 953.)

NOTE 2.—This section would seem to imply that the notice is to remain stuck up until it should be taken down at the time of the sale.

When the notice and the petition were stuck up every day at 10 A.M., and taken down at 5 P.M., and they were not stuck up at all on Sundays:—*Held* that the procedure was not justified by the Regulation.—(I. L. R., Cal., XXXII, page 953.)

11. *First*.—It is hereby declared that any *taluk* or saleable tenure that may be disposed of at public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have

Tenure to be sold free of incumbrance by act of defaulter.

accrued upon it by act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said *taluk* may have been held.

No transfer by sale, gift or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the *zamindar* to hold the tenure of his creation answerable, in the state in which he created it, for the rent, which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such *zamindar*.

*Second.*—In like manner, on sale of a *taluk* for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred, the possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the *raiyats*; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

*Third.*—Provided, nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a *taluk* or other saleable tenure intermediate between the *zamindar* and actual cultivators to eject a *khudkast raiyat* or resident and hereditary cultivator, nor to cancel *bona fide* engagements made with such tenants by the late incumbent or his representative, except it be

No under-lease to stand after sale.

Exception in favour of *bona fide* engagements with *raiyats*.

proved in a regular suit, to be brought by such purchaser for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.

NOTE 1.—On the sale of a *taluk* under the provisions of this Regulation all subordinate tenures, such as *ousut taluks howalahs*, *nimhowalahs*, did not necessarily lapse : it depended very much upon the terms of the *patta* or grant under which the original *taluk* was created.—(W. R., Vol. IX, page 200.)

NOTE 2.—A sale under this Regulation did not *ipso facto* annul all tenures created by the defaulting *patnidar*, but the purchaser, if he thought proper, could avoid them.—(B. L. R. A. C.; Vol. III, page 431; W. R., Vol. XII, page 383.)

NOTE 3.—The grantor of a *patni* tenure who subsequently purchases the lands granted by him in *patni* at the sale of the *patni* tenures does not revert *ipso facto* to the possession he formerly held as proprietor and is not entitled to recover rents from the tenants at the rate he was receiving when he granted the *patni*, without reference to the rents realized by the *patni* holder in the interim.—(B. L. R., Vol. XIII, page 198; W. R., Vol. XXI, page 326.)

NOTE 4.—A purchaser of a *patni taluk* at a sale held under Regulation VIII of 1819 is not entitled to hold the property free from a customary right or a right recognized by usage which has grown up during the subsistence of the *patni* and under which occupancy *raiya*t are entitled to appropriate and convert to their own use such trees as they have the right to cut down, inasmuch as he is not entitled to cancel a *bona fide* engagement made by the defaulting proprietor with the resident and hereditary cultivators.—(I. L. R., Vol. XXXVII, page 322.)

12. The rules of the preceding section, being declaratory of the principle to be observed on all occasions wherein saleable tenures are made responsible for the *zamindar's* reserved rent, will equally apply to the case of *taluks*, heretofore sold, as to those that may be sold henceforward, if the sale shall have been fair, and the process observed in conducting it shall have been that recognized and in use in the district at the time of selling.

Above rule to take effect retrospectively.

Nothing, however, herein contained shall operate  
Proviso. to the prejudice of any agree-  
 ment, express or implied, now  
 subsisting between the purchaser of a *taluk* and the  
 lessees of his predecessor.

Neither shall the rule for the fall of under-tenures  
 be considered to apply to any private transfer by a  
*talukdar* of his own interest, nor to a public sale in  
 execution of a decree, nor to the case of a relinquish-  
 ment by the *talukdar* in favour of the *zamindar*, nor  
 to any act originating with the former holder, other  
 than default as aforesaid : all such  
But not to apply to private transfers. operations involve only a transfer  
 of the tenure in the state in which  
 it may be held at the time, and the new incumbent  
 succeeds to no more than the reserved rights of the  
 former tenant, such as they may be, and is of course  
 subject to any restriction put upon the tenure by his  
 act.

13. *First.*—With reference to the injury that  
 may be brought upon the holder  
Reason for allowing under-tenants means of staying sale. of a *taluk* of the second degree by  
 the operation of the preceding  
 rules, in case the proprietor of  
 the superior tenure purposely withholds the rent due  
 from himself to the *zamindar* after having realized his  
 own dues from the inferior tenantry, it is deemed  
 necessary to allow such *talukdars* the means of saving  
 their tenures from the ruin that must attend such a  
 sale; and the following rules have accordingly been  
 enacted for this purpose.

*Second.*—Whenever the tenure of a *talukdar* of  
How under-tenants may stay sale. the first degree may be advertised  
 for sale in the manner required  
 by the second and third clauses of  
 section 8 of this Regulation, for arrears of rent due  
 to the *zamindar*, the *talukdars* of the second degree,  
 or any number of them, shall be entitled to stay the  
 final sale by paying into court the amount of balance

Rules 4 and  
 5, section  
 VIII.

that may be declared due by the person attending on the part of the *zamindar* on the day appointed for sale; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and, should the amount lodged be sufficient, the sale shall not proceed, but, after making good to the *zamindar* the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.

*Third.*—If the amount so lodged shall be rent due by the inferior *talukdar* to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.

Procedure in case of amount lodged being rent due from under-tenant;

*Fourth.*—If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, and in case of amount lodged being advanced from private funds.

so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the *taluk* so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in

order to recover the amount so advanced from any profits belonging thereto.

If the defaulter shall desire to recover his tenure from the hands of the person or persons who, by making the advance, may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve *per cent per annum* up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realized from the usufruct of the tenure.

NOTE 1.—On a reference from a Commissioner as to whether in the case of a *patni taluk* put up to sale which is held in equal shares conjointly or separately, by *dar-patnidars*, one of whom is willing to pay up the balance due by the *patnidars*, and the other not, the former by depositing the whole arrear demanded by the *zamindar* can obtain a mortgage on his coparcener's share under clause 4 of this section, the Board replied that the question being of a judicial nature can only be decided by the Civil Court.—(Board's Miscellaneous Proceedings of 27th August 1833, no. 33.)

NOTE 2.—A *patni taluk* under the Burdwan Raj was advertised for sale for arrears of rent by order of a Collector who was in temporary charge of the Burdwan Raj estates under section 38, Act IX (B.C.) of 1879. The *dar-patnidars* deposited the amount due in order to save the *taluk* from sale, and the Collector ordered that they should be put in possession under clause 4 of this section. An appeal was preferred to the Commissioner against the sale by the *patnidars*, who contended that under section 78 of Act VII (B.C.) of 1876, they were not bound to pay the *patni* rent to the Collector inasmuch as his name was not registered as proprietor or manager, and that consequently he could not sell the *patni* for default. The *dar-patnidars* had, therefore, no valid reason for depositing the arrear, and had no right to be put in possession on account of their having deposited it. Their appeal was rejected as the Board agreed with the Commissioner. They observed that



section 78 of the Land Registration Act refers to property in respect of which the proprietor or manager is required by the Act to cause his name to be registered. The Act declares that application for registration must be made within 6 months from the date of the succession or the assumption of charge as manager, and it is clear that the provisions of section 78 were not meant to apply to any person, till that person had failed to comply with the provisions of section 42. In this case, the *patni taluk* was not a property in respect of which the Collector was required by the Act to cause his name to be registered, because he had not been in charge of it for six months.—(Board's Miscellaneous Proceedings of 22nd August 1885, no. 200, Collection 7, File 290 of 1885.)

NOTE 3.—A tender to stay a sale under this Regulation must be of the whole of the *zamindar's* demand and without any condition as to its being kept in deposit by the Collector.—(W. R., Vol. XVII, page 122.)

14. *First*.—Should the balance claimed by a *zamindar* on account of the rent of any under-tenure remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve, in the manner provided for in sections 9 and 10 of this Regulation; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged.

Sale not to be stayed unless the arrear claimed be lodged.

Rules 4 and 6, section VIII.

It shall, however, be competent to any party desirous of contesting the right of the *zamindar* to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the *zamindar* for the reversal of the same, and, upon establishing a sufficient plea, to obtain a decree with full costs and damages.

The purchaser shall be made a party in such suits, and, upon decree passing for reversal of the sale, the court shall be careful to indemnify him against all loss, at the charge of the *zamindar* or person at whose suit the sale may have been made.

*Second.*—In cases also in which a *talukdar* may contest the *zamindar's* demand of any arrear, as specified in the notice advertised, such *talukdar* shall be competent to apply for a summary investigation at any time within the period of notice; the *zamindar* shall then be called upon to furnish his *kabuliyat* and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale.

Such award, if so made, will of course regulate the ulterior process; but, if the case be still pending, the lot shall be called up in its turn, notwithstanding the suit; and, if the *zamindar* or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash, or in Government securities, or in currency notes, by the *talukdar* contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy but by a regular action for damages and for a reversal of the sale.

NOTE 1.—It has been ruled by Government that a Collector cannot review his judgment in a summary suit, nor can the Commissioner or the Board authorize him to re-investigate a summary case, when once decided.—(Board's Circular order no. 4 of March 1849.)

NOTE 2.—A question was raised as to whether a Collector is competent to postpone the sale of a *patni taluk*, for any period with the consent of the *zamindar*. The Board ruled that the sales of *patni* tenures cannot be postponed as the law is imperative on this point.—(Board's Miscellaneous Proceedings of 1st October 1852, no. 20.)

NOTE 3.—A Commissioner of a division enquired whether upon proof of a *taluk* not being saleable under this Regulation, the Collector can stay the sale, or entertain any objection based upon the nature of the *taluk* and urged before the sale actually takes place. The Board held, that under this section, the

Collector may take up points connected not only with the amount of the claim but with the saleable character or otherwise of the tenure and that he was warranted in cases of doubt to call on the *zamindar* to show that he is only entitled to make the application provided for in section 8, and to produce the engagement in which the right of sale is reserved.—(Board's Miscellaneous Proceedings of 3rd June 1853, no. 92.)

NOTE 4.—A *patnidar* who contests the arrear under clause 2 of this section, may lodge the amount claimed after the lot has been called up for sale, but an under-tenant, who under the preceding section desires to pay the amount said to be due on the day of sale must do so as soon as the amount is declared, and before the lot has been called up, or he may lodge a sum any day before the day of sale.—(Board's Miscellaneous Proceedings of 12th September 1856, no. 30.)

NOTE 5.—A Collector refused to stay the sale of a *patni taluk*, on the ground that the agent of the *zamindar* (who had previously insisted upon the sale proceeding) asserted that he had received the balance, although he had not quitted the Court or communicated with any one during the interval. The Commissioner justified the Collector's action by quoting clause 2 of this section. The Board *held* that the Collector had acted illegally and that when the agent declared that he had received the balance it was not for the Collector to decide upon the truth or falsity of the statement. It was sufficient that it had been made and on the strength of it, the sale should have been stayed. They also pointed out that the clause referred to by the Commissioner had no bearing, as in this case the arrear had not been contested in a summary suit.—(Board's Miscellaneous Proceedings of 17th April 1857, no. 11.)

NOTE 6.—A Collector postponed the sale of a *patni* tenure, pending the decision of a summary suit, brought by the *patnidar*, contesting the *zamindar's* claims. The Board ruled that the Collector was not competent to postpone the sale and to decide the summary suit after date fixed for sale. As no award had been given on the day of sale and the case was still pending, the Collector had no option but to proceed with the sale on the *zamindar* insisting on the demand and on his (the *zamindar's*) responsibility, as the amount claimed had not been lodged by the *patnidar* as required by clause 2

of this section. If the Collector was of opinion that the sale could not proceed because the *zamindar* did not file the *patnidar's* *kabuliyat*, the case ought to have been struck off on the day of sale.—(Board's Miscellaneous Proceedings of 10th March 1860, no. 15.)

NOTE 7.—A petition was presented to the Board against the order of a Commissioner, confirming that of a Collector, by which the latter officer set aside of his own authority, a former award of his passed in a suit for the recovery of arrears of rent under this Regulation. The Board *held* that a Collector is not authorized to review a summary award which he has made under this section. Because there is no appeal against such an award, it did not follow that the Collector can alter an award once made. If injustice was done by the first award the constitutional and proper remedy to the injured party is a suit in the Civil Court. In the present case the Board rejected the appeal as no action on their part would revive the relations of the two parties as they were on the day of the Collector's award.—(Board's Miscellaneous Proceedings of 18th July 1865, no. 20.)

NOTE 8.—The Board declined to interfere in an appeal against the order of a Commissioner, upholding that of a Deputy Commissioner who decided to put a *patni taluk* to sale if the arrears claimed by the *zamindar* were not paid down, notwithstanding the pendency of a suit in the Civil Court for abatement of the rents claimed. But they observed that the Deputy Commissioner should have made an award. The order, that the sale could only be stayed if the arrear demanded was lodged, could not be called an award. Further it was brought to notice that the amount of arrear had been lodged. Lodging the arrear demanded is the condition imposed on all objections to proceedings of the *zamindar*, but when the objector is the defaulter, the question as to sale or no sale has to be decided in a summary investigation, by the officer presiding and his award is final.—(Board's Miscellaneous Proceedings of 1st August 1865, no. 22.)

NOTE 9.—It was held by a Commissioner that a *zamindar's* agent is not entitled to charge a *patnidar* fees for filing a petition against him, when a *patnidar* pays in full the amount due by him before the sale day appointed under this Regulation, and when there is no dispute as to the amount due by the *patnidar*. The Board concurred in the view that no expenses could be recovered, but held that this section

allows by implication the payment of arrears of rent to be made on the day fixed for the sale.—(Board's Miscellaneous Proceedings of 28th December 1872, no. 146.)

NOTE 10.—The Collector cannot refuse to abstain from sale on the ground of non-payment of expenses.—(Board's Miscellaneous Proceedings of 19th April 1873, no. 73.)

NOTE 11.—If a *zamindar* refuses to accept payment of the arrear on the ground that the amount tendered does not cover his costs, and insists upon the sale of the *patni* tenure, the Collector must sell on the *zamindar's* responsibility, but there can be no doubt that the Civil Court would set such a sale aside. If, however, the *zamindar* accepts the tenders of the arrear, but calls upon the Collector to proceed with the sale on the ground that the costs have not been paid, the Collector should refuse to sell.—(Board's Miscellaneous Proceedings of 11th September 1880, no. 146, Collection 7, File 2332 of 1880.)

NOTE 12.—On an enquiry from a Commissioner as to whether, if on the day of sale, a *patnidar* contests the *zamindar's* demand and there is no time for a summary enquiry and the *zamindar* insists on his demand, while the *patnidar* is ready to deposit the amount claimed, the sale should proceed or not, the Board held that the money lodged under this section is to be held in deposit until the enquiry made by the Collector is decided and not until the decision of the Civil Court (if a suit is instituted) is obtained, and that if the amount of demand is lodged or deposited by the *patnidar* the sale should be stayed. The intention of the law is that if the Collector finds on summary enquiry that the *patnidar's* objection is invalid, he should at once pay the *zamindar* the amount lodged, and the *zaminular* then takes it subject to the liability to a civil suit. If the Collector decides in favour of the *patnidar*, he will return the deposit, or such portion of it as he may determine, to the *patnidar*.—(Board's Miscellaneous Proceedings of 23rd July 1881, no. 162, Collection 7, File 2796 of 1881.)

NOTE 13.—The mortgagee of a *patni taluk* paid certain moneys to prevent the sale of such *taluk* for arrears of *zamindari* rent—held that this was not a voluntary payment and could not be so considered even in the case where the mortgagee, by a covenant in his mortgage deed, had insured himself against loss by such sale.—(I. L. R., Cal., Vol. IV, page 539.)

NOTE 14.—Clause 1 of this section does not contemplate that any party may, by depositing the amount due, stay a sale of a *patni*, but only a party having a recognized interest in such *patni*. According to section 6 even application for registration is not sufficient; that section provides what can legally be done if registration is refused. (W. R., 1864, page 53.)

15. *First*.—So soon as the entire amount of the purchase-money shall have been paid in by the purchaser at any sale made under this Regulation, such purchaser shall receive from the officers conducting the sale a certificate of such payment.

The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the *cutcherry* of the *zamindar*, and upon furnishing security, if required, to the extent of half the *jama* or annual rent, he shall receive the usual *amuldustuk*, or order for possession, together with the notice to the *raiyats* and others to attend and pay their rents henceforward to him.

The *zamindar* shall also be bound to furnish access to any papers connected with the tenure purchased that may be forthcoming in his *cutcherry*; and should he in any manner delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the Court, and he shall receive the orders for possession, and shall be put in possession, of the lands by means of the *nazir*, in the same manner as possession is obtained under a decree of Court:

Provided, however, that, if the delay be on account of the *zamindar's* contesting the sufficiency of the security tendered, the rule contained in section 6 of this Regulation shall be observed.

*Second.*—When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Civil Court for the aid of the public officers in obtaining possession of his just rights.

A proclamation shall then issue under the seal of the Court and signature of the Judge declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the *zamindar*, acquired the entire rights and privileges attaching to the tenure of the late *talukdar*, in the state in which it was originally derived by him from the *zamindar*, he alone will be recognized as entitled to make the *zamindari* collections in the *mufassal*, and no payments made to any other individual will on any account be credited to the *rai-yats* or others in any <sup>\*\*1</sup> suit for rent <sup>\*\*1</sup> or on any other occasion whatever when the same may be pleaded.

*Third.*—Should the late incumbent or his late under-tenants continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police officers and of all other public officers who may be at hand and capable of affording assistance shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

<sup>1</sup> The words which were repealed by the Repealing Act, 1874 (16 of 1874), are omitted.

NOTE 1.—The purchaser of a *patni taluk* sold for arrears of rent, was refused registration as he had not tendered the full amount of security required by the *zamindar*. The Collector, therefore, withdrew his previous orders for delivery of possession, until sufficient security was given. His appeal to the Commissioner was rejected as the Commissioner had no jurisdiction in the matter. The Board held that section 11 of Act VIII (B. C.) of 1865, refers to sales of under-tenures held in satisfaction of decrees for arrears of rent, but when a *patni* tenure has been summarily sold under Regulation VIII of 1819, and the security tendered by the purchaser is rejected by the *zamindar*, the purchaser's remedy is by application to the Civil Court under section 6 of this Regulation and, that the delivery of possession is regulated by the first clause of this section.—(Board's Miscellaneous Proceedings of 12th January 1889, no. 15, Collection 8, File 428 of 1888.)

NOTE 2.—It has been held that section 15, second clause, is not affected by section 3 of Act VIII (B.C.) of 1865, and that the functions vested in the Judge by that clause must be discharged by him and not by the Collector (I. L. R., Cal., Vol. XLIV, pages 715—719.)

16. [*Repealed by section 2 of the Bengal Rent Recovery (Under-Tenures) Act, VIII (B. C.) of 1865.*]

17. *First.*—The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation.

Disposal of proceeds of sale.

*Second.*—One *per cent* shall first be deducted from the net proceeds realized, and shall be carried to the account of Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this Regulation.

One per cent to be carried to the account of Government.

*Third.*—The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the *taluk* to sale) to the *zamindar* or other person to whom the same may be due:

*Zamindar's* balance and expenses to be next made good.



Provided, however, that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied. Such antecedent balances, if the *zamindar* shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become in fact mere personal debts of the individual *talukdar*, and must be recovered in the same way as other debts by a regular suit in the Court.

*Fourth.*—Any excess that may remain after satisfying the demand of the *zamindar*, in the manner above described, shall be forthwith sent by the officer conducting the sale to the treasury of the Collector or Assistant Collector of the district, to be there held in deposit to answer the claims of the *talukdars* of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing the *taluk* sold, or on any part of it.

*Fifth.*—It shall be competent to any one conceiving himself to possess such an interest to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale.

If the Court shall, on investigation, consider the plaintiff's claim to be an equitable one, the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances.

If there be more claimants than one, payment shall not be made from the deposit until the whole of the claims be settled; and, in case the value assessed

upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.

*Sixth.*—Provided, however, that no *talukdar* of the second degree or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior *taluk*, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

*Seventh.*—Should no claims upon the purchase-money of a *taluk* sold as above be brought forward by any under-tenants or assignees within the period of two months from the date of sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit, or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the Court, of there being no claims to afford ground of detention for the whole or any part of the deposit; and, upon exhibiting such certificate to Collector the amount set free thereby shall be paid to his receipt.

In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector.

*Eighth.*—It shall be competent to any party interested in a deposit to withdraw the whole or any part thereof on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day\*\*\*1.

NOTE 1.—Under clause 3 of this section, a *zamindar* can demand all reasonable charges in bringing the *patni* to sale, and if the Collector considers the employment of a pleader reasonable, the charge would be legitimate. The Collector would have to decide whether the engagement of a pleader, instead of a mukhtear or Revenue Agent, was necessary or reasonable. Such charges should only be allowed, *if they are actually incurred*. (Board's Sales Proceedings of 2nd August 1902, no. 2, Collection 1, File 41 of 1902.)

NOTE 2.—A reference was made by a Collector as to the disposal of surplus sale-proceeds of a *patni* as he had received precepts to attach various amounts out of such proceeds deposited in the Treasury. The Board agreed with the Commissioner that the deposit should be retained for two months to allow claims to it to be substantiated under clause 4 of this section. At the end of that period any balances left should be applied in satisfaction of decrees in full, in the order in which the Collector received the instructions of the various courts.—(Board's Miscellaneous Proceedings of July 1867, no. 605.)

NOTE 3.—Mukhtears' and Revenue Agents' fees may be treated as charges incurred in bringing the *taluk* to sale.—(Board's Miscellaneous Proceedings of 12th September 1874, no. 283.)

NOTE 4.—A purchaser of a *patni* tenure sold for arrears paid the earnest-money but failed to make good the balance of the purchase-money (Rs. 905) within the time prescribed by the law. The *patni* was, therefore, resold for Rs. 225, and the purchaser at the second sale likewise failed to deposit the balance within time. The *patni* was, therefore, sold for the third time for Rs. 560, and at this sale, though the purchaser

\*\*\*The words which were repealed by the Repealing and Amending Act, 1903 (1 of 1903), are omitted.

deposited the balance, his deposit was made out of time. A question was raised whether the purchaser at the first sale was liable to pay the difference between the bids of the first and the second sale, or the difference between the bids of the first and the third sale. The Commissioner with the approval of the Board issued the following instructions to the Collector in dealing with the case :—

“ The earnest-money deposited by the first and the second purchasers should be forfeited to Government under section 9 ; and as the bid by the third purchaser exceeded the bid by the second, the second purchaser should be refunded the amount of his bid, less the deposit. The first purchaser should be held liable for the difference between the first and the third bids. The amount of the third purchaser's bid and so much as may be recovered from the first purchaser is to be dealt with as the purchase-money under this section.”—(Board's Miscellaneous Proceedings of 22nd August 1885, no. 45, Collection 7, File 286 of 1885.)

NOTE 5.—A *patni taluk* was sold for arrears of rent. After the full amount of the purchase-money had been deposited by the auction-purchaser and the sale confirmed by the Collector, the *zamindar* presented a petition asking that the one *per cent.* which the Government was entitled to have under this section might be taken and the residue of the money applied to the satisfaction of the revenue demand payable for an estate owned by him. The Commissioner, who was in favour of granting the *zamindar's* application, referred the matter to the Board who, on the advice of the Legal Remembrancer, held that the provisions of this section should be strictly followed, and after the one *per cent.* has been carried under clause 1 to the account of Government the *zamindar's* balance should be made over to him. The *zamindar* could easily draw out the balance due to him and make his own adjustment of the revenue demand. The two transactions, viz., (1) the payment to the *zamindar* of the balance of the sale-proceeds of the *patni tenure*, and (2) the payment by the *zamindar* of the Government revenue demand, should be kept entirely distinct, so that in the event of the *patni* sale being set aside, the auction-purchaser's remedy would be against the *zamindar* and not against Government.—(Board's Miscellaneous Proceedings of 8th January 1889, no. 181, Collection 7, File 184 of 1889.)

NOTE 6.—The surplus proceeds of a sale made for default of payment of *patni* rent though under attachment by a Civil

Court in the hands of the Collector, continues to be the property of the *patnidar* until ordered to be paid away by an order from such Court.—(W. R., Vol. XIII, page 58.)

NOTE 7.—Under the *Patni* Regulation VIII of 1819, section 17, clause (c), where the arrears of rent claimed are for balances due for periods prior to the current year when the sale is held in the middle of the year, or prior to the year preceding if the sale be held at the commencement of the following year, these balances must be treated as personal debts recoverable under the ordinary procedure for recovery of debts, and not as rents recoverable under the provisions of the Tenancy Law, and in such a case the provisions of section 65 of the Bengal Tenancy Act would not have any application.—(Indian Law Reports, Volume XXXVII, page 747.)

18-19.—[*Rules regarding attachment of land of defaulter; summary process against person of defaulter.*] Repealed by the Bengal Rent Act (X of 1859), section 1.

## REGULATION I OF 1820.

### (The Bengal Patni Taluks Regulation, 1820.)

*A Regulation for providing that all sales of certain taluks made answerable by sale for arrears of the zamindar's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.*

1. WHEREAS it has been omitted to provide in the rules of Regulation VIII, 1819, whether, in case the proprietor of an estate paying revenue to Government should desire to bring to sale a saleable tenure of the nature defined in clause *first*, section 8, of that Regulation, for the realization of arrears of rent due thereupon, by any legal process other than that prescribed by the second and third clauses of the said section, such sale should be made in the public manner provided for the periodical sales therein described :

And whereas it is consonant with justice, and was intended by the said Regulation, that, in every case of the sale of such tenure for arrears of the *zamindar's* rent, the sale should be public, for the security of the interests of the owner of the tenure sold; which object can in no manner be duly secured except the sales to be so made be conducted by an officer of Government in the same manner as the periodical sales provided for by section 8 of the said Regulation;

The following additional rule has accordingly been passed by the Governor-General in Council, to take effect from the date of its promulgation, within the several districts of Bengal, including Midnapore.

2. *First*.—Whenever the proprietor of an estate paying revenue to Government shall desire to cause any tenure of the nature of those described in clause *first*, section 8, Regulation VIII, 1819, to be sold for arrears of rent due to him on account thereof, and

Rules of Regulation VIII, 1819, for periodical sales for *zamindar's* arrears of rent, extended to other sales for rent.

shall, under any summary process authorized by law, have acquired the right of causing such sale to be made, the same shall be conducted, after application from the *zamindar*, by the Registrar or Acting Registrar of the *zila* court, or, in his absence, by the person in charge of the office of Judge of the district, in the mode prescribed by Regulation VIII above quoted, for periodical sales.

*Second.*—Ten days' notice shall be given before proceeding to sale, by proclamation to be stuck up at the *cutcherry* of the court and at that of the Collector of the district.

Notice by proclamation.

*Third.*—The rules of sections 9, 11, 13, 15 and 17, Regulation VIII, 1819, are extended to all sales made after the manner therein provided.

Rules extended to sales hereunder.

**ACT VIII (B.C.) OF 1865.**  
**[The Bengal Rent Recovery (Under-Tenures) Act,**  
**1865.]**

PASSED BY THE LIEUTENANT-GOVERNOR OF  
BENGAL IN COUNCIL.

(Received the assent of the Lieutenant-Governor on the 10th  
May 1865, and of the Governor-General on the 27th idem.)

*An Act to amend the law for the sale of such under-tenures as by the title deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.*

WHEREAS doubts have arisen, in consequence of  
Preamble. the repeal of section 16 of Regulation VII of 1832, as to the authority by whom *patni taluks* and other saleable under-tenures of the nature defined in clause 1 of section 8 of Regulation VIII of 1819 are to be sold for arrears of rent due to the proprietor on account thereof;

And whereas it is expedient to amend the law for the sale of under-tenures in satisfaction of decrees for the recovery of such arrears;

It is enacted as follows :—

1. The word "Collector" as used in this Act includes all officers exercising the full powers of a Collector of a district.  
Meaning of the word "Collector".
2. [Laws repealed.] Repealed by Act XII of 1873.
3. The sale for the recovery of arrears of rent of *patni taluks* and other saleable under-tenures of the nature defined in clause 1 of section 8 of Regulation VIII of 1819 shall be conducted by the  
Sale by whom to be conducted.



Collector of Land Revenue in whose jurisdiction, as defined by Act VI of 1853,\* the lands lie, and all acts preparatory to, or connected with, the sale of such under-tenures as aforesaid, which, by Regulations VIII of 1819 and I of 1820, the Judge is required to perform, shall be performed by the said Collector.

NOTE 1.—On an enquiry made by a Commissioner as to whether a Deputy Collector appointed under Regulation IX of 1833, can exercise all or any of the powers of a Collector, the Board ruled that as under this section, a Deputy Collector is not the "Collector of Land Revenue" he cannot hold *patni* sales. Deputy Collectors can, however, hold sales of under-tenures in execution of a decree under the provisions of the following section.—(Board's Miscellaneous Proceedings of April 1869, no. 125.)

NOTE 2.—It was ruled by the Board in the year 1867 that under section 3, Act VIII (B.C.) of 1865, a Collector could not delegate to any of his subordinates the duty of holding sale of *patni* tenures. This ruling, however, does not appear to have been circulated for general information, and instances have recently come before the Board where such sales have been irregularly conducted by Deputy Collectors. The attention of Collectors is therefore drawn to the necessity for a strict observance of the law in future.—(Bd's. Cir. order no. 3 of January 1874.)

4. Whenever a decree for an arrear of rent, due in respect of an under-tenure saleable under the provisions of section 105 of Act X of 1859, shall have been obtained, and an application for the sale of the said under-tenure under the same section shall have been made and allowed, the Collector, in whose court the decree is in course of execution, shall thereupon cause to be hung up in his own Court and in that of the Collector and the Judge of the district within which the land comprised in the under-tenure to be sold is situated, and to be affixed on some conspicuous place on the land and in the town or village in or nearest to which the said land is situated, a notice for the sale of the said under-tenure on some fixed date not less than twenty days from the hanging

Notice of sale—where  
to be hung up.

\* Printed in appendix B.

up of the said notice in the Court in which the decree is in course of execution.

5. The said notice shall specify, in the words used in the plaint in the suit in which the decree was made, the name of the village, estate, and *pargana* or other local division, in which the land comprised in the said under-tenure is situated, the yearly rent payable under the said under-tenure, and the gross amount recoverable under the said decree.

Notice of sale—what to contain.

6. If the sum due under the decree, together with interest to date of payment and all costs of process, be paid into Court at any time before the sale commences, whether by the defaulting holder of the under-tenure or any one on his behalf, or any one interested in the protection of the under-tenure, such sale shall not take place; and the provisions of section 13 of Regulation VIII of 1819, for the recovery of sums paid by other than the defaulting holder of the under-tenure, to stay the sale of the under-tenure, shall be applicable to all similar payments made under this section.

How the sale may be stopped.

7. The under-tenure shall be sold to the highest bidder in open Court.

Sale to be made to the highest bidder.

8. The party who shall be declared to be the purchaser shall be required to deposit immediately, in cash or Government currency notes, twenty-five per cent of the amount of his bid; and, in default of such deposit, the under-tenure shall be put up again and sold forthwith, or on the next ensuing office day.

Purchaser to deposit 25 per cent.

9. The full amount of the purchase-money shall be made good by the purchaser before sunset of the eighth day from that on which the sale of the under-tenure took place, reckoning that day as one of the eight; or, if the eighth day

Deposit to be forfeited if balance of purchase-money be not paid up in time.

be a Sunday or other close holiday, then on the first office day after the eighth day: and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to the Government, and the under-tenure shall be resold, and the defaulting purchaser shall forfeit all claims thereto or to any part of the sum for which the said under-tenure may be subsequently sold.

If the proceeds of the sale which may be eventually completed be less than the price bid by the defaulting purchaser, the difference shall be leviable from him under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.

10. The provisions of all the sections of this Act with regard to sales, shall also be applicable to all re-sales, under this Act, which may be rendered necessary by the default of any purchaser.

Provisions as to sales to apply to all re-sales.

11. When the purchase-money shall have been paid in full, the officer holding the sale shall give the purchaser a certificate in the form prescribed in the Schedule annexed to this Act; and shall further, on the purchaser making application and depositing the requisite costs, depute an officer or amin to put him in possession of the under-tenure in the customary manner, and to publish the fact of the purchase to the cultivators of the lands comprised therein.

Certificate and possession to be given to purchaser on payment by him in full.

12. From the proceeds of the sale of the under-tenure, the officer holding such sale shall repay to the judgment-creditor the necessary expenses incurred by him in procuring it; and after satisfying the decree in execution of which the sale was made shall hold the residue, if any, in deposit on account of the defaulting holder of the under-tenure.

Proceeds of sale how to be dealt with.

13. An appeal shall lie to the Collector from any proceedings of a Deputy or Assistant Collector, if made within fifteen days; and to the Commissioner from any original proceedings of a Collector, under this Act, if made within thirty days from the date of the sale: but no proceedings under this Act shall be reversed or modified in appeal except upon the ground of irrelevancy of the law, or of such an irregularity in procedure as, in the opinion of the appellate authority, has caused injury to the interest of one of the parties to the suit in which the decree was passed.

Rule 6, section VIII.

NOTE 1.—A *patni* tenure was sold in execution of a rent decree under the provisions of this Act. Against this sale an appeal was made to the Commissioner, who set it aside, on the ground that the sale was advertised to be held in one place but was actually held in another. On the case coming up to the Board, on appeal, they held that they had no jurisdiction to interfere with the Commissioner's order, but as the subject of Regulation VIII of 1819 is one which falls within the scope of their administration generally, they expressed their concurrence with the view taken by the Commissioner that the irregularity in the notice should have been sufficient to prevent the sale of the property under the *patni* procedure.—(Board's Miscellaneous Proceedings of 21st September 1895, no. 397, Collection 7, File 241 of 1895.)

NOTE 2.—A Commissioner of a division urged that it would be inconvenient and unjust were there no appeal to the Commissioner from any irregular or illegal act done professedly under Regulation VIII of 1819. He was of opinion that this section gave the Commissioner power to interfere on appeal made to him, on the ground of irrelevancy of the law, with any original proceedings of a Collector under the Act. The Board ruled that this section did not apply to appeals in *patni* sales. It did not appear to them that under this Act any such appeal could be heard on any ground whatever. They, however, held that it was the duty of the local Revenue authorities to notice every irregularity arising from want of jurisdiction in the proceedings of their subordinates. Such notice would in some cases obviate injury, while in others it would not, but in the latter class of cases it would indicate

to the injured parties the advisability of applying for redress to the Civil Court which alone can right them effectually so long as the law remains unaltered.—(Board's Miscellaneous Proceedings of May 1867, no. 333.)

14. No appeal as of right shall lie from any order passed in appeal under this Act; but a Commissioner, in any case in which an appeal has been heard by a Collector, and the Board of Revenue, in any case in which an appeal has been heard by the Commissioner, may call for the record at any time within three months from the date of the order passed in appeal, and pass thereon such orders as they may think proper.

Rule 6, section VIII. Power of revision.

NOTE 1.—A Commissioner set aside the sale of certain under-tenures in execution of a decree, on the ground that three of the five lots sold were not in arrears, though the *jama* of the five lots were the same as for which the sale took place. The law only allows lands in arrears to be sold. *Held* by the Board, on appeal, that the Commissioner had power to upset the sale, and the reason given by him was valid. They, however, under the following section, supplemented the Commissioner's order by directing that the purchaser should receive back his purchase-money with interest at the rate of 12 per cent payable by the respondent.—(Board's Miscellaneous Proceedings of 6th August 1892, Collection 7, File 303 of 1892.)

NOTE 2.—The sale of a tenure in execution of a decree under this Act was postponed by a Collector on the representation of one of the debtors that if he failed to pay up the arrears due within the time of postponement, the sale was to be held. But no fresh notice was published. The tenure was afterwards sold, as the arrears had not been paid up. The sale proceeding of the Collector was upheld by the Commissioner on appeal. Against this order of the Commissioner an appeal was preferred to the Board, who *held* that on the postponement it was incumbent on the Collector to issue a fresh notice, and the failure to do so vitiates the sale proceedings. They accordingly set the sale aside.—(Board's Miscellaneous Proceedings of 26th July 1890, no. 59, Collection 7, File 130 of 1890.)

15. If any sale of an under-tenure shall, under either of the two preceding sections, be set aside, the purchaser shall be entitled to receive back the purchase-money with or without interest, and in such manner as the appellate or revising authority may in each instance direct.

Purchaser to recover purchase-money in such manner as appellate or revising authority may direct, if sale be set aside.

either of the two preceding sections, be set aside, the purchaser shall be entitled to receive back the purchase-money with or without interest, and in such

Any order for the recovery of the purchase-money or interest, passed by such appellate or revising authority as aforesaid, may be enforced by the process in force under decrees for the recovery of arrears of rent.

16. The purchaser of an under-tenure sold under this Act shall acquire it free of all encumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such encumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, his representatives, or assignees :

Purchaser to acquire the under-tenure, with certain exceptions, free of encumbrances.

this Act shall acquire it free of all encumbrances which may have accrued thereon by any act of any holder of the said under-tenure,

his representatives or assignees, unless the right of making such encumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, his representatives, or assignees :

Provided that nothing herein contained shall be held to entitle the purchaser to eject *khudkhast* raiyats or resident and hereditary cultivators, nor to cancel *bona fide* engagements made with such class of raiyats or cultivators aforesaid by the late incumbent of the under-tenure or his representatives, except it be proved, in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor.

Nothing in this section shall be held to apply to the purchaser of a tenure by the previous holder thereof, through whose default the tenure was brought to sale.

## Part III.] RULES MADE BY THE BOARD. [Sec. I.

Areas.	Latest dates for payment.			
	Estates paying an annual revenue not exceeding Rs. 10.	Estates paying an annual revenue exceeding Rs. 10 but not exceeding Rs. 50.	Estates paying an annual revenue exceeding Rs. 50 but not exceeding Rs. 100.	Estates paying an annual revenue exceeding Rs. 100.
1	2	3	4	5
In districts where the Faali era prevails.	28th March	{ 12th January 28th March.	{ 7th June .. 12th January .. 28th March ..	{ 7th June. 28th September 12th January. 28th March.
In the districts of Hazaribagh (except Kharakdiha).	28th March	{ 28th January 28th March.	{ 28th October 28th January .. 28th March ..	{ 28th October. 28th January. 28th March.
Ranchi ..				
Singhbhum ..				
Palamau* ..				
Manbhum ..	28th March	{ 28th January 28th March ..	{ 28th May .. 28th January .. 28th March ..	{ 28th May. 28th January 28th March.
In Kharakdiha in Hazaribagh.				

\*Under notification no 12-35-5, dated the 11th June 1924, published in Part II, pages 950-951 of the *Bihar and Orissa Gazette*, dated the 9th July 1924, the dates mentioned in the table against Palamau have been declared as the dates on which the instalments or kists of revenue are due and the dates mentioned below as the latest dates of payment.

Area.	Estates paying annual revenue not exceeding Rs. 10.	Estates paying an annual revenue exceeding Rs. 10 but not exceeding Rs. 50.	Estates paying an annual revenue exceeding Rs. 50 but not exceeding Rs. 100.	Estates paying an annual revenue exceeding Rs. 100.
1	2	3	4	5
Palamau ..	28th April ..	28th February 28th April ..	28th November 28th February 28th April ..	28th November. 28th February. 28th April.

**Sec. I.] RULES MADE BY THE BOARD. [Part III.**

(ii) *In the Orissa Division (except the Sambalpur district) :—*

Estates.	Proportions of instalments of revenue.	Latest dates for payment.
1	2	3
	A. D.	
Temporarily-settled estates paying an annual revenue not exceeding Rs. 10.	16 0	8th November.
Temporarily-settled estates paying an annual revenue exceeding Rs. 10 but not exceeding Rs. 100.	10 8	28th April.
	5 4	8th November.
Temporarily-settled estates paying an annual revenue exceeding Rs. 100.	8 0	28th April.
	8 0	8th November.
Permanently-settled estates .. ..	9 0	28th April.
	7 0	8th November.

*Note.*—It should be clearly understood that these dates, though in popular parlance designated "kist" days, are not really so and that they are not the "kista" referred to in section 2 of Act XI of 1859 which are set out in the *doul* of the estate.

3. When the latest day for payment of arrears of Provision for close revenue falls on a Sunday or holiday, on which the Collector's office is authorized to be closed, the first open day after such Sunday or holiday is to be taken as the latest day.

NOTE.—When the latest day for payment of arrears of revenue falls on a local holiday, the tauzi and treasury departments of district offices must remain open. Where, however, the work of treasuries is carried on by a branch of the Imperial Bank of India, the accounts section of district offices may be closed on such local holidays at the discretion of the District Officers.

4. When new estates are formed under the Partition Act, the instalments of revenue and latest days for payment of arrears of revenue of new estates created under Partition Act. cannot be altered without the consent of the proprietors, but should be distributed proportionately between the parent and the new estates. The number



of latest days for the payment of arrears of revenue of each estate must, however, follow the table in rule 2; thus the new estates will have one, two, three or four latest days for the payment of arrears of revenue according as they pay revenue not exceeding Rs. 10, Rs. 50, or Rs. 100, or exceeding Rs. 100.

If in the case of any estate the number of latest days for the payment of arrears of revenue has been wrongly entered, necessary corrections should be made in accordance with the table in rule 2, care being taken that in making the adjustment the whole of the revenue is accounted for.

NOTE.—When effect is given to a partition subsequent to the first latest day for the payment of arrears of the original estate, it may happen that, under the operation of the above rule, a larger proportion of the demand may have been paid than would have been the case if effect had been given to the partition before that day. In such cases, the excess amount paid should be distributed proportionately to the revenue demand of the new estates and deducted from the amounts recoverable on the next subsequent latest days for the payment of arrears of the new estates.

5. In the case of temporarily-settled estates, it must be remembered that the latest days for payment of arrears of temporarily-settled estates must be remembered that the instalments fixed according to the provisions of rule 650 of the Settlement Manual, 1927, become arrears only on the first of the following month of the same era. The latest days for the payment of these arrears must be subsequent to the first of the following month, and their number must follow, not the number of instalments, but the instructions contained in the table in rule 2.

6. Special notices should always be served on proprietors when the latest days for the payment of arrears of revenue fixed under section 3 of Act XI of 1859 are changed.

Service of special notices, when latest days of payment are changed.

(C. O. no. 6 of August 1902.)

## SECTION II.—PROCEDURE ON LATEST DAY.

1. On the latest day of payment the Collector is to be present at the office in person until sunset, and he must regard this as a duty to which no other should be preferred. If his attendance in person be impossible, an Assistant or a Deputy Collector is to attend.

2. When payments made on the last day are so numerous that the whole cannot be received in the usual form. Lump payments. the money may be received in sealed bags, which bags are to be locked up under the joint key of the Collector and Treasurer. The parties are to be present at the opening of the bags, and must stand the consequence should the payment prove to be short.

3. Remittances of arrears of land revenue by money-orders on account of any instalment must be made so as to reach, not later than sunset on the latest day for payment of arrears of revenue, the Time within which revenue money-orders should reach the Treasury to which remitted. of arrears of revenue, the Treasury Department of the Collectorate of the district in the accounts of which the amount is to be credited. Revenue money-orders which reach the Treasury after the latest day for payment of arrears of revenue are not to be refused, but the amounts are not to be treated as payment barring a sale, unless the remitter applies in the ordinary way for exemption of his estate from sale and his application is acceded to. If they do not reach the Treasury on or before the latest day for payment of arrears of revenue, the estate is to be dealt with in the same manner as other estates which have defaulted, and the question, whether it should be exempted from sale, can only be considered by the Collector on the presentation of the usual stamped petition for exemption, or of an unstamped petition if the value of the stamp has been remitted by revenue or ordinary money-order.

**Part III.]**                      **RULES MADE BY THE BOARD.**                      **[Sec. III.**

4. It will be a question of fact in each case whether a payment by revenue money-order reached the Treasury before sunset on the latest day for payment of arrears of revenue. The date of receipt of the Treasury voucher according to rule 30 of the revised revenue money-order rules will be conclusive on this point. No representations from the payers that they remitted the revenue in time, and that delay occurred in the post office or Treasury, should receive attention.

**SECTION III.—PROCEDURE AFTER LATEST DAY AND BEFORE SALE.**

1. Arrear lists of land revenue are to be prepared after each latest day for payment of arrears of revenue in accordance with rule 2, section XIX, chapter II of the Tauzi Manual. The Deputy Collector in charge of the Tauzi Department is to examine the arrears for each class of estates as given in columns 7 and 11 of the lists with the figures given in columns 16 to 18 of the second goshwara prepared under rule 3(ii)(b), section XVII, chapter II of the Tauzi Manual, and to certify to the Collector that they agree. The object of the check is to see that all estates liable to sale are brought on the arrear list.

2. As soon as each tauzi muharrir's arrear list of land revenue (see rule 2, section XIX, chapter II, Tauzi Manual) is made over to the Deputy Collector in charge of the Arrear Collection Department, the latter will, *after causing columns 13, 14 and 15 to be filled up*, have it put up before the Collector for orders.

3. The Collector is then to enter the necessary orders in column 16 of the arrear lists. The order will be of this kind: "Not liable to sale, sections 5 and

**Sec. III.]                      RULES MADE BY THE BOARD.                      [Part III.**

17, Act XI of 1859," " Need not be advertised, arrear being petty," save where the reasons have been noted on a petition, and then it will be sufficient to enter the number and date of the case in column 16, and in column 17 the requisite date in those cases where the proprietors were allowed to pay up the arrears.

*Note.*—When defaults are numerous, the labour of writing out these orders in column 16 of the arrear lists of land revenue will be considerable. With a view to avoid this labour the Board prescribes the following abbreviations (lettered from " A " onwards, if abbreviations are used). But it is left to Collectors to use them or not as they find it convenient.

Nature of order.	Abbreviations to be used.
Advertise for sale ...	... A
Exempt under section 18, Act XI of 1859 ...	... B
As there is surplus in the general account exempt the share from sale ...	... C
Amount received by Remittance Transfer Receipt which shows the payment to have been made before the latest day of payment. Exempt under rule 9, page 164 of the Sale Law Manual, 1936 ...	... D
Exempt, arrears having been paid by co-sharers under section 14 of Act XI of 1859 ...	... E
Under Court of Wards Manage- ment. Not to be sold, <i>vide</i> section 17, Act XI of 1859. Ask Manager to report when he will pay up arrears. ...	... F

**Part III.]      RULES MADE BY THE BOARD.      [Sec. III.**

Nature of order.	Abbreviations to be used.
------------------	------------------------------

Arrears being petty, not to be sold on the next sale. Deal with the case under rule 5, page 163 of the Sale Law Manual, 1936      ...      ...	G
--	---

Estate under attachment or the case comes under one of the four descriptions mentioned in section 5 of Act XI of 1859. Issue notification under that section      ...      ...	H
--	---

Amount having been received by money order or post bill, after latest date of payment, take steps to sell unless formal application for exemption is made and granted      ...	I
--	---

Sold on the last sale date, sale not yet confirmed. Not to be sold next sale day      ...	J
---	---

Appeal pending against the last sale of estate or share. Not to be sold next sale day      ...	K
--	---

Settled under the Bengal Settled Estates Act, III of 1904. Put up separately for orders	L
---	---

4. After taking the orders of the Collector in column 16 of the arrear list, Abstract lists. the Arrear Collection Department is to prepare from them two abstract lists— (1) of estates in which the arrears are petty and not to be collected by sale, and (2) of estates which are to be advertised for sale.

NOTE.—Before passing orders on a petition under section 18 for the exemption from sale of an estate or share, the Collector should ordinarily call for information about the number of co-sharers, as this will roughly indicate the number of interests which would be affected by the sale. Moreover, when the sale list (*vide* rule 17) is prepared, the number of co-sharers should be entered in the remarks column. If this number is large, the Collector would exercise a sound discretion if he ascertained whether defaults have been numerous in the past. If they have been rare, it would be useful to scrutinise the returns of the service of the notices under section 7 to see whether there are any indications of collusion or fraud.

5. Collectors should not advertise estates for sale for trifling arrears unless they have reason to suppose the small balance is being deliberately withheld. In ordinary cases it will suffice to post up in the Collectorate a list, to be prepared in the vernacular by the Arrear Collection Department, of the arrears due in such estates, with a warning that unless the arrear is paid before, or at the next latest day of payment, the estate will be advertised.

Precaution against sale for petty arrears.

At the same time, if the Collector deems it necessary in order to correct laxity in payments, this rule should not be read so as to preclude Collectors from advertising whenever they think necessary.

If an estate is advertised for petty arrears, Collectors must always enquire carefully into the facts of the arrears, and satisfy themselves before passing the orders for sale that they are not the result of an error in account. See also Note 8 to section 18, Act XI of 1859.

6. A Collector is at liberty, under the provisions of section 6, Act XI of 1859, either to refuse or to accept tender of payment after the latest day, it being understood that the acceptance of the tender does not

Subsequent payments.

**Part III.]**                      **RULES MADE BY THE BOARD.**                      **[Sec. III.**

necessarily bar sale; but only the most exceptional circumstances would justify a Collector in selling an estate for arrears after payment of the arrears has been accepted. Whenever a Collector passes an order for the acceptance of any tender of arrears, he is at the same time to expressly record either that the property advertised will be exempted from sale, or that the tender is accepted at the wish of the party making it, and that the Collector will decide on a date to be fixed at the time of passing the order, whether the property will or will not be exempted from sale.

7. It might be convenient to a defaulter to pay Payments in part and in full. in the arrears in part; and in such case the Collector need not refuse the money, it being clearly explained to the party that the law may be allowed to take its course notwithstanding, and will in any case take its course if the balance is not paid up. If a Collector accepts tender in full of all arrears, and exempts the estate from sale, it is necessary to see that Government dues, such as local cess, etc., which the defaulter may owe, are cleared up before the indulgence of exemption is granted.

8. The rules regulating the remission of balances Remission of balances. are contained in rule 6, section XVIII, Chapter II of the Tauzi Manual.

9. The revenue of an estate may be paid by a Transfer receipts and revenue money-orders. transfer receipt or by revenue money-order. If the transfer receipt shows the payment, in exchange for which it was granted, to have been made before sunset of the latest day of payment, and if it reached the Collector of the district in which the estate is situate before the " schedule of estates in arrears " is made out, he must not advertise the estate for sale. If the receipt reach him after the publication of the

**Sec. III.]      RULES MADE BY THE BOARD.      [Part III.**

schedule, the estate must be exempted from sale under section 18, Act XI of 1859.

10. Every care should be taken to watch and record, as far as they can be ascertained, the true causes which lead to sales of estates for arrears of revenue, and with that view, at the time of sale, a note should be appended to the sale papers of each such estate, showing the probable cause of sale, whether such cause be diluvion, quarrels among sharers, or other circumstances. The Collector should analyse the note so recorded when noticing the subject of sales for arrears of revenue in his Annual Land Revenue Report.

11. When the Collector's orders in column 16 have been noted on the arrear lists, he should fix the sale date, being guided in doing so by the report of the Head Clerk of the Arrear Collection Department as to the time that will probably be required to prepare the sale notices.

12. On the Collector's noting what estates are to be advertised for sale, the record-keeper should be required to enter in column 5 of the arrear list against each estate, regarding which such order has been passed, the names and addresses of some of the proprietors, and the name of one of the mauzas belonging to the estate, and the name of the thana in which such mauza is situated.

13. As soon as the record-keeper makes the requisite entries in column 5 of each arrear list, the work of writing the necessary sale notifications and notices should at once be taken in hand.

14. The dates of issue or service of the sale notifications and notices need not be entered on the arrear list.



15. The returns of service of the notifications and notices of all kinds should be carefully filed in the Arrear Collection Department for each kist with the record of each arrear case, and are to be treated as B class papers.

Returns of service.

On the morning before, or of, the sale day the Head Clerk of the Arrear Collection Department will carefully examine the returns of service relating to every estate which is to be put up for sale, certify on the sale list that he has done so, and bring to the notice of the Collector any defect which would invalidate the sale if held.

16. Every payment made before sale day in the case of estates exempted by the Collector from sale on payment of all arrears should be promptly noted in columns 18 to 21 of the arrear list by the Arrear Collection Department.

Entry of satisfaction.

17. On the day before sale day, or in the early morning of sale day, the Head Clerk of the Arrear Collection Department will prepare from the arrear list for the Collector a list of estates remaining in arrear which have been duly advertised for sale under sections 6 and 7 of Act XI of 1859, and which will be sold unless the Collector exercises his exempting power under section 18 of the same Act.

The sale list.

This list is the sale list, and on it the Collector should record with his own hand—

- (i) the fact of the estates having come to auction;
- (ii) against each estate sold, to whom sold, and the price;
- (iii) regarding each estate exempted from sale, that it was exempted, and the reason.

18. The form of the sale list is given in Appendix  
Form of sale list. A. In it the estates are to be  
 entered in the numerical order  
 of their tauzi numbers, in accordance with section 21,  
 Act XI of 1859.

This sale list is not to be confused with the  
 Board's Sale Register 19.

19. The arrear list and sale list should ordinarily  
 be written in English unless  
Language in which list of arrears and sale list should be written. the muharrirs are incapable of  
 writing English, and in that  
 case English writing clerks should be substituted as  
 soon as possible (see rule 2, section 1, Chapter II,  
 Tauzi Manual). In any case the figures in the list  
 should be written in Arabic numerals.

20. Collectors are responsible that lists of estates  
 in arrear are promptly prepared  
Prompt action required. and disposed of.

Ordinarily the proceedings in connection with the  
 sale of estates for arrears of one  
Sale of estates for arrears of one instalment before next instalment. instalment should be concluded  
 before another latest day for pay-  
 ment of arrears of revenue has  
 come round. Every endeavour should be made to hold  
 sales on dates previous to the next latest day for pay-  
 ment of arrears of revenue of the district. When,  
 however, for any special reason,—*e.g.*, the necessity  
 of making special enquiries, or the short interval  
 between the latest days for payment of arrears of  
 revenue,—it is impossible to do so, a report should be  
 submitted to the Commissioner explaining the delay  
 and stating generally that all arrears of such estates  
 were cleared off before the next latest day for payment  
 of arrears of revenue. If the arrears of any estate  
 were not cleared off before the next latest day for pay-  
 ment of arrears of revenue of that estate, a special  
 explanation should be submitted for each such estate.

To their Annual Reports on Land Revenue, Collectors are required to attach statements showing the dates on which the sales for each *kist* were concluded.

Annual statements showing dates of sales.

21. The Collector should divide the defaulters into groups according to the geographical position of their estates so as to economise labour as much as possible by entrusting the services of processes relating to one neighbourhood to the same peon.

Service of processes.

SECTION IV.—SYSTEM TO BE FOLLOWED IN THE ARREAR COLLECTION DEPARTMENT AS REGARDS THE PAYING OF ARREARS.

1. The payer will come to the cutcherry and get two blank chalan forms, and write or have written, on one form (Schedule XIV, no. 1030-H, or, in the districts not included in Appendix A, Tauzi Manual, A. G. B. Form no. 162A.) the amount of the outstanding balance of land revenue or cess (and interest thereon) he intends to pay in, with the other necessary particulars against the various cross-heads; and on the other (A. G. B. and O. no. 214) the process fees or costs, etc., due, which he wishes to pay, as well as the other requisite entries. Having done so, he will make, or have made, two copies of each of the two chalans.

Filling up of chalans.

2. The payer will then present his six chalans to the clerk of the Arrear Collection Department deputed to receive chalans, over whose desk should be hung a board, on which should be painted in large characters in English and the vernaculars in use in the district—

Payer to present chalans to the clerk of the Arrear Collection Department.

“ ARREAR CHALANS RECEIVED HERE.”

3. On receiving the chalans the clerk will stamp across each of the six forms the word “ ARREARS ” and pass

Treatment of chalans.

them and the payer on to the clerk who keeps the account of the arrear which the payer wishes to liquidate. This latter clerk will then see that the copies agree with the originals, that the entries as to the arrear to which the sum is to be credited, and also the number and date of the case concerned, are correctly entered, and after giving any information as to the state of the balance which the payer may require, will initial and return the chalans to the payer. But as regards a land revenue arrear chalan and its copies, he will not initial the chalan until he has ascertained that the Collector has agreed to accept from the defaulter payment of such arrear.

4. The payer will next present his six chalans to the Accountant, who, after seeing—  
Payer to present the Accountant, who, after chalans to the Accountant. seeing—

- (I) that the chalans relating to cess or land revenue are duly stamped "ARREARS," the need of which he can at once ascertain by a glance at the column "Period for which paid",
- (II) that the copies agree with the originals,
- (III) that each has been stamped by the Arrear Collection Department clerk, and initialled by the clerk of the Department to which the arrears relate, and
- (IV) that the amount noted in words agrees with that given in figures,

will sign and date each chalan and its copies, and return all six to the payer.

5. The payer will then present his six chalans to the Treasurer, who, after carrying out or causing to be carried out the procedure referred to in clauses (a) to (e), both inclusive, paragraph (iii), rule 2, section XVI, Chapter II, Tauzi Manual, will return all six chalans to the payer.

6. The payer will then again go to the Accountant and give him the six chalans. The Accountant will enter the details, in his registers, viz., (a) local cess, (and interest thereon) and land revenue of land revenue-paying estates, in Register (Appendix K) of the Tauzi Manual, and (b) process fees, costs, etc., and the cess on tenures and estates other than land revenue-paying ones in Register (Appendix S) of the Tauzi Manual.

Accountant to enter details of the chalans in his registers.

Having entered the details in his registers, the Accountant will then put on each chalan and its copies the serial number which the entry relating to it bears in the register in which its details have been noted, and after so doing will return the originals to the payer, and will retain copies.

7. The Accountant will, on the morning following the day on which the copies above referred to were retained by him, distribute all such copies as follows:—

Distribution of copies of chalans.

- (i) to the Head Tauzi Navis in the districts referred to in Appendix A, Tauzi Manual, a copy of the chalan relating to land revenue or cess (and interest thereon),
- (ii) in the districts not included in Appendix A, Tauzi Manual, the copy of the land revenue chalan to the Head Tauzi Navis, and that of the local cess to the Head Clerk of that Department,
- (iii) to the Arrear Collection Department the other copy of the chalan relating to land revenue or cess, (and interest thereon) and the copy of the chalan relating to payment of process fees, costs, etc.,
- (iv) to the Tauzi Navis the other copy of the chalan relating to process fees, costs, etc.,

**Sec. V.]                      RULES MADE BY THE BOARD.                      [Part III.**

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and in a manuscript book, to be kept by him for the purpose, will obtain from the officer, to whom such chalans may be made over, a receipt showing the total number of such chalans so made over daily and their total value.

8. As regards the method to be followed in the Land Revenue or Cess Tauzi Department after the receipt of the chalan copies from the Accountant, the procedure laid down in rules 4 and 5, section XVI, Chapter II, Tauzi Manual, will *mutatis mutandis* apply, but chalans for arrear payments must be distinguished from those for current, and a separate total be given in column 9 of the register prescribed in rule 4(d), section XVI, Chapter II of the Tauzi Manual.

9. The payments referred to in the copies of the chalans will then be noted up in the registers relating to the cases in question with which the chalan copies should then be filed.

10. To the Arrear Collection Department will belong the duty of maintaining Register 19 (Sales for arrears of revenue).

**SECTION V.—THE NOTIFICATION.**

1. Estates are to be notified for sale in the numerical order of their tauzi numbers—*vide* rule 18 of section III. They are also to be put up for sale in that order, irrespective of the fact that they may have been notified in two separate notifications.

2. The following forms of notice of sale for arrears of land revenue have been approved by Government, and should be followed by Collectors as far as possible in notifying estates and shares for sale. The columns

**Part III.] RULES MADE BY THE BOARD. [Sec. V.**

of the forms have been filled up by way of illustration:—

**NOTIFICATION A.**

Notice is hereby given under sections 6 and 13, Act XI of 1859, that the undermentioned estates and shares of estates in the district of \_\_\_\_\_ will be put up for sale at the office of the Collector of that district on \_\_\_\_\_ at \_\_\_\_\_ for arrears of revenue and other demands which by law are realisable as arrears of land revenue:—

1	2	3	4	5	6	7	8	9
Tauzi number.	NAME OF MAHAL AND PARGANA.	Sadr jama of whole estate.	Whether the whole estate is to be sold.	If only a share is to be sold, specification of such share or shares.	Names of proprietors of property to be sold.	If only a share is to be sold, the sadr jama of such share.	If the whole estate is to be sold, the arrears due from it.	If only a share is to be sold, the arrears due from it
		Rs. A. P.				Rs. A. P.	Rs. A. P.	Rs. A. P.
43	Estate Alimuddin, pargana Panna.	546 14 0	The whole.	..	Solimulla and others.	..	82 0 0	..
227	Estate Bemala Churn, mauza Andul, pargana, Ghatchick.	50 0 0	..	3 annas share.	Kena Ram Das.	9 6 0	..	1 4 0
491	Mahal Brindaban, mauzas Rampur and Gobindpur, pargana Shahuji.	160 0 0	..	Share consisting of 2 annas of mauza Rampur.	Budhi Nath Singh and others.	7 8 0	..	3 0 0

NOTE 1.—When in columns 5, 7 and 9 of the above statement it is stated that only a share is to be sold, it is to be understood that a separate account is kept for that share.

NOTE 2.—After specifying in column 5 the share in each estate to be sold, a note should be inserted as follows:—“All other shares besides that specified will be excluded from the sale.”

NOTE 3.—When a share to be sold is a “residuary” share, all the mauzas in which the share has an interest should be specified in column 5, with the extent of interest in each, and the following should be added at the end of the list:—“If the residuary share is found after the sale to contain property other than that specified above, that property also will pass by the sale.”

The term “residuary” shall be rendered in Hindi as **हकमाले बाकि**, in Bengali as **ইকমাল অবশিষ্ট**, and in Oriya **ଓଡ଼ିଆ ଉପରାଜିତ**!

**Sec. V.] RULES MADE BY THE BOARD. [Part III.**

**NOTIFICATION B.**

Notice is hereby given under sections 5 and 13, Act XI of 1859, that unless the arrears mentioned below are paid on or before the next latest date of payment, viz., the \_\_\_\_\_, the undermentioned estates or shares of estates in the district of \_\_\_\_\_ will be put up for sale at the office of the Collector of that district on the \_\_\_\_\_ at \_\_\_\_\_ for the said arrears :—

1	2	3	4	5	6	7	8	9	10
Tauzi number.	NAME OF MAHAL AND PARGANA.	Sadr jama of whole estate.	Whether the whole estate is to be sold.	If only a share is to be sold, specification of such share or shares	Names of proprietors of property to be sold.	If only a share is to be sold, the sadr jama of such share.	If the whole estate is to be sold, the arrears due from it.	If only a share is to be sold, the arrears due from it.	Nature and amount of demand for which to be sold.
4	Estate Ahmuddin, pargana Panna.	Rs. A. P. 546 14 0	The whole.	..	Solimulla and others.	Rs. A. P. .. ..	Rs. A. P. 82 0 0	Rs. A. P. .. ..	Rs. A. P. .. ..
227	Estate Bemala Churn, mauza Andul, pargana Ghatchick.	50 0 0	..	3 annas share.	Kena Ram Das.	9 6 0	..	1 4 0	..
491	Mahal Brindaban, mauzas Rampur and Gobindpur, pargana Shahujal	160 0 0	..	Share consisting of 2 annas of mauza Rampur.	Budhi Nath Singh and others.	7 8 0	..	3 0 0	..

NOTE 1.—When in columns 5, 7 and 9 of the above statement it is stated that only a share is to be sold, it is to be understood that a separate account is kept for that share.

NOTE 2.—The descriptions of arrears to which this form of notification applies are specified in section 5 of the Act, and particulars should be given accordingly in column 10.

NOTE 3.—After specifying in column 5 the share in each estate to be sold, a note should be inserted as follows :—“All other shares besides that specified will be excluded from the sale.”

NOTE 4.—When a share to be sold is a “residuary” share, all the mauzas in which the share has an interest should be specified in column 5, with the extent of interest in each, and the following should be added at the end of the list :—“If the residuary share is found after the sale to contain property other than that specified above, that property also will pass by the sale.”

The term “residuary” shall be rendered in Hindi as **रजिमाक भाग** in Bengali as **ইজমাল অবশিষ্ট**, and in Oriya **ରଜମାଲ ଅବଶିଷ୍ଟ**।



3. The above notifications are to be published in the manner prescribed by sections 5 and 6 of Act XI of 1859, respectively. When any estate or shares paying revenue exceeding Rs. 500 are included, notifications in English for those estates or shares only should be published in the *Bihar and Orissa Gazette*. Collectors will forward the notices to the publisher of the Gazette. They should be headed "Notices of sale," and should be very plainly written and clearly signed and dated.

4. The publisher of the *Bihar and Orissa Gazette* is held by Government responsible for the timely publication of all sale notices duly received by him. He has consequently been requested by the Board to acknowledge the receipt of such notices in the issue of the Gazette following their receipt in all cases where, from whatever cause, the notices themselves cannot appear. Should neither the notice nor the acknowledgment appear in the issue in which calculating the time required for transit by post, it should have appeared, the Collector should lose no time in transmitting a duplicate of the notice to the publisher, in order that its timely publication may be ensured.

5. The attention of Collectors is required to the circular (Civil Side) of the High Court, no. 2 of 10th January 1871, of which a copy is given below, and they are to ascertain whether the provisions of this circular are regularly acted up to by Judicial officers in their respective districts. Where it is found that this is not the case, the Collector is to address the Judge of the district, requesting him to cause the practice enjoined by the High Court to be observed by all the Courts of the district.

**Sec. V.] RULES MADE BY THE BOARD. [Part III.**

High Court Circular no. 2, dated Calcutta, the 10th January 1871.

To—All Zilla Judges and Judicial Commissioners.

THE Court directs that all orders by all Civil Courts for the attachment of estates and shares of estates shall be immediately notified to the Collector of the district within which such estates or shares are situated.

6. The third clause of section 5 of Act XI of 1859, which requires that under certain circumstances a notification shall be issued before an estate is sold, applies to cases in which a whole estate or a portion of an estate, having been attached under the Civil Procedure Code, is in the hands of a manager appointed on the application of the judgment-debtor for the purpose of liquidating the debts.

Notice to be issued before sale of such attached estates.

7. Should the Civil Court be closed on, or immediately after, the latest day of payment, the notification under section 6, Act XI of 1859, is to be issued after the opening of the Courts.

Provision for close days.

8. The attention of District Officers is drawn to the case, noted in the margin, referred to in paragraph 8 of the Legal Remembrancer's Report on the Civil Litigation of Government during the year 1884-85, and in paragraph 4 of the Resolution recorded by Government thereon, which are reproduced in note 2(ii) to section 6, as illustrating the vital importance of observing in sales held under Act XI of 1859 all the formalities which the law prescribed.

Importance of observing all legal formalities in sale.

Lala Mobarak Lal and others  
*versus*  
Government and others, reported in the Indian Law Reports, Calcutta Series, Part IV, Vol. XI, page 200, April, 1885.

## SECTION VI.—THE SALE.

1. A Commissioner of Revenue may authorise any officer subordinate to him, By what officer. who can legally exercise the powers of a Collector, to hold sales of land. As a general rule it is desirable that the Collectors should themselves preside at sales for arrears of revenue, and that subordinate officers should be authorised to hold such sales only when urgent circumstances make such an arrangement necessary.

2. The authority of an agent bidding at a sale is Agent's authority. to be carefully ascertained. The power-of-attorney of such an agent is to be delivered up and recorded with the proceedings.

3. In sales under Act XI of 1859, the Collector is bound to sell the estate to the Highest bidder. highest bidder. He cannot refuse a bid upon suspicion of the bidder's solvency, but he is at liberty to test it by immediately requiring the deposit prescribed in section 22 of the Act.

4. When the amount bid does not cover the arrear, Purchases for Government. Collectors are authorised by section 58, Act XI of 1859, to purchase on behalf of Government. But this power must be exercised with discretion. A Collector is not bound to buy for Government whenever the bidding falls short of the balance; nor is it expedient for him to purchase, as a matter of course, estates on account of Government when there is no advantage in doing so.

5. If the sum bid for any estate, or share of an estate, which has been sold is sufficient, after meeting all arrears of land revenue, and all other Government demands due Cases in which surplus sale-proceeds of an estate may be appropriated to liquidate arrears due from another estate. in respect of such estates or share,

to liquidate the arrear due on any other estate, or share of an estate belonging to the same recorded proprietors, which has also been lotted and advertised for sale, the Collector should exempt such other estate or share from sale, provided that the whole body of proprietors make a joint written application to that effect, expressly authorising the Collector to apply the surplus sale-proceeds to the liquidation of the arrears of land revenue and other Government demands due in respect of the estate or share which is to be so exempted from sale. The attention of Collectors is drawn to the last lines of section 31, Act XI of 1859, from which they will see that it will be necessary for them to act promptly on the authority given by the proprietors so to apply the surplus sale-proceeds, inasmuch as the receipt of a precept from the Civil Court, while the surplus proceeds are still in deposit, might have the effect of preventing their so applying the money.

6. When an entire estate, of which separate accounts have been opened, becomes liable to sale for arrears of revenue under section 14, Act XI of 1859, in consequence of the highest offer for the share exposed for sale being not equal to the amount of arrear due thereupon up to the date of sale, it shall be the duty of the Collector to publish in open Court a declaration that the entire estate will be put up for sale on a future date, unless the other recorded shareholders, one or more of them, shall within ten days from the date of the said declaration purchase the share in arrears by paying to Government the whole arrear due from such share.

NOTE.—By the words “publish in open Court a declaration” is meant an oral declaration and not a written notification.

7. Before any recommendation is made for the annulment of the sale of an estate, a deposit should be required of a sum of money sufficient to cover

Cases in which proprietors may regain their estates.

Deposit before annulment of sale of estate.

the claim for interest on the purchase-money as also all intermediate payments of Government dues which may have been made by the auction-purchaser.

8. When making a recommendation for the annulment of the sale of an estate, the Commissioner will invariably cause a notice to be served on the purchaser in the following form. Such notices will be served at the cost of the party in whose favour the recommendation is made. A similar notice should be served in all cases in which references are made to the Board, advising the modification of proceedings which have already been held affecting the interest of any party. A certificate of the date of the service should always be transmitted to the Board as soon as the notice has been served. If the notice is served by a registered letter, the date on which the letter was received should be communicated to the Board :—

FORM OF NOTICE.

To.....  
Of.....

TAKE notice that a reference has been made by me to the Board of Revenue under section 26 of Act XI of 1859, recommending.....

If no appearance is made on your behalf before the Board within a period of two weeks from the date of receiving this notice either by yourself, or your pleader, or by some one by law authorised to act on your behalf, the reference will be disposed of by the Board *ex-parte* in your absence.

SECTION VII.—MISCELLANEOUS ABOUT SALES.

1. An estate, the proprietors of which have agreed to a settlement, though the settlement may not have been confirmed by the controlling authority, may be sold for arrears of revenue.

**Sec. VII.]                      RULES MADE BY THE BOARD.                      [Part III.]**

2. Estates summarily settled are not to be sold if sale be avoidable. Should sale be inevitable, only the interest of such of the shareholders as may have entered into engagements can be sold.

Summarily settled estates.

3. The form of agreement to be signed by a party depositing money or Government securities with the Collector for the protection of an estate from sale is given in Appendix E.

Form of agreement by depositor.

4. If the deposit is in cash, it is to be credited in the accounts as a deposit and entered in the register of deposit receipts; if it is in Government securities, the securities should be entered in a separate memorandum.

Mode of accounting for deposit.

5. At foot of the certificate given in the form of Schedule A, appended to Act XI of 1859, the amount of purchase money should always be distinctly set forth, and the proper stamp impressed upon the certificate, accordingly, at the expense of the purchaser.

Stamp on sale certificate.  
Amount of purchase money to be indicated in the certificate.

6. Collectors will not, under section 29 of Act XI of 1859, give possession of estates and shares of estates sold under the provisions of the Revenue Sale Law, until the stamp fee payable for a certificate under section 28 and any fees due from the purchaser under rule 9 of this section have been deposited.

Delivery of possession of estates.

7. It appeared from a case submitted to the Board that, after the sale of a share of an estate for an arrear of Government revenue, certain individuals petitioned the Collector for entry of their names in the sale proceedings and confirmation of the sale to them, producing a registered deed of release under Article 55

Transfer of estates after sale.

of Schedule I of the Stamp Act, executed in their favour by the actual bidder, and alleging that the latter was merely their *farzidar* (or *benamidar*) and that they themselves were the real purchasers. The share having, however, been knocked down to the so-called *farzidar*, he only could be recognised as the purchaser by the Government. District officers when selling estates or shares of estates for arrears of revenue should not recognise as purchaser any person but the actual bidder, unless the latter declares on the property being knocked down to him that he was bidding as agent for another, in which case the name of his principal can be recorded in the sale proceedings. Persons whose names are not so declared cannot, subsequently in any part of the sale proceeding, be recognised as purchasers of the estate or share sold, and their names cannot be inserted in the sale certificate issued under section 28 of Act XI of 1859. That certificate can only contain the name of the person who was recognised as purchaser at the time of the sale.

8. Cases are occasionally reported to the Board in which sales of estates for arrears of revenue under Act XI of 1859 have become final, but in which there are elements of hardship due to mistakes subsequently discovered. In such cases, timely endeavour should be made to get the auction-purchaser to settle amicably by withdrawing from his purchase and receiving back the purchase-money, with compensation from Government, if necessary, under section 32 of the Act. If the auction-purchaser accepts the proposal, the matter may drop as by mutual consent; but should he refuse to give up his purchase, the only course open is to refer the late proprietor to the remedy of a suit in the Civil Court. The Board's consent to the action enjoined above should, however, be obtained in each case before anything is done.

9. Defaulters are to be charged with the expense of serving the notices prescribed by section 7 of the Act. The  
Fees for processes.

Collector is to deduct the amount from the proceeds of sale, when a sale takes place, and to recover it from the defaulter, as a condition of exemption, when the estate is exempted from sale. The other notices required by the Act (including those under section 5) must be paid for by the parties for whose benefit they are issued. Notices under section 5 are issued for the benefit of the defaulting proprietor. The proclamation under section 28 notifying the transfer of an estate by sale under the Act and the notice prescribed by section 32 when a sale is reversed must be issued free of charge.

10. (1) Under section 6, lists of estates for sale must be posted up in the office of the Collector and in the Court of the Judge of the district, and no fee is to be charged for including an estate therein.

Fee for posting up notification.

(2) The notification under section 7 must be affixed in at least four places—the Collector's office, the Munsif's Court, the thana, and the estate. If the first three are in the same place, a fee of rupee one and annas two shall be charged for them; and if they are in different places, a separate fee of rupee one and annas two shall be charged for each place and an extra fee of rupee one and annas two for the service on the estate. Under section 7 of Act VII (B.C.) of 1868, a similar notice should be posted at the subdivisinal *cutcherry* within the jurisdiction of which the estate to which such notice refers, or some portion thereof, is situate, a separate fee of rupee one and annas two being charged for it.

(3) A similar procedure should be adopted for the publication of a copy of the application under section 10; only that six copies of the application must be posted up, viz., in the Courts of the Collector, the Judge, the Magistrate, the Munsif, the thana, and the estate.

(4) The notice withdrawing attachment made under section 7 should be served in all places in which



the attachment notice under the same section is served, and the fees to be levied should be the same as in the case of the latter notice.

11. Surplus proceeds of estates sold under the provisions of Act XI of 1859 can under section 31 of the Act, be paid only to the late recorded proprietor or proprietors of the estate or share sold, or to their heirs or legal representatives duly constituted, whether under Act VII of 1889, or any other Act.

12. The question whether a Commissioner has power to review an order passed by him under section 2 of Act VII (B.C.) of 1868 having been raised more than once, the Board have notified, for the future guidance of Revenue officers, that they have been advised by the Law officers of Government that a Commissioner has no such power under the existing law.

13. Petitions of appeal against the orders of a Commissioner under section 2 of Act VII (B.C.) of 1868 having occasionally been presented to the Board, they have in each case had to point out that those orders are final by law, and that the Board have no jurisdiction to entertain appeals against them. In a recent case a warning was conveyed to a Pleader in the following terms, which are reproduced for general information:—

“ This is not the first time that the Board have had to remark on the impropriety of such petitions as these being filed. The Board must now repeat what they have said before, that they look upon the representation of such appeals as these by professional gentlemen as a serious breach of professional duty. The Vakil or Pleader who presents such an appeal must either be ignorant of a plain provision of the

**Sec. VII.]      RULES MADE BY THE BOARD.      [Part III.**

law, or he must hold out to his clients an expectation which he knows to be unfounded, or he must hope to betray the Board into exercising an illegal jurisdiction. If such conduct is repeated after this warning has been given, the Board would be fully justified in bringing the matter to the notice of the High Court under the Legal Practitioners' Act of 1879."

14. The Board have notified to all Revenue officers Appeals, etc., relating to annulment of sales to be speedily disposed of. that they attach very great importance to the disposal, with all practicable despatch, of appeals and references relating to the annulment of sales of estates or shares for the recovery of arrears of land revenue and other public demands recoverable as arrears of land revenue.

15. The Board do not permit any avoidable delay to occur in dealing with cases represented to them under section 26 of Act XI of 1859. But instances continually occur in which appeals preferred to Commissioners under section 2 of Act VII (B.C.) of 1868 (which is a part of Act XI of 1859) against sales of estates or shares are allowed to remain pending before them for months without being heard.

16. As serious injury may accrue to the parties and to the property concerned, so long as such appeals remain undecided and the eventual proprietorship of the estate or share is in doubt, the Board have impressed on Commissioners the necessity of giving precedence on their files to the appeals above indicated.

17. Under section 88 of Act V of 1898 (the Code of Criminal Procedure), a Magistrate, having jurisdiction, may in certain cases order the attachment and sale of land paying revenue to Government, being the property of an

**Part III.] RULES MADE BY THE BOARD. [Sec. VIII.**

absconded offender. In all such cases the authority for the sale will be the order of the Magistrate who directed the attachment, whether the land be situated within his jurisdiction or not, but the law is silent as to the manner in which the sale should be held.

18. The High Court have represented that Collectors of districts, who from time to time hold sales of land paying revenue to Government, can more conveniently and advantageously hold sales of such attached land as is above referred to, situated within their jurisdiction, than can Magistrates, especially in cases where the Magistrate is in another district. Collectors are to comply with the requisitions of Magistrates to hold sales in such cases, and in these cases the procedure in respect of advertisement, sale, and delivery of possession in the case of sales in execution of decrees of Civil Courts under the Code of Civil Procedure should be, as far as possible, followed.

**SECTION VIII.—PATNI SALES.**

1. One petition only need be presented for the sale of any or all of the tenures described in section 8, clause 1, Regulation VIII of 1819, contained in one estate. These sales are conducted by the Collector of land revenue under section 3, Act VIII (B.C.) of 1865. See also Appendix F.

2. If the 1st *Bysakh* or the 1st of *Kartik* fall on a Sunday or other close holiday, the petitions prescribed in clauses 2 and 3 of section 8 of Regulation VIII of 1819 must be presented on the first succeeding day on which the office is open.

**Sec. VIII.] RULES MADE BY THE BOARD. [Part III.**

3. Every application under section 8, Regulation VIII of 1819, should be referred on receipt to the record-keeper for report, and it should be acted upon only if the record-keeper reports that the applicant is the recorded proprietor of the estate.

4. A defaulting *patnidar*, who has not contested the arrear summarily under the provisions of section 14, Regulation VIII of 1819, must, in the event of a petition being presented at the end of the year, pay the amount claimed before the day of sale; and in like manner, in the event of a petition being presented in the middle of the year, he must pay the advertised balance, or the requisite proportion as laid down in clause 3, section 8, before the day of sale. Upon the date of sale, if there is any balance outstanding and the *zamindar* insists upon a sale, the Collector must sell. A *patnidar* who has contested the award summarily as above is entitled to lodge the amount of the arrear demanded after the lot has been put up. Talukdars of the second degree, on the contrary, who wish to stay the sale under clause 2, section 13, by paying the amount of balance that may be declared due by the person attending on the part of the *zamindar*, must do so before the lot has been called up. They may of course lodge money antecedently, as allowed by the same clause.

5. Collectors should not receive payment of arrears due from *patnidars*. Such payment should be made to the *zamindars* direct, except when a *patnidar*, a *talukdar* of the first degree, contests the demand of an arrear made by the *zamindar*, in which case deposit must be accepted to stay the sale. This ruling does not affect *dar-patnidars*, who come under the provisions of clause 2, section 13 of the law.

6. The Board has ruled that no appeal lies to a Commissioner under section 13 of Bengal Act VIII of 1865 against sales held (without decree obtained) under the summary procedure of Regulation VIII of 1819. On the same grounds they have also held that the powers of revision given to Commissioners and to the Board by section 14 of the Act apply only to sales of under-tenures after decree obtained. Commissioners are, however, to take notice of any irregularities which may come to their notice with regard to such sales, with a view to preventing the repetition of them.

SECTION IX.—OPENING OF SEPARATE ACCOUNTS IN RESPECT OF SHARES.

1. A recorded sharer, owning an undivided interest in a specific portion of an estate, may have a separate account opened in his name by complying with the procedure laid down in sections 10 and 11 of Act XI of 1859 and in Part V of Act VII (B. C.) of 1876.\*

2. The following is the proper mode of keeping the accounts of revenue demands and payments in respect of estates within which separate accounts have been opened under section 10 or 11, Act XI of 1859, or under section 70 of Act VII (B. C.) of 1876.\*

3. For each such estate a "general account" should be kept in the form prescribed in Appendix F of the Tauzi Manual, in which should be shown the instalments of the entire *sadr jama* or revenue demand against the entire estate; and against these should be credited the total payments of revenue made on account of the estate by whomsoever made as laid down in rule 12, section XV, Chapter II of the Tauzi Manual.

\* Appendix B.

Sec. IX.] RULES MADE BY THE BOARD. [Part III.

• 4. Besides the above "general account" for the entire estate the Collector will keep a "subsidiary account" in similar form for each share in respect of which a separate account has been opened under section 10 or section 11 of the Act, or under section 70 of Act VII (B.C.) of 1876.\* In the "subsidiary account" relating to each share will be entered the portion of each instalment of the entire *sadr jama* for which such share is primarily liable under the Act, and against it will be credited every payment of revenue made on account of that particular share, whether such account is actually due or is a payment in advance.

5. As long as the "general account" does not show that an arrear has accrued against the entire estate in consequence of the aggregate payments falling short of the aggregate demand, the Collector will not be concerned to enquire how the "subsidiary accounts" of the respective shares stand; but when the "general account" shows that such an arrear has accrued, the estate will have "become liable to sale for arrears of revenue," as mentioned in section 13 of Act XI of 1859, and it will then be the duty of the Collector to ascertain by reference to the "subsidiary accounts" from which of the shares, "according to the separate accounts, an arrear of revenue may be due," in order that he may, "in the first place," "put up to sale that share or those shares only."

6. Under no circumstances can a surplus or advance payment made on account of one particular share be credited to another share in the "subsidiary account".

7. The residuary portion of an estate, that is, the portion in respect of which no separate accounts have been

\* Appendix B.

opened on application, is to be dealt with like any other share.

8. The fees of Rs. 2 referred to in section 70 of Act VII (B.C.) of 1876\* as amended by section 13 of Act II (B.C.) of 1906 on application under sections 10 and 11 of Act XI of 1859, are payable on filing an application, and not on the grant of the permission applied for. The parties have no legal right to their refund on the ground of an application being rejected. When applications for opening separate accounts are rejected for want of a special power-of-attorney in each case, separate fees are not to be charged a second time on the renewal of the application after the technical objection has been removed. Fees deposited before an application is made may be refunded if the depositors make no application at all. Where the depositors had parted with their interests in an estate, and the separate shares were closed, a refund of the fees was refused.

9. Instructions for numbering shares having separate accounts are given in rule 4(*iv*), section II, Chapter II of the Tauzi Manual.

10. Notice of the subsidiary numbers should be given to the parties concerned in all past cases, if this has not been already done, and in all future cases by post-cards at the expense of the Government, and the sharers should be distinctly told to use the numbers in future *chalans* and remittances by revenue money-order. The small cost of the post-cards should not be recovered from the parties.

11. Considerable inconvenience, and possibly hardship, may be occasioned to parties if separate accounts are permitted to be opened shortly before any latest day of payment of arrears of

\* Appendix B.

**Sec. X.] RULES MADE BY THE BOARD. [Part III.**

revenue since separate liability commences from the date of the Collector's order of sanction and, if the proprietors of the new separate accounts do not receive intimation or fully realise, that they must pay in the revenue specifically to the credit of their newly separated shares forthwith, those shares will, on the approaching latest day for payment of arrears of revenue, be rendered liable to sale on the ground of formal default.

District Officers should, therefore, avoid passing final orders sanctioning the opening of separate accounts within three weeks of any latest day of payment of arrears of revenue. (Board's Circular Order no. 5, dated the 25th May 1915.)

12. As the revenue money-order form already contains a heading for the *tauzi* number, no change in it is required. Against that heading the subsidiary number will be inserted, and it will indicate both the *tauzi* number and the share. A revenue money-order cannot be refused because there is some mistake in the entry for the *tauzi* number. The mistake must be cleared up, soon or late, in the Collectorate, the money being kept in deposit until this is done. No notice should, therefore, be given to the sharers that their money-orders will not be accepted, if they do not insert their subsidiary numbers.

**SECTION X.—REGISTRATION.**

1. The registration of a fractional share in a taluk or other dependent tenure, or the registration of a tenure which consists of an undivided fractional share of an estate, is inadmissible under sections 38 and 40, Act XI of 1859. It is not unusual for an owner of an undivided fraction of an estate to make an assignment of his rights and interests in consideration of a fixed annual payment and to call the assignee's interest a taluk,

Registration inadmissible for the protection of assignees of fractional interests in rents.



but this is a misuse of the word. The assignee enjoys a certain fractional interest in the rents paid by the raiyats and nothing more; he is not a talukdar within the meaning of the Regulations. The particulars which section 40, Act XI of 1859, requires to be set out in a petition for registration clearly show the intention of the Legislature as to the nature of the subject which it was intended to protect by the two systems of registration. Everything indicates a definite area of land with a local situation. There is nothing to show that the Legislature was concerned for the protection of assignees of fractional interests in rents. The words "as far as ascertainable" provide for inaccuracy or omission in the prescribed details, but cannot be strained so as to neutralise the whole section and to admit subjects altogether different from those the particulars of which are clearly set out.

2. The entries in Register G are practically *verbatim* copies of the particulars contained in the application, Entry in Register G. which is in the form prescribed by section 40 of Act XI of 1859. If the Record-keeper finds these particulars correct, he need only say in his report that such is the case and should not enter into unnecessary details. When the order of the Collector to 'register' has been obtained, registration should follow without any *rubakari*. Where the particulars are incorrect, the applicant should be required to amend the application, or to submit a fresh one, or to clear up the discrepancy; after this has been done, the above procedure becomes applicable.

**APPENDIX A.**  
**FORM OF SALE LIST.**  
*(See SECTION III, RULE 18.)*

*Sale List for the Kist ending the                      of 19   , District*

1	2	3			4	5	6	7			8			9			10	11	12	
Tausi no.	Name of Estate and Pargana or Tappa etc.	Sadr jama of whole estate.			Whether the whole estate is to be sold.	If only a share is to be sold, the specification of such share or shares.	Names of proprietors of property to be sold.	If only a share is to be sold the sadr jama of such share.			If the whole estate is to be sold, the arrears due from it.			If only a share is to be sold, the arrears due from it.			Remarks and orders.	If sold, to whom sold, and price obtained.	Final disposal.	
		Rs.	A.	P.				Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.				

APPENDIX A.

## APPENDIX B.

## APPENDIX B.

## I. CONNECTED REGULATIONS AND ACTS.

## 1. REGULATION XI OF 1822—THE BENGAL GOVERNMENT INDEMNITY REGULATION, 1822 (UNREPEALED SECTIONS).

36. If a Collector shall at any time, being so instructed by either the Government or the Board, purchase on account of Government an estate exposed to sale for the recovery of arrears of revenue, the rules applicable to the management of ordinary malguzari mahals held khas or farmed shall be considered applicable to such estate and also to all other estates the property of Government according as they may be held khas or let in farm.

Rules for khas management applied to purchases by Government.

37. It is hereby declared and enacted that Government is not, and shall not be held, liable for any error or irregularity which may have occurred, or shall occur, in any order, proceeding or decree of any Court of Judicature, whether a revenue or other officer of Government may or may not have been, or shall or shall not be employed in giving effect to the order, proceeding or decree deemed to be erroneous or irregular. Nor shall any officer of Government be held liable for anything done or suffered in conformity with an order, proceeding or decree of a Court as aforesaid; and if any person or persons shall sue Government or any officer of Government for anything done or suffered under an order, proceeding or decree of Court as aforesaid, such person or persons shall be non-suited with costs.

Government not liable for errors of Courts.

The same principle is and shall be held applicable to all orders, proceedings or decrees made, held or passed by any public officer, in virtue of powers vested in him for the judicial cognizance of any pleas, suits, complaints or information whatsoever, unless otherwise specially provided.

2. ACT XII OF 1841.—THE BENGAL LAND REVENUE SALES ACT, 1841 (UNREPEALED SECTION).

2. There shall be no demand of interest or penalty

Interest and penalty upon any arrear of land revenue. abolished.

3. ACT VII (B. C.) OF 1876—THE LAND REGISTRATION ACT, 1876. (PART V.)

(*Of the Opening of Separate Accounts in Respect of Shares.*)

69. Notwithstanding anything contained in Act XI of 1859 (*an Act to improve the law*

*relating to sales of land, etc.*) from the commencement of this Act, no separate account shall be opened under the provisions of section 10 or section 11 of the said Act in respect of the share of any applicant under the said sections otherwise than for a share corresponding with the character and extent of interest in the estate in respect of which such applicant is recorded as proprietor or manager under this Act.

70. When a proprietor of a joint estate, who is recorded as proprietor of an undivided interest held in common tenancy in any specific portion of the land of the estate, but not extending over the whole estate, desires to pay separately the share of the Government revenue which is due in respect of such interest, he may submit to the Collector a written application to that effect. The application must contain a specification of the land in which he holds such undivided interest, and of the boundaries and extent thereof, together with a statement of the amount of Government revenue heretofore paid on account of such undivided interest. On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for publication of notice in section 10 of Act XI of 1859.

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it.

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The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

Notwithstanding anything hereinbefore contained, no application under this section or under section 10 or section 11 of the Bengal Land Revenue Sales Act, 1859, shall be received unless it is accompanied by a fee of two rupees.

71. Section 12 of the said Act XI of 1859 shall apply to every application made under Sections 12, 13 and the last preceding section; and the 14 of Act XI, 1859, effect and consequences of opening a separate account under the last preceding section shall be such and the same as are described in section 13 and in section 14 of Act XI of 1859.

72. Whenever any share in respect of which a separate account has been opened by the Collector under section 10 or section 11 of the said Act XI of 1859, or under section 70, shall no longer correspond with the character and extent of interest held in the estate by any one proprietor or manager, or jointly by two or more proprietors or managers any proprietor or manager whose name is borne on the General Register under this Act as proprietor or manager of any interest in the share in respect of which such separate account is open, may submit to the Collector a written application setting out the circumstances under which such share no longer corresponds with the extent of interest held in the estate by any recorded proprietor or manager or jointly by two or more recorded proprietors or managers, and specifying the manner in which such share has become broken up and distributed among the proprietors of the estate, and praying that the separate account standing open in respect of such share shall be closed, and, if he so desire, praying that another separate account be opened in respect of any other share or shares, which were wholly or partly included in the share in respect of which the previous separate account was open.

*Illustration.*

In a certain estate separate accounts have been opened under section 10 of Act XI of 1859 for the 4 annas share of

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*A*, and also for the 5 annas share of *B*, the accounts of the remaining 7 annas share being kept jointly in the names of the remaining proprietors *C*, *D* and *E*.

In course of time *X* has inherited *A*'s 4 annas share, and also *C*'s interest in the 7 annas share, which amounted to 3 annas; *X* has also acquired by purchase 2 annas out of *B*'s 5 annas share, so that the interests in the estate are now distributed as follows :—

<i>X</i>	...	...	...	9 annas.
<i>B</i>	...	...	...	3 „
<i>D &amp; E</i>	...	...	...	4 „

*X*, if a recorded proprietor of the estate, may apply to the Collector to close the separate account which is open in respect of *A*'s 4 annas share, and also the separate account which is open in respect of *B*'s 5 annas share as neither of these shares corresponds with the extent of interest held by any one proprietor, or held jointly by two or more proprietors in the estate, and in the same application *X* may apply for the opening of a separate account in respect of the 9 annas share which he now holds.

Any of the other proprietors might also make a similar application.

73. On receipt of such application, the Collector shall cause a copy of the same to be published in the manner provided in section 10 of Act XI of 1859; and if within six weeks from the date of such publication no objection is made by any other recorded proprietor of the estate, the Collector shall close the separate account which then stands open, and shall open a separate account with the applicant as required by him, under section 10 or section 11 of Act XI of 1859, or under section 70 as the case may be.

74. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the share in respect of which any separate account is open as aforesaid has not been broken up, and does still correspond with the character and extent of

## APPENDIX B.

interest held by any one proprietor or manager, or jointly by two or more proprietors or managers,

or object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him,

or (when the application is in respect of a specific portion of the land of an estate, or in respect of an undivided interest held in common tenancy in any specific portion of the land of the estate) object that the amount of Government revenue stated by the applicant to have been heretofore paid on account of such portion of land, or on account of the applicant's undivided interest therein, is not the amount which has been recognized by the other sharers as the Government revenue thereof.

the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

74A. Notwithstanding anything contained in the foregoing sections, if the Collector becomes aware otherwise than after receipt of an application under section 72, that any separate account opened under section 10 or section 11 of the Bengal Land Revenue Sales Act, 1859 or under section 70 or section 72 of this Act in respect of any estate does not represent existing facts, he may, after service of a notice on the recorded proprietors in the manner prescribed by section 50 and after hearing any objection which may be preferred, close the account.

#### 4. ACT IX (B.C.) OF 1870 (PART III).

##### PROTECTION FROM SALE OF CERTAIN ESTATES.

23.\* *Clause 1.*—Except as hereinafter provided by section 23A, every estate, and, subject to the provisions of section 14 of Act XI of 1859, every share or part of an estate for which a separate account has been opened under section 10 or section 11 of the said Act, or

\* Sections 23 and 23A have been substituted for the original section 23 by Act III (B. C.) of 1881, section 4.

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under section 70 of Bengal Act VII of 1876, shall be exempt from sale for arrears of Government revenue which have accrued whilst such estate, share or part has been under the charge of the Court.

Provided that all such arrears of revenue shall be the first charge upon the sale-proceeds of any estate, share or part which may be sold for any other cause than for such arrears of revenue.

*Clause 2.*—If at the time when such estate, share or part ceases to be under the charge of the Court of Wards, an arrear of revenue is due on account thereof, the Collector may attach such estate, share or part and collect the rent, cesses, and other demands due, and all arrears thereof, managing such estate, share or part either directly or through a manager, or by farming it for a period not exceeding five years, as he may think fit.

Provided that when such estate, share or part has been attached under the provisions of this clause, the proceeds shall be paid to the Collector; and the Collector, after deducting the claims of Government for revenue and other public demands, together with any interest which has accrued upon such public demands other than Government revenue, and the charges of management, due up to the date of making such deduction, shall release such estate, share or part from attachment and pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part, or to his duly constituted agent, and shall furnish such proprietor or agent with an account of the receipts and expenditure extending over the time when such estate, share or part was under attachment.

23A.\* Notwithstanding anything in clause 5, section 8, Regulation I of 1793, or in section 23 of this Act contained, any estate, share or part of an estate on which an arrear of revenue has accrued while under the charge of the Court may at any time be sold under the provisions of the law for the time being in

\* Sections 23 and 23A have been substituted for the original section 23 by Act III (B. C.) of 1861, section 4.



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force for the recovery of arrears of Government revenue, if the Court has certified in writing that the interest of the ward require that such estate, share, or part be so sold, and has stated in such writing the reasons upon which it has arrived at such conclusion.

24. No estate the sole property of a minor or of two or more minors, and descended to him or them by the regular course of inheritance, or by virtue of the will of, or some settlement made by, some deceased owner thereof, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until such minor or one of such minors has completed his age of twenty-one years, but all arrears of revenue shall be the first charge upon the proceeds of such estate, if the estate is sold for any other cause during such minority.

The Collector may, on an arrear so accruing on any such estate, attach the estate and collect the rents and all arrears of rent due, managing the estate either directly or through a manager or by farming it, as he may think fit, for a period not exceeding ten years, nor extending beyond the time when such minor or one of such minors completes his age of twenty-one years.

25. The exemption from sale for arrears of revenue given by section 24 shall only apply to cases in which a written notice of the fact that the estate is the sole property of one or more minors, and entitled to such exemption, has been served on the Collector before the sale.

26. When an estate has been farmed under the provisions of section 24, the proceeds of such farm shall be paid to the Collector, and the Collector, after deducting the amount of the claims of the Government for revenue and other public demands and the charges of management, shall either pay the proceeds to the person authorized to receive them for the proprietor, or shall dispose of them in any of the modes mentioned in section 49 or in section 50.

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 5. ACT V (B. C.) OF 1897—THE ESTATES PARTITION ACT.

(SECTIONS 15 AND 16.)

15. If any estate has been declared to be under partition as provided in section 29, any arrears of land revenue of an estate which is under partition. before the date specified in the notice issued under section 94 may be realized by sale of the estate as if the same had not been declared to be under partition; and if such sale takes place, the partition proceedings shall cease from the date thereof, but shall be revived if the sale is set aside.

16. Nothing contained in section 15 shall be deemed to affect the provisions of section 10, section 11, section 12, section 13, or section 14 of Act XI of 1859 (*an Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), or any similar law for the time being in force in respect to the opening of separate accounts for different shares in an estate and the protection afforded to such shares thereby.

Provided that, if any share in any estate is sold for its own arrears of land revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be sold subject to the partition proceedings, which shall proceed as if no such sale had taken place; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition proceedings.

## 6. ACT 6 OF 1853.

## (THE RENT RECOVERY ACT, 1853.)

(15th April, 1853.)

*An Act relating to summary suits for arrears of rent, to sales of patni taluks and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.*

Whereas by Regulation 8, 1831, of the Bengal Code the hearing and decision of summary suits or claims relating to arrears or

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exactions of rents were transferred from the Judges of the Zila or City Courts to the Collectors of land-revenue of the several districts;

And whereas by Regulation 7, 1832, of the Bengal Code the conduct of sales of *patni* taluks and other saleable tenures under Regulations 8, 1819, and I, 1820, of the same Code, and the performance of other acts preparatory to, or connected with, such sales, were transferred to the Collector or Deputy Collector of land-revenue or Head Assistant to the Collector or Deputy Collector, subject to an appeal as therein provided;

And whereas by Act 8, 1835, the power theretofore vested in the Judge of the Diwani Adalat of selling land in satisfaction of summary decrees for rent was transferred to the Collectors of land-revenue, and it was enacted that all sales for the recovery of arrears of rent held under clause 7, section 15, Regulation 7, 1799, should be conducted by the Collector, his Deputy or duly authorized Assistant, and that ten days' notice should be given of such sales by advertisement to be stuck up at the catchery of the Zila Court or local Adalat and that of the Collector

And whereas doubts may be entertained as to who ought to exercise the jurisdiction transferred by the above mentioned Regulations and Acts, where lands situate within the zila or other district of one Collector form part of an entire estate paying revenue to the Collector of another zila or district;

in order therefore to avoid such doubts, and also to define who are the proper officers to exercise such jurisdictions in cases where lands are situate in a district assigned to an independent Deputy Collector, and also in cases where lands held in *patni* or other tenure at one entire rent are situate in two or more Collectorates

It is enacted as follows :—

1. If the lands which may be the subject of any such sale or to the rent of which any such suit may relate, be all situate in one collectorate, the Collector of such collectorate is the Collector to conduct the sale or to hear and decide the suit.

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If one *taluk* or tenure shall comprise lands situate in two or more collectorates, or if any lands situate in two or more collectorates be held under one lease or engagement or at one entire rent, the Collector in whose collectorate the greater part of such lands shall be situate is the Collector to conduct the sale of such *taluk* or tenure or of such lands, and to hear and decide any summary suit relating to arrears or exactions of rent in respect thereof.

2. If a Collector to whom application shall be made to exercise any of the powers above-mentioned shall entertain any doubt as to whether the lands or the greater part of them are situate within his collectorate, he shall report the case for the order of the Board to which he is subordinate, and, if ordered by such Board to proceed in the matter, such order shall be conclusive upon the question of his jurisdiction.

Procedure in case of doubt as to officer having jurisdiction.

3. The word "Collectorate" in this Act means the *zila* or other district to which a Collector is appointed, and no lands situate beyond the limits of such *zila* or district shall be deemed to be situate within the collectorate by reason of their forming part of an estate paying revenue to the Collector thereof.

"Collectorate" defined.

4. An independent Deputy Collector may, within his Deputy collectorate, exercise all the powers and jurisdictions of a Collector with which he may be entrusted, in the same manner and to the same extent as a Collector may do within his Collectorate; and, with reference to the exercise of such powers and jurisdictions, his Deputy collectorate shall be deemed a collectorate, and he shall be deemed to be a Collector within the meaning of this Act.

Powers and jurisdiction of independent Deputy Collector.

5. An independent Deputy Collector is an officer appointed by Government to act as Deputy Collector independently of a Collector, whether his office is one for the receipt of revenue or not.

"Independent Deputy Collector."

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A Deputy collectorate is the district within which an independent Deputy Collector is directed by Government to act.

"Deputy collectorate." collecto- rate.

6. In cases of sales by an independent Deputy Collector under the above-mentioned Regulations or Act, any notice thereby required to be stuck up at the cutcherry of the Collector may be stuck up at the cutcherry of the Deputy Collector.

Publication of notice of sale by independent Deputy Collector.

7. An independent Deputy Collector may exercise the powers assigned to him over any part of his Deputy collectorate in public cutcherry, in whatever part of his Deputy collectorate the same may be situate or held.

Exercise of powers of independent Deputy Collector.

8. Any notice required by the above-mentioned Regulations or Act to be given by advertisement to be stuck up at the cutcherry of the Zila Court or local Adalat shall be stuck up at the Zila Court or local Adalat within the jurisdiction of which the lands to be sold, or the greater portion of them, as the case may be, shall be situate.

Publication of notice required by law to be advertised.

9. Rep. by the Repealing Act, 1873 (12 of 1873).

10. Rep. by the Bengal Rent Recovery (Under-tenures) Act, 1865 (Ben. Act 8 of 1865).

*II. Rules framed under sections 23—26 of Act IX (B.C.) of 1879, regarding arrears of revenue due from estates under the Court of Wards or proposed to be taken under the Court of Wards, reproduced from the Wards' Manual, 1927.*

1. As soon as the Court takes charge of a share in an undivided joint estate, the Collector is at once to take steps to open a separate account for such share in accordance with section 10 or 11 of Act XI of 1859, or section 70 of Act VII (B.C.) of 1876. (Rule 261 of the Wards' Manual, 1927.)

Opening of separate account for share in undivided joint estate.

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2. If any arrear of revenue be due from an estate of which it is proposed that the Court shall take charge a report of the circumstance must be specially made through the Commissioner to the Board before the estate is brought under the Court; and if the estate be the sole property of a minor or two or more minors, having descended to them by the regular course of inheritance, or by virtue of the will of the deceased owner, the report must, with reference to section 24 of the Act, state what portion of the arrear has accrued before, and what portion has accrued after, the date on which the minor or minors succeeded to the property. (Rule 86 of the Wards' Manual, 1927.)

3. The Board's Circular Order no. 6 of May 1881, regarding the process of recovery of arrears of revenue due from estates of which a joint and undivided share is the property of a minor or other disqualified proprietor under the Court, is in force and will be found in Appendix C of this Manual. (Rule 262 of the Wards' Manual, 1927.)

4. With respect to the liability of minor's shares, in joint estates under the Court to be sold for arrears of revenue which accrued before the opening of separate accounts for such shares, it has been ruled that a subsequent opening of separate accounts does not afford protection to the shares so separated on account of arrears of revenue which accrued upon the whole estate before separation. The separate liability of the share commences from the date on which the Collector gives his sanction to the opening of the separate accounts. Arrears which may have accrued before that date must be satisfied by the sale of the whole estate. A joint undivided share of an estate cannot be sold under Act XI of 1859, which only contemplates the sale of entire properties or of such shares of entire properties, in respect of which separate accounts have been opened. (Rule 263 of the Wards' Manual, 1927.)

5. Collectors and Managers are warned of the heavy responsibility which the exemption from sale (under clause 1, section 23 of the Act) imposes on them in respect of arrears from sale-proceeds.

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of any arrears of revenue which they allow to accrue while the estate is under the charge of the Court by applying the proceeds of the property to any purposes other than those specified in clause I of section 48 of the Act before paying the instalments of Government revenue, and of all cesses and other public demands due from the property. If any estate, share, or part is sold for any cause, other than for an arrear of revenue, by order of the Court or of a competent Court the arrear of revenue due from such estate, share, or part must first be deducted from the proceeds of the sale as required by section 23 of the Act. (Rule 264 of the Wards' Manual, 1927.)

6. Under clause 2 of section 23 of the Act, the Collector may attach any estate, share or part from which an arrear of revenue is due at the time such estate, etc., ceases to be under the management of the Court, and may manage it, as he thinks fit, until the arrear of revenue due at the date of attachment, or which may fall due during the period of attachment, is recovered. (Rule 265 of the Wards' Manual, 1927.)

Attachment of estate for arrears.

7. Under section 23A of the Act, any estate, share or part of an estate on which an arrear of revenue has accrued while under the charge of the Court, may at any time be sold if the Commissioner has certified in writing that the interests of the Ward require that such estate, share or part be so sold, and has stated in such writing the reasons upon which he has arrived at such conclusion. (Rule 266 of the Wards' Manual, 1927.)

Sale of estate for arrears.

8. It will be observed that the exemption in section 23 of the Act extends only to sale during the period of management. The law does not prohibit the realization by sale, after release of the estate, of arrears which have accrued before the date on which the disqualified proprietor or proprietors succeeded to it, nor in the case of an estate, being the property of any disqualified proprietor other than a minor, before the date on which it was brought under the management of the Court. (Rule 267 of the Wards' Manual, 1927.)

Exemption from sale.

## APPENDIX C.

## APPENDIX C.

## SELECTIONS FROM THE CIRCULAR ORDERS OF THE BOARD OF REVENUE.

## 1. No. 14 OF JULY 1870.

NAZIRS, when deputed to attach and sell property under Act VII (B.C.) of 1868, are to be paid the actual travelling expenses incurred by them, together with any further remuneration which may in each case be thought necessary, not exceeding 5 per cent, on the value of the property sold. Charges of the latter description may be disbursed by Collectors, under the rules applicable to contingent expenses.

## 2. No. 4 OF FEBRUARY 1881.

THE Board having reason to believe that the ruling of the Privy Council in the case of Banwari Lal Sahu (Defendant) *versus* Mahabir Prasad Singh and others (Plaintiffs), reported at page 297, Vol. XII of the Bengal Law Reports, is often overlooked, desire to call the attention of all Revenue officers to that ruling, in which it has been held that the third clause of section 5 of Act XI of 1859, which requires that under certain circumstances, a notification shall be issued before an estate is sold, applies to cases in which a whole estate, or a portion of an estate, having been attached under the Civil Procedure Code, is in the hands of a Manager appointed on the application of the judgment-debtor for the purpose of liquidating the debts.

## 3. No. 6 OF MAY 1881.

THE Board have observed that there is considerable confusion and uncertainty regarding the process of recovery of arrears of revenue due from estates of which a joint undivided share is the property of a minor or other disqualified proprietor under the Court of Wards, and that different officers take different views of the law on the subject. The following instructions are accordingly issued, after consultation with the Law Officers of Government, and with the approval of the Lieutenant-Governor :—

I. The first portion of section 17, Act XI of 1859, has been repealed by section 2, Act III (B.C.) of 1881, and the exemption from sale for arrears of revenue, which the law affords to proprietors under the charge of the Court of Wards,



## APPENDIX C.

is now contained in section 23 of the Court of Wards Act, 1879, as amended by section 4, Act III (B.C.) of 1881. The subjects to which the exemption extends are properties falling under either of the following categories :—

- (1) every estate ;
- (2) subject to the provisions of section 14 of Act XI of 1859, every part or share of an estate for which a separate account has been opened under section 10 or 11 of Act XI of 1859, or under section 70 of Act VII (B.C.) of 1876.

The sections, therefore, do not exempt from sale for arrears of revenue an estate in which a minor or disqualified proprietor under the Court of Wards has a joint undivided share only. It will be observed, also, that even to the share for which a separate account has been opened, a limited protection only is given. Such a share is exempt from sale, subject to the provisions of section 14 of Act XI of 1859, i.e., if the arrears cannot be otherwise realized, the entire estate may be sold, including the separated share under the charge of the Court.

The interpretation clause of Act VII (B.C.) of 1868, which applies to Act XI of 1859,\*

\*The first part of section 17, Act XI of 1859, has been replaced by clause 1, section 23, Act IX (B.C.) of 1879, as amended by Act III (B.C.) of 1881. defines an estate to be "any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the register, known as the general register of all revenue-paying estates". A joint undivided share is not "a share in land subject to the payment to Government of an annual sum, &c." and an estate in which the Court of Wards manages only a joint undivided share is not, therefore, an estate under the management of the Court. It follows that such a share, or an estate which contains such a share, does not come under the protection afforded by clause 1, section 23, Act IX (B.C.) of 1879, as amended by section 4, Act III (B. C.) of 1881.

II. There is no other law under which Wards' estates are protected from sale for arrears of revenue, and consequently no estate in which a minor or other disqualified proprietor under the Court of Wards holds a joint and undivided share is exempted from sale.

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III. It will be observed that section 23 of Act IX (B.C.) of 1879, as amended, exempts from sale even the protected estates, shares, and parts of estates only "for arrears of Government revenue which have accrued whilst such estate, share or part has been under charge of the Court."

If such arrears of revenue accrue on such an estate, share, or part which is not exempted from sale, the proper course will be for the Collector to advertise the estate, share, or part for sale in the usual way. But he should allow every facility to the Manager on behalf of the Court of Wards to pay up the whole of the arrear that has fallen due. The Manager on payment of the whole arrear will, of course, be entitled to bring a contribution suit against the co-sharers of the minor or other disqualified proprietor for the amount of arrear of revenue with costs that he has paid on their account.

IV. The Collector will in no case attempt to enforce recovery of the arrear from the co-sharer by the certificate procedure. The certificate procedure should only be used to enforce payment of a balance not covered by sale.

V. The Board take this opportunity of again drawing the attention of all Collectors and Managers of estates to the importance of opening separate accounts under the provisions of Act XI of 1859, or of section 70, Act VII (B. C.) of 1876, for all shares held by the Court of Wards, and thus obtaining the protection which the law affords to separated shares. If separation is opposed by the other proprietors, it will be a matter for consideration whether it will not be better to let the Wards' share go to sale than to continue to hold it unprotected. But this course should not be adopted without the approval of the Board, previously obtained.

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4. No. 8 OF DECEMBER 1898.

THE special attention of all Revenue officers is drawn to the judgment of the Privy Council of the 14th of May 1898 in the case of *Balkishen Das and others versus Simpson*, reported at pages 833 to 844 of the *Indian Law Reports*, Calcutta series, Volume XXV, Part XI, November 1898, regarding the sale of an estate under Act XI of 1859 for arrears of revenue, when there were really no arrears.

*See* note 5, section 33, Act XI of 1859.

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5. No. 11 OF MAY 1901.

*Extract paragraphs 3 to 5 (classification and disposal of  
Chaukidari Chakran lands).*

3. The effect of the sale of *chaukidari chakran* lands is clearly described in section 55 of Act VI (B.C.) of 1870. The purchaser acquires the right to hold them free of incumbrances, but subject to the *chaukidari* assessment at half rates. He cannot be said to hold them revenue free, because, at the time of the permanent settlement, revenue was assessed on them under section 41 of Regulation VIII of 1793. The exact legal status of the auction purchasers of such lands need not be settled by the Revenue authorities. It is for the Civil Courts to decide it. All that the Revenue authorities are concerned with is the payment of the assessment due to the Village Chaukidari Fund.

4. The Collector alone can legally make the first transfer, under section 50, and it is not clear that subsequent transfers are valid unless they are made under sections 54 and 55. In order, however, to maintain a record of transferees of *chaukidari chakran* lands, a separate register (no. 81) has been opened. Columns 5, 7 and 8 in the register are also intended for the record of transfers made by sale under section 55 after the first transfer under section 50, Act VI (B. C.) of 1870, and they should be entered in it subject to their being made under section 55, and not by private sale or arrangement, which should not be recognized. The form of notification for sale of *chaukidari* lands for arrears of assessment is given after rule 5 below.

5. When *chakran* lands are sold, under section 55 of Act VI (B. C.) of 1870, in accordance with the provisions of Act XI of 1859, the particulars of the sale should be entered in Register 19 (Sales for arrears of revenue), and should be distinguished from ordinary revenue sales by a letter—say C—or by entry in red ink (B. C. O. no. 11 of May 1901).

## APPENDIX C.

Notification under section 6, Act XI of 1859, and section 55, Act VI (B. C.) of 1870, for sale of Chaukidari Chakran lands.

The public are hereby informed that the *chaukidari chakran* lands, specified below, will be sold under the provisions of Act XI of 1859, at the office of the Collector of \_\_\_\_\_ on \_\_\_\_\_ (date) at \_\_\_\_\_ (hour), for arrears of assessment on account of \_\_\_\_\_ due to the Village Chaukidari Fund, unless such arrears are paid up on or before the said date :—

Serial number of entry in Collector's register of transferred chaukidari lands prescribed by Board's Circular Order no. 11 of December 1897.	Name of the village and thana in which the land is situated.	Area of land transferred as actually found on measurement.			Name and address (if known) of person to whom the land has been transferred under section 56 or sold under section 55 of Act VI (B.C.) of 1870.*	Annual assessment at which the land was transferred.	Amount of the arrears of assessment for which to be sold.			REMARKS.		
		B.	K.	C.			Rs.	A.	P.		Rs.	A.
1	2	3	4	5	6	7	8	9	10	11		
		B.	K.	C.		Rs.	A.	P.	Rs.	A.	P.	

\* NOTE.—If there are more than one transferees, only the name of the person who stands first in the Collector's register need be given, the rest being designated as "and others".

Dated the

19

}

Collector.

15

51 Bd. of Rev.

## APPENDIX D.

## APPENDIX D.

## REGISTERS.

## Register A.

*General Register (Part I) of Revenue-paying lands in estates borne on the revenue-roll of the district of*

*N.B.*—It is not necessary to reserve one page for each estate.

[See sections 6, 7 and 19-A., Act VII (B.C.) of 1876.]

1. Name of estate in tauzi serial order.
2. Tauzi no. of estate.
3. Names of mauzas in which any lands of the estate are situated.
4. Thana name.
5. Mauza no. in Register C.
6. Area in acres of so much of the mauza as falls within the estate.
7. Remarks.

*NOTE 1.*—As many horizontal lines as necessary would be occupied in columns 3, 4, 5 and 6 for each estate entry. The total area in column 6 would be struck for each estate.

*NOTE 2.*—The details of the area of the land left common after partition should be recorded in *red ink* in the "Remarks" column, against the parent estate; and against each of the estates resulting from the partition should be recorded, also in *red ink*, the extent of the interest of that estate in the common lands, together with reference to the page of the Register at which details of the area will be found.

*General Register (Part II) of Revenue-paying lands situated in the district of — but appertaining to estates borne on the revenue-roll of other districts.*

*N. B.*—It is not necessary to reserve one page for each estate.

[See sections 8 and 19A, Act VII (B. C.) of 1876.]

1. Name of estate in tauzi serial order.
2. Tauzi no. of estate.
3. Particulars of other districts.

## APPENDIX D.

*Sub-heads—*

(a) Name of district on revenue roll of which the estate is borne.

(b) Number in general Register, Part I of the fore-named district.

4. Names of mauzas in which any lands of the estate are situated.

5. Thana name.

6. Mauza no. in Register C.

7. Area in acres of so much of the Mauza as falls within the estate.

8. Remarks.

NOTE 1.—As many horizontal lines as necessary would be occupied in columns 4, 5, 6 and 7 for each estate entry. The total area in column 7 would be struck for each estate.

NOTE 2.—The details of the area of the land left common after partition should be recorded in *red ink* in the "Remarks" column against the parent estate; and against each of the estates resulting from the partition should be recorded, also in *red ink*, the extent of the interest of that estate in the common lands, together with a reference to the page of the Register at which details of the area will be found.

*Special and common Registers of under-tenures (E to K).*

E.—Special register of istimrari tenures held at a fixed rent from time of permanent settlement (*section 44, Act XI of 1859*).

(*Finally closed.*)

F.—Special register of tenures existing at time of settlement which have not been held at a fixed rent (*ib.*).

(*Finally closed.*)

G.—Common register of talukdari and other similar tenures and farms created since the time of the settlement and held immediately from the proprietors of estates (*section 41, ib.*).

H.—Special register of ditto ditto (*section 42, ib.*).

I.—Common register of leases of lands whereon dwelling-houses, &c., have been erected (*section 43, ib.*).

## APPENDIX D.

K.—Special register of leases of lands whereon dwelling-houses, &c., have been erected (*section 43, ib.*).

1. Serial number.
2. Name of applicant and date of application.
3. Name of the pargana and estate in which the tenure is situate.
4. Nature of tenure.
5. Name of the village or villages in which the land is situate.
6. Area, in acres, of the land in the tenure, with boundaries in complete detail.
7. Amount of the annual rent of the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it.
8. Date of the deed constituting the tenure, or the date when the tenure was created.
9. Name of the proprietor who created the tenure.
10. Name of the original holder of the tenure.
11. Name of the present possessor, and if he be not the original holder, mode in which he succeeded to the tenure, and whether he holds jointly or solely.
12. Date on which, and authority by whom registry was ordered.
13. Signature of Collector.
14. Remarks.

NOTE 1.—Registers E and F are now finally closed.

NOTE 2.—For instructions about entries in Register G, see rule 2, section X, page 190.

## REGISTER NO. 12.

*Separate Accounts under sections 10 and 11 of Act XI of 1859, and sections 70 and 72 of Act VII (B.C.) of 1876.*

1. Serial number.
2. Name of applicant and date of application.

## APPENDIX D.

REGISTER NO. 12—*concl.*

3. Section and Act under which application is made.
4. Estate concerned—
  - (a) Name of thana.
  - (b) Number on the roll.
  - (c) Government revenue.
5. Specification of share mentioned in the application—
  - (a) Name of mauza.
  - (b) Share of area, if specified.
  - (c) Government revenue.
6. Date and purport of Collector's order.
7. Remarks.

## REGISTER NO. 12A.

*Particulars of separate accounts opened under sections 10 and 11 of Act XI of 1859, and sections 70 and 72 of Act VII (B.C.) of 1876.*

Tauzi number	...	
Name	...	
Pargana	...	
Annual demands, Rs.....		
Revenue-roll reference	..	} Part Volume Page

1. Serial number.
2. Separate account number.
3. Whether share is of whole estate or of a village only.  
If latter, give name of village.
4. Extent of share (in annas, gandas, &c.).
5. Share of land revenue.
6. Date of taking effect.



## APPENDIX D.

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**REGISTER NO. 12A—concl'd.****7. Separate account—****(a) Case number.****(b) Year.****8. Remarks.**

*Instructions :—*1. The total of shares shown in column 4 with the residuary share must always amount to 16 annas.

2. Separate accounts cancelled or modified should be struck out, and separate accounts opened should be posted in a new line.

3. In the Land-Revenue Roll in the column of remarks a cross reference should be made to the number and pages of the volume of the Register.

**REGISTER NO. 13.**

*Deposits made under section 15, Act XI of 1859, for protection of estates from sale.*

**1. Serial number.**

**2. Name of estate and pargana, its number on the roll, and Government revenue:**

**3. Date of deposit and of signature to the agreement.****4. Nature and amount of the deposit.****5. Dates and amount of payments from the deposit.**

**6. Particulars of payment in column 5 (from principal so much, from interest so much).**

**7. Date of withdrawal of the deposit, and receipt of the depositor.**

**8. Amount of fees realized.****9. Date of realization.****10. Signature of Treasurer.****11. Remarks.****REGISTER NO. 14.**

*Application for registry, common or special, under sections 40 to 44, Act XI of 1859.*

**1. Serial number.****2. Name of the applicant and date of application.**

## APPENDIX D.

REGISTER NO. 14—*concl'd.*

3. Name of the estate in which the tenure or the land is situate.
4. Purport of the application.
5. Date and purport of Collector's order.
6. Date and purport of Commissioner's order, if an appeal be preferred under section 49.
7. Reference to entry in registers G. to K.
8. Amount of fees realized.
9. Date of realization.
10. Signature of Treasurer.
11. Remarks.

## REGISTER NO. 19.

*Sales for Arrears of Revenue.*

1. Serial number.
2. Number of estate on the roll.
3. Names of estate and pargana.
4. Government revenue.
5. Name of defaulter.
6. Nature of arrears.
7. Amount of arrears.
8. Date of sale.
9. Name and signature of purchaser.
10. Price.
11. Earnest money deposited; date of payment.
12. Signatures of Treasurer and Treasury Officer.
13. Balance of purchase-money paid; date of payment.
14. Signatures of Treasurer and Treasury Officer.
15. Date of grant of certificate and receipt for it.
16. Amount still due from defaulting proprietor or bidder, including costs.

## APPENDIX D.

REGISTER NO. 19—*concl'd.*

17. Date of forwarding the requisition to the Certificate Officer.
18. Amount recovered.
19. Date of recovery.
20. Remarks.

NOTE 1.—In this and in registers 19A, 20 and 23 enter only actual sales.

NOTE 2.—In districts, where the treasury is the Imperial Bank of India, the Accountant will sign in columns 12 and 14 in place of the Treasurer.

## REGISTER NO. 19A.

*Sales of Khas Mahal tenures under section 11, Act VII (B.C.) of 1868, read with Act XI of 1859.*

1. Serial number.
2. Number of tenure on the roll.
3. Name of tenure with its situation.
4. Annual Government rent.
5. Name of defaulter.
6. Nature of arrears.
7. Amount of arrears.
8. Date of sale.
9. Name and signature of purchaser.
10. Price.
11. Earnest money deposited; date of payment.
12. Signatures of Treasurer and Treasury Officer.
13. Balance of purchase-money paid; date of payment.
14. Signatures of Treasurer and Treasury Officer.
15. Date of grant of certificate and receipt for it.
16. Amount still due from defaulting proprietor or bidder, including costs.
17. Date of forwarding the requisition to the Certificate officer.
18. Amount recovered.
19. Date of recovery.
20. Remarks.

## APPENDIX D.

## REGISTER NO. 20.

*Sales of Patni Taluks under Regulation VIII of 1819.*

1. Serial number.
2. Number of case.
3. Name of parties.
4. Date of presentation of petition.
5. Name of *patni taluk* sold, and its annual *jama*.
6. Amount of balance, and on account of what year.

NOTE 1.—The remaining headings, 7 to 14, are the same as headings 8 to 15 of Register 19 excepting that in column 8 the fact whether the superior landlord of the *patni taluk* is or is not the purchaser should also be noted.

To heading 8 after "purchaser" add the words "and whether he is the superior landlord or not".

NOTE 2.—The credit to the treasury of a fee of one per cent from the sale proceeds of the *patni taluks*, as required by clause 2 of section 17 of Regulation VIII of 1819, should be noted in the column of "Remarks" against "each case, e.g." Sale fee Rs. credited to Treasury on

## REGISTER NO. 23.

*Under-tenures sold under Act VIII (B.C.) of 1865.*

1. Serial number.
2. Names of parties.
3. Property sold.
4. Arrear due.
5. Order under which sale took place. (The remaining headings, 6 to 13, are the same as headings 8 to 15 of Register 19.)

NOTE 1.—In this Register enter only actual sales.

NOTE 2.—For the districts of the Orissa Division the heading of the Register shall be:—Estates, tenures, under-tenures and raiyati holdings sold under Act XI of 1859, Act VIII (B. C.) of 1865, and Act VIII of 1885.

## APPENDIX D.

## REGISTER NO. 35.

*Attached Estates.*

1. Serial number.
2. Names of parties concerned.
3. Authority by whose order attached.
4. Date of order.
5. Name of estate, and if portion of an estate, extent of share.
6. Government revenue.
7. Date of execution of order.
8. How collections are made.
9. Date of order for release, and by what authority issued.
10. Date of execution of order for release.
11. Remarks.

NOTE 1.—Lands attached by a Criminal Court, except under section 146 of the Code of Criminal Procedure, and made over to the Collector for management, should be entered in red ink in this register to prevent their being lost sight of. The Collector should keep a separate volume of this register for entry therein of all lands of which he is appointed to be receiver under section 146, Criminal Procedure Code, and the Subdivisional Officer will keep a similar subsidiary register of properties attached in his subdivision. (14-2-1905.)

NOTE 2.—Estates or shares of estates attached by a Civil Court but not in the custody of the Collector, should be entered in this register in red ink to guard against their being sold without preliminary issue of the notice required by section 5 of Act XI of 1859. A note to this effect should also be made in the corresponding page of the Tauzi Ledger.

## REGISTER NO. 39.

*New Estates.*

1. Serial number.
2. Name of estate.
3. Name of the pargana in which the estate is situate.
4. By what means added to the roll, whether by partition, resumption, escheat, forfeiture, assessment of alluvion, transfer or otherwise.
5. Date of the order by which the estate became liable to the payment of revenue.
6. Date on which the estate was entered in the general register (A), (Part I), and on the roll.
7. Remarks.

## APPENDIX D.

---

**REGISTER NO. 40.***Alterations of Assessment.*

1. Serial number.
2. Name of estate.
3. Name of pargana in which the estate is situate.
4. Rate assessed on soils.
5. Classes of tenants or occupiers.
6. Character of settlement.
7. Term of settlement.
8. Assessment in books.
9. Assessment to be substituted.
10. Date on which new assessment takes effect.
11. Increase.
12. Decrease.
13. Date of orders.
14. By what authority ordered.
15. Remarks.

## APPENDIX E.

## APPENDIX E.

[SEE SECTION VII, RULE 3.]

*Form of Agreement.*

WHEREAS I, the undersigned, A. B., am the recorded proprietor of the estate (or the recorded proprietor of annas of the estate, or one of the recorded co-partners of the estate) called \_\_\_\_\_ which is numbered \_\_\_\_\_ on the revenue-roll of the district of \_\_\_\_\_; and whereas I am desirous that the revenue of the said estate should be regularly paid into the treasury of Government according to the established instalments; and whereas, from accident, negligence, or other cause, it may occur that an arrear of revenue remains due from the said estate after sunset of the latest day of payment fixed under section 3, Act XI of 1859.

Therefore, in order to save the said estate from liability to sale in consequence of such default on my part or on the part of my agents (or on the part of any of my co-partners in the said estate), I have this day deposited in the treasury of Government at \_\_\_\_\_ the sum of \_\_\_\_\_ rupees (or the undermentioned Government securities) for the purpose of being appropriated to the liquidation of any arrear of revenue which may be due on any of the said latest days of payment from the said estate bearing number \_\_\_\_\_ on the revenue-roll of the \_\_\_\_\_ district; and I hereby authorise the Collector of \_\_\_\_\_ for the time being to apply the said sum of \_\_\_\_\_ rupees (or the said Government securities, with such interest as may accrue thereon) to the payment of any arrear of revenue which may become due from the said estate, and which may remain unpaid at sunset on the latest day of payment as aforesaid in accordance with the provisions of section 15 of the said Act XI of 1859, to all which provisions I do hereby consent and agree; and this agreement shall be binding on my heirs and assigns.

Signed and executed by

in the presence of

## APPENDIX F.

## APPENDIX F.

[SEE SECTION VIII, RULE 1.]

*Extract from a letter from the Superintendent and Remembrancer of Legal Affairs, no. 980, dated the 15th June 1867.*

In my opinion (1st) the definition of the term "Collector" in section 1, Act VIII (B.C.) of 1865, does not include Deputy Collectors of all grades, and (2nd) that the question of whether the definition referred to does bar a Deputy Collector from holding a sale in execution of decrees under Act XI of 1859 must depend upon the jurisdiction of such Deputy Collector in the matter of the hearing and disposal of such suits.

2. The interpretation clause of the Act in question declares that the word "Collector" includes persons exercising the full powers of a Collector. The question thereby raised is what are the "full powers" of a Collector in regard to the subject matter of the Act.

3. The Act provides (1st) for the sale of *patni* and other cognate tenures, and (2nd) the sale of under-tenures in execution of a decree for arrears of rent. As regards the first subject, the Collector derives his present jurisdiction in connection with the process prescribed by law for the recovery of an arrear of rent accruing on *patni* tenures, from this Act alone, and, therefore, for the purpose of the present enquiry, it appears to me that the Collector only, or any officer charged with the revenue administration of a district in similar capacity to a Collector or who has been specially vested by Government with the full powers of a Collector, alone comes within the definition referred to.

4. In the latter case the Collector derives his authority in dealing with the matter of the recovery of ordinary rent arrears from Act XI of 1859, and that authority is, by section 19, Act VI (B.C.) of 1862, vested in all Deputy Collectors *on reference by the Collector*, and in Deputy Collectors in charge of divisions of district or specially empowered by Government without such reference. These officers therefore may be said "quoad" the dealing with suits for the recovery of rent to exercise the full powers of a Collector, and I hold them to be included in the terms of the interpretation clause of Act VIII (B.C.) of 1865.



## APPENDIX G.

## APPENDIX G.

*Appeal from Appellate Decree no. 1597 of 1931.*

Jadunandan Singh (Defendant)—*Appellant*,

*versus*

Srimati Savitri Devi (Plaintiff) and Mahabir Singh and others  
(Defendants)—*Respondents*.

KULWANT SAHAY, J.—This is an appeal by the defendant against the decision of the Additional District Judge of Monghyr reversing the decision of the Subordinate Judge and setting aside a revenue sale under Act XI of 1859. It appears that there are several co-sharers in the estate Nadaura, bearing tauzi no. 364 of the Monghyr Collectorate. Some of the co-sharers had opened separate accounts under section 11 of the Act and the share left after the opening of these separate accounts was known as the *ijmali* or the residuary share. The Government revenue payable on account of this *ijmali* share was Rs. 22. The plaintiff owns 1-anna 10-*gandas* 1-*kauri*, and the defendants—second-party own 11-*gandas* out of the total 2-annas 1-*ganda* 1-*kauri* share of the estate which was left as the *ijmali* share. The revenue sale of this *ijmali* share was held on the 20th of September 1927 for arrears of the June instalment of 1927, and it was purchased by the defendant—first-party for a sum of Rs. 120 only. The plaintiff preferred an appeal before the Commissioner against the sale, but this appeal was dismissed on the 18th of November 1927. The present suit was then instituted on the 4th of June 1928 for setting aside the sale. The allegations contained in the plaint were non-service of the notices under sections 6 and 13 and section 7, and that the sale was brought about by the defendants—second-party who fraudulently made default in payment of their share of the Government revenue and who suppressed the several notices issued by the Collector and who purchased the property themselves in the name of their creature the defendant—first-party. The relief asked for was that the sale may be set aside on account of the irregularities which had occasioned serious loss to the plaintiff as property worth more than Rs. 3,000 was sold for the grossly inadequate price of Rs. 120; and secondly, that if the sale be not set aside then the defendant—first-party may be directed to execute a reconveyance in favour of the plaintiff in respect of her share in the estate. The suit was contested

## APPENDIX G.

by the defendant—first-party alone who denied the allegations of the plaintiff as regards the irregularities as well as the fraud alleged by her in bringing about the sale.

The learned Subordinate Judge found that there was no irregularity inasmuch as the notices under sections 6 and 13 and section 7 were properly served, and no fraud was proved to have been practised in respect thereof. He further held that the plaintiff was not entitled to a reconveyance inasmuch as the defendant—first-party did not make the purchase for the defendants—second-party but was the real purchaser at the sale. He found that the price fetched at the sale was inadequate; but having regard to the finding of want of irregularity and fraud he held that mere inadequacy of price was no ground for setting aside the sale. Against the decree of the Subordinate Judge the plaintiff preferred an appeal before the District Judge. The learned District Judge affirmed the finding of the Subordinate Judge on the two points raised by the plaintiff in her plaint and pressed before the Subordinate Judge. A third point was, however, raised before the District Judge, which had not been raised either in the plaint or in the grounds of appeal before the District Judge and which did not form the subject matter of any of the issues framed in the suit. The point was that the sale made by the Collector was without jurisdiction and as such it was liable to be set aside. The learned Officiating District Judge gave effect to this contention of the plaintiff and set aside the sale. The defendant no. 1, who was the purchaser at the revenue sale, has preferred this second appeal, and the only contention raised in the appeal was whether the Collector had jurisdiction to sell the *ijmali* share of the estate.

The question of jurisdiction is raised in this way. The sale purported to be made for the arrears of the "June-kist" of 1927. The learned District Judge finds that there was an arrear in June-kist of 1927. The notification issued by the Collector showed the arrears to be Rs. 6-12-6. The District Judge was of opinion that the arrears amounted to only Rs. 3-11-0. The actual amount of arrears is immaterial. The fact found is that there was an arrear in the June-kist of 1927. The learned District Judge, however, refers to the provisions of sections 2 and 3 of the Revenue Sale Law (Act XI of 1859) and says that under section 2 it did not become an arrear of revenue until the 1st of July 1927 and under section 3 of the Act the latest date for payment of such arrears

## APPENDIX G.

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was the 28th of September 1927, and as the sale was held on the 20th September 1927 it was illegal and invalid as the Collector had no jurisdiction to hold the sale before the 28th of September 1927, and he relied upon the decision of the Privy Council in *Musammat Saraswati Bahuria v. Suraj-narayan Chaudhuri* (I. L. R. 10 Pat. 496).

In the first place it is to be noticed that the point upon which the learned District Judge set aside the sale was not taken by the plaintiff at any stage of the suit until the argument of the appeal before the District Judge. The point involved a determination of a question of fact, viz., what was the kist or instalment according to which the settlement and kistbandi of the mahal in question had been regulated within the meaning of section 2 of the Act. No allegation was made that the 7th of June 1927 was the date of the kist or instalment within the meaning of section 2 and it is overwhelmingly impossible that it could be. No opportunity was given to the defendant to show that the 7th of June was not the kist date under section 2. It is conceded that the latest dates of payment fixed by the Board of Revenue under section 3 of the Act in so far as the present estate is concerned, are the 7th of June, 28th of September, 12th of January, and 28th of March of each year. The learned District Judge has taken it for granted that the 7th of June 1927 was the kist date within the meaning of section 2 of the Act. It is a well-known fact that in Bihar the original *kistbandis* fixed under the engagement entered into with the proprietors for payment of the Government revenue were almost invariably according to the *Fasli* era, and the four dates in June, September, January and March fixed for the payment of the Government revenue are the latest dates of payment determined by the Board of Revenue under section 3 of the Act and could not possibly be *kistbandi* dates of the *Fasli* era. It was pointed out in *Shama Kant Lal v. Kashi Nath Singh* (7 P. L. T. 747) that where the original *kistbandi* under section 2 of the Revenue Sale Act is unknown and forgotten, the latest dates fixed under section 3 are popularly known as the kist dates. They are not the *kistbandi* dates as provided by section 2 but only the latest dates of payment as fixed by the Board of Revenue under section 3 of the Act. The word 'kist' no doubt appears in the *Tauzi* Ledger and the dates in the four months mentioned above are shown there as the June-kist, September-kist, January-kist, and the March-kist. But it has been expressly stated in the *Tauzi* Manual that the word 'kist'

## APPENDIX G.

is therein used to indicate the period between one latest day of payment of the arrears of revenue and the next, and is not used in the restricted sense in which the word is used in section 2 of the Act.

In Saraswati Bahuria's case (I. L. R. 10 Pat. 496) it is evident that it was found as a matter of fact (and not held as a matter of law) that on the evidence which the parties in that case were able to adduce before the Court of first instance, the original *kistbandi* dates under section 2 of the Act coincided with the dates fixed under section 3 of the Act, and it was solely upon the facts as there found that it was held that the sale in that case took place before the latest date of payment prescribed by the Board of Revenue and so was illegal. This distinction was brought out by the Calcutta High Court in *Sri Sri Radha Gobinda Deb Thakur v. Girija Prasanna Mookherjee* (35 C. W. N. 912). That was also the case in *Krishnachandra Bhoumik v. Pabna Dhanabhandar Company, Ltd.* (I. L. R. 59 Cal. 1034).

That in some very rare cases the two dates fixed under sections 2 and 3 of the Act may coincide is illustrated by *Haji Buksh Elahi v. Durlav Chandrá Kar* (I. L. R. 39 Cal. 981) which was a modern case in a Government Khas-mahal. The distinction between the *kistbandi* date under section 2 and the latest date of payment under section 3 was brought out by this Court in *Jagdishwar Narayan v. Muhammad Haziq Hussain* (5 P. L. T. 473) which went in appeal before the Privy Council (I. L. R. 6 Pat. 200), and the Privy Council affirmed the view of this Court on this point and explained the decision in *Haji Buksh Elahi's* case (I. L. R. 39 Cal. 981), but the decision in *Jagdishwar Narayan v. Muhammad Haziq* does not appear to have been brought to their Lordships' notice in *Saraswati Bahuria v. Surajnarain Chaudhuri*.

The learned District Judge has, therefore, fallen into an obvious error in treating the 7th of June 1927 as the *kistbandi* date under section 2 of the Act, in which view the Government revenue would not become an arrear until the 1st of July and the estate could not be sold until the next latest date of payment which was the 28th of September. That the 7th of June 1927 was actually not the *kistbandi* date under section 2 has now been set at rest by the production on behalf of the appellant of the original *kistbandi* from the office of the Collector of Monghyr. Having regard to the fact that the point was not taken in the trial Court and no opportunity

## APPENDIX G.

was given to the defendant to show what the actual kist dates were under section 2 of the Act, we thought it fit to admit in evidence in this Court the original *kistbandi*. The learned Advocate for the plaintiff-respondent waived his right of formal proof of the document, although he objected that the document ought not to be admitted in evidence at this late stage; but having regard to the circumstances, and in order to enable us to give judgment we were of opinion that this is a fit case for admission of new evidence on the point. On referring to this document it is clear that the original *kistbandi* fixed in respect of this estate was according to the *Fasli* era and the eleven kists were payable for the months of that era (except *Bhado* which is blank) in *sicca* currency as follows :—

			Rs.	a.	p.
Asin	...	...	2	8	0
Kartik	...	...	2	8	0
Agrahan	...	...	7	8	0
Pous	...	...	15	0	0
Magh	...	...	10	0	0
Phalgun	...	...	2	8	0
Chait	...	...	10	0	0
Baisakh	...	...	50	0	0
Jeth	...	...	50	0	0
Asarh	...	...	5	0	0
Sravan	...	...	5	1	13

This was certainly the *kistbandi* of the whole estate bearing tauzi no. 364 and could only vary with the compensation for *sicca* currency. By the opening of the separate accounts the revenue for the residuary or *ijmali* share was fixed at Rs. 22 and on referring to the *Tauzi* Ledger it appears that for the payment of this sum of Rs. 22 the latest dates were as follows :—

			Rs.	a.	p.
7th June	...	...	15	2	0
28th September	...	...	1	10	0
12th January	...	...	1	10	0
28th March	...	...	3	10	0

## APPENDIX G.

The payment not having been made on the latest date, viz., the 7th of June 1927, it was within the jurisdiction of the Collector to sell the estate after that date, and, therefore, the sale held on the 20th of September was a valid sale.

The decree of the learned District Judge must therefore be set aside and that of the Subordinate Judge restored. The appeal must be allowed with costs throughout.

KULWANT SAHAY.

MACPHERSON, J.—I agree.

T. S. MACPHERSON.

KHAJA MOHAMED NOOR, J.—I agree.

KHAJA MOHAMED NOOR.

HIGH COURT, PATNA :

*The 16th March 1933.*

In a note at pages 29n to 32n of Volume XIV of the *Patna Law Times*, the Editor, in commenting on the special interest of this judgment, observed :—

“ Nothing could better illustrate the position than the particulars of Mahal Ladugaon, a share of which was in contest in the case of Saraswati Bahuria. They are taken from the Tauzi Ledger and the Land Revenue and other registers of the Collector.

*Account of the total jama of Mahal Ladugaon, pargana Bachaur, tauzi no. 554.*

	Rs.	a.	p.
Annual <i>jama</i> as at decennial settlement	450	0	0
<i>Ezad Batta</i> (compensation for <i>sica</i> coinage).	30	0	0
<i>Nimaksair</i> (salt petre) ... ..	4	11	1
	484 11 1		
	484 11 1		

## APPENDIX G.

*Kistbandi of the Mahal (Fasli era) and last dates for payment (as shown in the Land Revenue Register) of an arrear of revenue.*

Month of Fasli era (section 2).	Original instalments and distribution.	When it became an arrear of revenue.	Last date for payment (section 3 of Act XI of 1859) of " arrear of revenue ".
	Rs. a. p.		
<i>Chait</i> ...	60 0 0		
<i>Baisakh</i> ...	60 0 0		
	<u>120 0 0</u>		
<i>Nimaksair</i> ...	1 2 8		
	<u>121 2 8</u>	1st <i>Jeth</i> ...	7th June (first kist).
<i>Jeth</i> ...	60 0 0		
<i>Asarh</i> ...	60 0 0		
<i>Sawan</i> ...	30 0 0		
	<u>150 0 0</u>		
<i>Nimaksair</i> ...	1 8 7		
	<u>151 8 7</u>	1st <i>Bhado</i> ...	28th September (second kist).
<i>Asin</i> ...	15 0 0		
<i>Kartik</i> ...	15 0 0		
<i>Aghan</i> ...	30 0 0		
	<u>60 0 0</u>		
<i>Nimaksair</i> ...	0 9 4		
	<u>60 9 4</u>	1st <i>Pus</i> ...	12th January (third kist).
<i>Pus</i> ...	60 0 0		
<i>Magh</i> ...	45 0 0		
<i>Phagun</i> ...	45 0 0		
	<u>150 0 0</u>		
<i>Nimaksair</i> ...	1 7 4		
	<u>151 7 4</u>	1st <i>Chait</i> ...	28th March (fourth kist).
<b>Total</b> ...	<u>484 11 11</u>		

## APPENDIX G.

Each date for payment of the four 'kists' (which are not monthly instalments of the *kistbandi* but two or more such instalments lumped together) has been so fixed that the sums in respect of which it is the penal date, have each become an "arrear of revenue" on or before the date. Indeed so far as the first three 'kists' are concerned, they invariably fall in the month of the English era succeeding that in which the last instalment included in them become 'an arrear of revenue' within the meaning of section 2. Thus the first day of Jeth, Bhado and Pus, respectively, never falls later in the calendar year than the months of May, August and December, respectively. As to the fourth kist, the Board of Revenue has been compelled by the necessity of collecting as much as possible of the 'arrears of revenue' within the financial year which terminates with the month of March, to allow a smaller margin but the 28th day of March is the latest date on which the first day of Chait in the *Fasli* year can fall, and in the years 1918 to 1933 inclusive it has always fallen earlier except in 1918 when it fell on the 28th March. Thus, if there is an arrear of revenue on any of those dates (which are really dates fixed under section 3 though popularly designated 'kist days'), it is open to the Collector to sell forthwith and in particular without waiting for the first day of the next succeeding month of the English era which is altogether irrelevant, or for the so-called next 'kist day'.

Part of the confusion has arisen from the unwise use in the *Tauzi Manual* of 'kist' in a different connotation from that in which *kistbandi* is used in section 2 of the *Land Revenue Sales Act*, a fact often lost sight of. Very occasionally too as in the case of *Haji Buksh Elahi* (39 Cal. 981) there may have been deviation from the normal in modern times, either because the circumstances of the case were peculiar or through ignorance or mistake in the Collector's office.



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