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C O N T E N T S

Government of Bengal. Legislative Department -

1. Bengal Act VII of 1936: The Bengal Agricultural Debtors Act, 1935. (pp. 764-841) As modified up to 11th July 1940. (X9(1):6:(7762) G9)
2. Bengal Act VIII of 1940: The Bengal Agricultural Debtors (Amendment) Act, 1940. (X9(1):6:(7762) H1 842-857)
3. Bengal Act VIII of 1942: The Bengal Agricultural Debtors (Second Amendment) Act, 1942. (X9(1):6:(7762) H2 858-859)
4. Bengal Act VII of 1933: The Bengal Money-Lenders Act, 1933. As modified up to the 1st March, 1941. (X9(1):6:(7762) H1 860-869)
5. Bengal Act X of 1940: The Bengal Money-Lenders Act, 1940. (Y22:1:(7762) 870-901)
6. Government of Bengal. Judicial Department. The Bengal Money-Lenders Rules 1940 (X62:1:(7762) H2 902-937)
7. Act VIII of 1885: The Bengal Tenancy Act 1885. As modified up to the 1st April 1942. (X9(1):6:(7762) H2 938-112)
8. Bengal Act No. I of 1903. An Act to validate certain transfers, made under the Bengal Tenancy Act, 1885. (X9(1):6:(7762) D3 1130-113)
9. Bengal Act No. I of 1907. An Act to amend and supplement the Bengal Tenancy Act, 1885. (X9(1):6:(7762) D7 1132-116)
10. Bengal Act No. II of 1918. The Bengal Tenancy (Amendment) Act, 1918. An Act to supplement and amend the Bengal Tenancy Act, 1885. (X9(1):6:(7762) E8 1162-117)

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Government of Bengal
Legislative Department

Bengal Act VII of 1936

The Bengal
Agricultural Debtors Act, 1935

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Bengal Act VII of 1936.

THE BENGAL AGRICULTURAL DEBTORS ACT, 1935.

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Bengal Act VII of 1936.

THE BENGAL AGRICULTURAL DEBTORS ACT, 1935.

[Published in the *Calcutta Gazette* of the 9th April, 1936.]

An Act to provide for the relief of indebtedness of agricultural debtors in Bengal.

WHEREAS it is expedient to provide for the relief of indebtedness of agricultural debtors and to amend the law governing the relations between agricultural debtors and their creditors;

5 & 6 Geo.
V, c. 61;
6 & 7 Geo.
V, c. 37;
9 & 10
Geo. V, c.
101.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Agricultural Debtors Act, 1935.

(2) It extends to the whole of Bengal.

(3) It shall come into force in such areas on such dates as the Local Government may, by notification, direct.

Short title,
extent and
commencement.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "agriculture" includes horticulture and dairy farming and the use of land for any purpose of husbandry inclusive of the keeping or breeding of live-stock, poultry or bees and the growing of fruits, vegetables and the like;

(2) "amount payable under an award" means an amount included under clause (d) of sub-section (1) of section 25 in an award as payable by a debtor in respect of any debt, or any part of such amount which remains unpaid, together with any interest on such amount or part thereof which is due under the award;

(3) "Appellate Officer" means an officer appointed under section 40;

(4) "award" means an award as made by a Board under sub-section (2) of section 19 or sub-section (6) of section 22, or as confirmed or modified by an Appellate Officer under sub-section (5) of section 40;

(5) "Board" means a Debt Settlement Board established under sub-section (1) of section 3, and includes an officer or the Collector authorised under the proviso to section 4;

(Section 2.)

(6) "Certificate-officer" means a Certificate-officer as defined in the Bengal Public Demands Recovery Act, 1913; Ben. Act
III of 1913.

(7) "Collector" includes any officer appointed by the Local Government to exercise any of the powers of a Collector under this Act;

(8) "debt" includes all liabilities of a debtor in cash or in kind, secured or unsecured, whether payable under a decree or order of a Civil Court or otherwise, and whether payable presently or in future, but does not include the following:—

- (i) any amount the liability for the payment of which is only contingent;
- (ii) any rent not due at the time when a Board determines the amount of debts under section 18;
- (iii) any share of the produce of land payable on account of land cultivated under the system known as *adhi*, *barga* or *bhag*;
- (iv) any amount recoverable as a public demand, except—
 - (a) an amount referred to in sub-section (1) of section 28, and
 - (b) arrears of rent payable on account of the use or occupation of land held by a tenant;
- (v) any amount a suit or application for the recovery of which is barred by limitation; or
- (vi) any debt due to any bank included in the Second Schedule to the Reserve Bank of India Act, 1934; II of 1934.

(9) "debtor" means a debtor whose primary means of livelihood is agriculture and who—

- (a) is a *raiyat* or an under-*raiyat*, or
- (b) cultivates land himself or by members of his family or by hired labourers or by *adhidars*, *bargadars* or *bhagdars*;

and includes a group of persons who join in making an application under the provisions of sub-section (1) of section 9;

(10) "loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of a Board, in substance a loan;

of 1936.]

(Sections 3—7.)

(11) "notification" means a notification published in the *Calcutta Gazette*;

(12) "prescribed" means prescribed by rules made under this Act;

(13) "settlement" includes an amicable settlement and a settlement or adjustment made by order of a Board;

(14) "supplementary income" means any income derived by the debtor from any source other than agriculture;

(15) the expressions "landlord," "*raiyat*," "*under-raiyat*," and "rent" have the same meanings as in the Bengal Tenancy Act, 1885.

VIII of
1885.

3. (1) The Local Government may, by notification, establish one or more Debt Settlement Boards for any local area specified in the notification.

Establishment of
Debt Settlement
Boards.

(2) Each Board shall consist of a Chairman and of not more than four other members, to be appointed by the Local Government.

4. The Local Government may, at any time, for reasons to be recorded in writing, cancel, by notification, the appointment of the Chairman or of any other member of a Board or dissolve any Board:

Power of Local
Government to
cancel appoint-
ments of
Chairman and
members of, or to
dissolve, a Board.

Provided that if, when a Board is dissolved, the Local Government does not consider the appointment of another Board to be necessary or desirable, it may authorise any officer who has had judicial experience to exercise such of the powers of the Board in connection with the making of awards as it may specify and the Collector to exercise all or any of the other powers of the Board.

5. The Local Government may, by notification, delegate its powers under sections 3 and 4 to the Commissioner.

Delegation of
power to
Commissioner.

6. The Chairman and the other members of a Board shall be appointed for a term of not more than three years, but shall be eligible for reappointment.

Tenure of
office.

7. The Local Government may, by notification, from time to time, empower a Board to exercise all or any of the powers under sub-section (2) of section 9, sub-section (2) of section 13, clause (b) of sub-section (1) of section 19, section 21, or sub-section (1) of section 22, and unless so empowered a Board shall not exercise any such powers.

Local
Government
may invest
Boards with
certain powers.

(Sections 8, 9.)

Application for
settlement of
debts.

8. (1) Subject to the provisions of section 9, a debtor may make an application for the settlement of his debts to a Board established for the local area within which he ordinarily resides within five years after the first Board is established under sub-section (1) of section 3 for that local area.

(2) Unless the debtor has already made an application under sub-section (1) any of his creditors may make an application to a Board to which the debtor might have applied under that sub-section.

(3) If applications are made to more than one Board in respect of the debts of the same debtor, such applications shall, subject to rules made under this Act, be transferred to and dealt with by one Board.

(4) No objection as to the place of presentation of the application shall be allowed by the Appellate Officer unless such objection was taken, at the earliest opportunity, before the Board to which the application was made and unless there has been a consequent failure of justice.

(5) Notwithstanding anything contained in sub-section (1), a Board may for good and sufficient reason entertain a further application in respect of any debt incurred before the date of a first application under sub-section (1) or sub-section (2) whether such application was made to it or to any other Board, except when such application under either of the said sub-sections has been dismissed under sub-section (3) of section 13 or under clause (b)(ii) of sub-section (1) or sub-section (2) of section 17.

(6) A Board shall not entertain any further application for the settlement of any debt which has been incurred by a debtor (including any rent which has become due) after the date of application under sub-section (1) or sub-section (2).

Application for
settlement of
joint debts.

9. (1) An application may be made under sub-section (1) of section 8 for the settlement of—

- (a) an ancestral debt for which two or more persons are jointly liable if one of such persons is a debtor within the meaning of this Act, and they all join in making such application, or
- (b) a debt for which two or more persons are jointly liable if all such persons are debtors within the meaning of this Act and they all join in making such application,

and the Board may pass orders under this Act regarding any debt to which such application relates.

of 1936.]

(Sections 10, 11.)

(2) If a debtor within the meaning of this Act is jointly liable with other persons for any debt other than a debt for arrears of rent such debtor may make an application under sub-section (1) of section 8 for relief in respect of his liability in regard to such debt, and the Board, after consideration of the facts and circumstances of the case, may, if so empowered under section 7, pass such order as it thinks fit under this Act regarding the debt so far as such applicant is concerned and such order of the Board shall not be questioned in any Civil Court or in any manner other than that provided in this Act:

Provided that an order of the Board under this sub-section shall not affect the liability of any other person who is jointly liable with the debtor for the debt, but in no case shall the creditor to whom the debt is due be entitled to realize more than his dues from the persons jointly liable.

10. Every application under section 8 shall be in writing in the prescribed form and shall be signed and verified in the prescribed manner. Form and verification of application.

11. (1) Any application made by a debtor under sub-section (1) of section 8 shall contain a statement of debt, in the prescribed form, which shall include the following:— Statement of debts to be included in application.

- (a) the name of the place where he ordinarily resides;
- (b) the names and addresses of his creditors, the total amount claimed by each creditor to be owing to him in respect of each debt, so far as is known to the debtor, and a note whether each such claim is admitted by the debtor;
- (c) the history of each such debt with particulars of the original principal and the rate of interest chargeable;
- (d) details of any debts for which the debtor is liable as a surety or is liable with other persons as a joint debtor or joint surety together with the names and addresses of all such persons;
- (e) particulars of the debtor's property both movable and immovable (including claims due to him), a specification of its value and of the places where it may be found, and details of any attachment, mortgage, lien or charge subsisting thereon together with the names and addresses of the co-sharers, if any, of the debtor;

(Section 12.)

- (f) particulars of any property as in clause (e) which has been transferred by the debtor within two years previous to the date of his application, together with the name and address of the transferee;
- (g) particulars of any supplementary income of the debtor; and
- (h) a declaration that all his debts and all his properties have been included in the statement.

(2) An application made by a creditor under sub-section (2) of section 8 shall contain a statement of debt, in the prescribed form, which shall include the following:—

- (a) the name of the place where the debtor ordinarily resides;
- (b) the total amount of every debt claimed by the creditor to be owing to him from the debtor;
- (c) the history of each such debt with particulars of the original principal and the rate of interest chargeable;
- (d) the names and addresses of the other creditors, so far as they are known to the creditor;
- (e) particulars, so far as they are known to the creditor, of the debtor's property, as in clause (e) of sub-section (1);
- (f) particulars, so far as they are known to the creditor, of any supplementary income of the debtor; and
- (g) a declaration that agriculture is the primary means of livelihood of the debtor.

Procedure on receipt of application.

12. (1) On receipt of an application under section 8, the Board shall pass an order fixing a date and place for consideration of the application, unless the application is dismissed forthwith under section 17.

(2) The Board shall, in the prescribed manner, give notice of such order to the debtor (if he is not himself the applicant) or (if the debtor is the applicant) to all persons whose names and addresses are given in the application.

(3) The applicant may, at the discretion of the Board, be examined on oath or affirmation on the date fixed under sub-section (1) or on such other date as the Board may fix and a memorandum of the substances of the statement made by the applicant shall be recorded in writing by the Board.

of 1936.]

(Section 13.)

(4) No woman who has made an application under section 8 shall, against her will, be required to appear in person before the Board for the purpose of being examined under this section.

13. (1) If after consideration of the application the Board does not dismiss the application forthwith under section 17, it shall, in the prescribed manner, serve a notice on the debtor (unless the debtor is himself the applicant) and on every creditor whose name and address are given in the application and also publish a general notice requiring the debtor and all creditors to submit a statement of debt in the prescribed form within one month of the date of service of the notice, or publication of the general notice, whichever is later:

Further statements of debts.

Provided that, if the Board is satisfied that the debtor or any creditor is for good and sufficient cause unable to comply with such notice, it may extend the period for the submission of his statement of debt.

(2) If any creditor fails to comply with a notice under sub-section (1), the Board, if so empowered under section 7, may pass an order in writing declaring that the amount of any debt due to him from the debtor on the date of such order shall, for the purposes of this Act, be deemed to be the amount stated in the statement of debt submitted by the debtor, and that no debt of which the creditor has failed to submit a statement, other than a debt which the debtor has included in his statement of debt shall be payable;

and such order shall not be questioned in any Civil Court or in any manner other than that provided in this Act.

(3) If any debtor fails to comply with a notice under sub-section (1), the Board shall dismiss the application and may allow against the debtor such costs as the Board considers reasonable and such costs shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the same is due:

Provided that an order made under sub-section (2) or sub-section (3) may be varied or reversed by the Board on an application for review or by the Appellate Officer on appeal if it is proved to the satisfaction of the Board or of the Appellate Officer that the creditor or debtor or any person referred to in clause (d) of sub-section (1) of section 11, as the case may be, had no knowledge of the notice under sub-section (1) or that he has complied with it or that he had sufficient reason for non-compliance:

(Sections 14—16.)

Provided further that when a Board has ceased to exist an order made under sub-section (2) or sub-section (3) may be varied or reversed by the Appellate Officer on an application if it is proved to his satisfaction that the creditor or debtor or any person referred to in clause (d) of sub-section (1) of section 11, as the case may be, had no knowledge of the notice under sub-section (1) or that he has complied with it or that he had sufficient reason for non-compliance.

Production of documents.

14. (1) When a creditor has submitted to the Board a statement of debt under sub-section (2) of section 11 or sub-section (1) of section 13, the Board shall fix a date for the production of all documents (including entries in books of account) by which the creditor intends to prove any debt owing to him together with a true copy of each such document.

(2) The Board shall mark in the prescribed manner each original document so produced, keep the copy after verifying its correctness, and return the original to the creditor.

(3) No document relating to a debt regarding which a creditor has failed to submit a statement under sub-section (2) of section 11 or sub-section (1) of section 13, and no document which being in the possession or under the control of the creditor has not been produced by him as required by sub-section (1), shall be admissible in evidence against the debtor or his successor in interest in any suit by the creditor or by any person claiming under him for the recovery of the debt to which such document relates unless it is proved to the satisfaction of the Civil Court that there were sufficient reasons for non-production of the document before the Board.

Board to attempt amicable settlement.

15. Subject to any rules made under this Act, the Board shall call upon the debtor and each creditor to explain his case regarding each debt, and shall use its best endeavours to induce them to arrive at an amicable settlement.

Power of Board to require attendance of persons and production of documents and to receive evidence.

16. (1) Subject to rules made under this Act, a Board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a Civil Court by the Code of Civil Procedure, 1908.

Act V of 1908.

(2) Any person present may be required by a Board to furnish any information or to produce any document then and there in his possession or power.

of 1936.]

(Sections 17, 18.)

17. (1) An application under section 8 may be dismissed by the Board, at any stage of its proceedings, in respect of all or any of the debts to which it relates,—

Dismissal of applications.

(a) if, for reasons to be stated in writing, the Board does not consider it desirable or practicable to effect a settlement of debts, or

(b) if, in the opinion of the Board—

(i) the applicant fails to pursue his application with due diligence, or

(ii) the debtor is attempting to use the provisions of this Act with a view to defraud any creditor or any person referred to in clause (d) of sub-section (1) of section 11.

(2) An application under section 8 shall be dismissed by the Board, if in its opinion—

(a) such application includes a claim which is intended to defraud any creditor; or

(b) there has been transfer of any property by the debtor within two years previous to the date of such application with a view to defraud any creditor.

18. (1) If there is any doubt or dispute as to the existence or amount of any debt, the Board shall decide whether the debt exists and determine its amount:

Determination of amounts of debts.

Provided that a decree of a Civil Court relating to a debt shall be conclusive evidence as to the existence and amount of the debt as between the parties to the decree.

(2) Before passing any order under sections 19, 21, or 22 the Board, after considering the statements of debt submitted under section 11 and sub-section (1) of section 13 and after hearing the parties and considering the evidence produced shall, in accordance with rules made under this Act, determine in respect of each debt the amount of the principal and the amount of the arrears of interest due thereon from the debtor up to the date of such determination.

(3) In determining the original principal of a debt for the purposes of proviso (ii) to clause (b) of sub-section (1) of section 19, the Board shall determine the amount of the original loan, after excluding any amount of interest on such loan which may at any time have been included as principal.

(4) When the Board has determined under sub-section (2) the amounts of the principal of a debt due from

(Sections 19, 20.)

a debtor and of the arrears of interest due thereon, the decision of the Board in this respect shall not be questioned in any Civil Court or in any manner other than that provided in this Act.

Settlement of debts.

19. (1) Subject to rules made under this Act—

- (a) when any creditor agrees in respect of any debt owing to him to an amicable settlement with the debtor, the Board shall embody such settlement in writing; or
- (b) when creditors to whom there is owing not less than forty *per cent.* of the total debt, agree to an amicable settlement with the debtor, the Board, if it is so empowered under section 7 and if it considers that an offer made by the debtor for the settlement of any debt not included in the amicable settlement is a fair offer which the creditor concerned ought reasonably to accept, may pass an order that the debt to which the offer relates shall be settled in accordance with such offer:

Provided that for the purposes of this clause an offer shall not be considered by the Board to be a fair offer—

- (i) if its terms are less favourable than the terms of the amicable settlement relating to a debt of the same description, or
- (ii) if it contemplates the reduction of any debt to an amount which is less than the original principal of the debt as determined under sub-section (3) of section 18, unless creditors to whom there is owing not less than sixty *per cent.* of the total debt agree to the proposed reduction.

(2) The terms of any settlement of debt under sub-section (1) shall be embodied in an award to be made by the Board.

Explanation.—The words “total debt” mean the sum total of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute.

Decision by Board as to whether person is a debtor.

20. If any question arises in connection with proceedings before a Board under this Act, whether a person is a debtor or not the Board shall decide the matter.

of 1936.]

(Sections 21, 22.)

21. Subject to any rules made under this Act, if any creditor does not accept an offer made by the debtor which in the opinion of the Board is fair and such as the creditor ought reasonably to accept, the Board if it is so empowered under section 7, instead of passing any other order which it is competent to pass, may grant to the debtor a certificate in the prescribed form in respect of the debt to which the offer relates,

Grant of certificate in respect of certain debts.

and thereafter, notwithstanding the provision of any law for the time being in force, no Civil Court shall allow to the plaintiff, in any suit for the recovery of such debt, any costs in such suit or any interest on the debt after the date of such certificate in excess of simple interest at the rate of six *per cent. per annum* on the principal of such debt as determined under sub-section (2) of section 18, and no decree for the recovery of such debt shall be executed until all amounts payable under an award in respect of other debts of the debtor have been paid, or such award has ceased to subsist under sub-section (5) of section 29, or, if there is no award, until the expiry of such period not exceeding ten years as may be specified in the certificate.

22. (1) When the Board is satisfied that the debts of a debtor are such that they cannot be reduced under the provisions of section 19 to an amount which he will be able to repay within twenty years, and that the debtor is a fit person to be given the benefit of this section, the Board if it is so empowered under section 7, may, subject to rules made under this Act and after considering all the circumstances of the debtor, by a written order declare him to be insolvent and may by such order either—

Adjustment of an insolvent debtor's debts.

(a) reduce his debts to such amounts as it considers that he can pay within a period, not exceeding twenty years, to be mentioned in the order, or

(b) if, for reasons to be recorded in writing, it does not consider the reduction of his debts under clause (a) to be desirable, direct that, subject to the provisions of sub-section (4) and of section 24, all his property shall be sold and the proceeds shall be utilised towards the payment of his debts in such manner as may be specified in the order.

(2) The Certificate Officer shall, on the requisition of the Board in the prescribed form, sell the property of the debtor referred to in clause (b) of sub-section (1) in

(Section 22.)

the manner provided in the Bengal Public Demands Recovery Act, 1913, and the provisions of the said Act regarding sales in execution of certificates shall, subject to the provisions of this Act, apply to such sale. Ben. Act
III of
1913.

(3) When the Board reduces the debts of an insolvent under clause (a) of sub-section (1), it shall specify in the order what sum he shall pay in each year towards the settlement of the debts as so reduced and in what manner such sums shall be distributed among the creditors:

Provided that the sum to be paid in each year shall be fixed by the Board at an amount which, in its estimation, is likely; in a year of normal harvest, to leave to the insolvent as provision towards his maintenance one-half of the surplus which remains from the value of the produce of his land after paying to the landlord the current rent due for such land.

(4) When the Board directs the sale of an insolvent's property under clause (b) of sub-section (1), it shall set aside, as provision towards his maintenance, not more than one-third of the land held by him in his direct possession exclusive of the land occupied by his dwelling house:

Provided that, even if he holds less than three acres of land in his direct possession, the Board shall thus set aside not less than one acre of the land so held exclusive of the land occupied by his dwelling house:

Provided further that no portion of the immovable property of an insolvent shall be exempted under this sub-section from sale for realisation of arrears of rent.

(5) When the property of the insolvent referred to in clause (b) of sub-section (1) has been sold under sub-section (2) or when he has paid all the sums fixed by the Board under sub-section (3) or when his property has been sold under section 28, the Board shall make an order of discharge and grant him a certificate of discharge in the prescribed form. Such certificate shall release the insolvent from all debts which were or might have been included in the application under section 8:

Provided that if within five years of the order declaring the debtor insolvent any property is acquired by, devolves on, or is declared by a Civil Court or is discovered to belong to, the insolvent debtor such property shall, on application made by a creditor to the Board, be available for distribution among the creditors of the debtor, to the extent of their debts, in such manner as the Board may direct.

(6) An order passed by a Board under sub-section (1) shall be embodied in an award to be made by the Board.

of 1936.]

(Sections 23—25.)

VIII of
1885.

23. The principal of any debt due in respect of arrears of rent or under section 171 of the Bengal Tenancy Act, 1885, shall not be reduced under clause (b) of sub-section (1) of section 19 or under section 22, and the provisions of section 21 shall not apply to the principal of any such debt.

The principal of certain debts not to be reduced.

24. (1) When a debtor is declared insolvent under sub-section (1) of section 22, the Board shall, in the prescribed manner, determine what portion of his immovable property shall be deemed to be the dwelling house of the debtor for the purposes of this Act.

Exemption of certain property of an insolvent debtor from sale.

(2) Such dwelling house shall be exempt from sale under sub-section (2) of section 22 and from sale for the recovery of any unsecured debt under section 28, and, notwithstanding anything contained in any other Act, the debtor shall be incompetent to mortgage, charge, lease or alienate the same in any way until he is granted a certificate of discharge under sub-section (5) of section 22.

(3) Notwithstanding anything contained in any other Act, no part of the property of a debtor who has been declared insolvent under sub-section (1) of section 22 shall be exempt from sale under sub-section (2) of that section or under section 28 except such movable property as shall be prescribed, the immovable property excluded as provision towards his maintenance, and, subject to the provisions of sub-section (2), his dwelling house as determined under sub-section (1).

25. (1) An award shall be in the prescribed form and shall include the following particulars:—

Awards.

- (a) a list of the immovable properties of the debtor with particulars of any mortgage, lien or charge subsisting thereon;
- (b) a list of the movable properties of the debtor on which there is any mortgage, lien or charge with particulars of such mortgage, lien or charge;
- (c) details of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute;
- (d) the amount to be paid to each creditor for each debt owing to him under the terms of an amicable settlement or of an order of the Board under section 19 or section 22;
- (e) the manner and the order in which and the times at which the amounts referred to in clause (d) shall be paid:

(Section 26.)

Provided that the order in which such amounts shall be paid shall be in accordance with any rules made under this Act;

- (f) the rate of interest, if any, payable on each amount referred to in clause (d);
- (g) an order that all the properties mentioned in the list referred to in clause (a) or clause (b) except such properties as are exempt from sale shall, subject to any mortgage, lien or charge subsisting thereon, be security for the amounts payable under the award.

(2) At a place and time of which notice shall be given to the parties in the prescribed manner the award shall be explained to the parties present and shall be signed by the Board; but the validity of an award shall not be affected by the absence of any of the parties.

(3) From the date of the signing of the award under sub-section (2) it shall, in supersession of all previous decisions of a Civil Court in respect of the debts mentioned in it, be binding on the debtor and his creditors and the successors in interest of such debtor and creditors.

Special provision for arrears of rent.

26. Notwithstanding anything contained in this or any other Act—

- (a) if any rent due for any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 falls into arrears, the landlord may include in a suit for the recovery of such arrears the amount of arrears of rent payable under such award;
- (b) if any land referred to in clause (a) is advertised for sale in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the provisions of section 171 of the Bengal Tenancy Act, 1885, shall not apply, but any person whose interests are affected may pay into Court the amount requisite to prevent such sale, and thereupon the amount so paid, together with interest at the prescribed rate which shall not exceed twelve *per centum per annum*, shall be included by the Board in the award in accordance with rules made under this Act and such amount shall take priority of every other debt payable under the award and of every other charge on the land other than an arrear of rent.

Ben. Act III of 1913. VIII of 1885.

of 1936.]

(Sections 27, 28.)

27. (1) When an award is made as regards any debt which is secured by a mortgage, lien or charge on any immovable property of a debtor, such mortgage, lien or charge shall subsist to the extent of the amount payable in respect of such debt under the award until such amount has been paid or the property has been sold for the satisfaction of such debt or the debtor has been granted a certificate of discharge under sub-section (5) of section 22.

Existing mortgages, etc. to subsist.

(2) Any mortgage, lien or charge upon any immovable property securing a debt on account of which any amount is payable under a decree of a Civil Court shall cease to subsist when such property is sold under the provisions of section 28 or sub-section (4) of section 29.

28. (1) If by the date fixed the debtor fails to pay any amount payable under an award such amount shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the amount is due.

Recovery of amounts included in an award.

If the creditor does not so apply such amount shall, for the purposes of clause (iii) of section 35, be deemed to be a debt incurred by the debtor after the date of the signing of the award.

(2) Subject to any rules made under this Act, the Certificate Officer, if satisfied that there is good reason for the failure to pay by the fixed date, may allow time to the debtor within which to pay any amount due. If the Certificate Officer thus allows time, he may, if he thinks fit, further direct that a similar period of time shall be given to the debtor after the time fixed in the award for payment of any other amount payable thereunder, within which to make such other payment, and the award shall be deemed to be modified accordingly.

(3) If the Certificate Officer does not allow time under sub-section (2), or if the debtor fails to pay within the time allowed, the Certificate Officer shall proceed to recover the amount in the manner provided in the Bengal Public Demands Recovery Act, 1913:

Ben. Act
III of
1913.

Provided that, if such debtor has been declared insolvent under section 22, the Certificate Officer after allowing such time, if any, as he thinks fit, shall, forthwith, subject to the provisions of sub-section (4) of section 22 and section 24, sell such portion of the property of the debtor as will be sufficient to pay all the amounts payable whether under the award or under sub-section (1) of section 29.

(Section 29.)

(4) Subject to the proviso to sub-section (3), if the Certificate Officer fails to recover the full amount in respect of which an application has been made under sub-section (1) by sale of the movable property or agricultural produce of the debtor, he shall sell such portion of the immovable property of the debtor as will be sufficient to pay all amounts payable whether under the award or under sub-section (1) of section 29 or under any decree which has, to the knowledge of the Certificate Officer, been passed by a Civil Court in respect of a debt of which details are included in the award under clause (c) of sub-section (1) of section 25.

(5) When the Certificate Officer sells the immovable property of a debtor under sub-section (2) of section 22 or under this section he shall keep a separate account of the proceeds realised from the sale of any portion of such property upon which a mortgage, lien or charge is shown as subsisting in the list included in the award under clause (a) of sub-section (1) of section 25.

(6) If any debt in respect of which no amount is payable under the award is secured by a mortgage, lien or charge shown in such list, the Certificate Officer shall sell the immovable property subject to such mortgage, lien or charge, unless a decree of a Civil Court for the recovery of the debt is outstanding in respect of such property. If such a decree is outstanding the Certificate Officer shall distribute the sale proceeds in accordance with the provisions of clause (a) of sub-section (2) of section 29.

**Distribution of
sale proceeds.**

29. (1) When a Certificate Officer has sold property of a debtor under sub-section (2) of section 22 or under section 28 he shall first pay from the proceeds of the sale any amount payable as costs of sale in execution of the certificate and next—

(a) any amount payable for arrears of rent under the award and as arrears of rent which may have fallen due between the date of determination of the debt under sub-section (2) of section 18 and the date of confirmation of the sale; and

(b) any amount due to the Local Government included in a certificate issued under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
III of
1913.

(2) After making the payments under sub-section (1), if any, the Certificate Officer shall proceed as follows:—

(a) he shall, in the first instance, apply the surplus of the proceeds realised from the sale

of 1936.]

(Section 29.)

IV of
1882.

of any portion of the immovable property for which he has kept a separate account under the provisions of sub-section (5) of section 28 to the payment of any amounts payable under the award or under a decree of a Civil Court to creditors on account of debts which are secured by a mortgage, lien or charge upon such property in order of priority determined in accordance with the provisions of the Transfer of Property Act, 1882, and if such surplus is insufficient to meet such payments the balance of such amounts shall, unless the debt has been extinguished by such sale, rank equally with unsecured debts:

Provided that if there is any dispute or doubt as to the priority of payment of such debts the Certificate Officer shall refer the matter to the Appellate Officer who shall determine the same according to the provisions of the aforesaid Act;

(b) when there is a surplus after payment of the amounts referred to in clause (a), the Certificate Officer shall apply the sum of such surplus and of any proceeds realised from the sale of other property of the debtor to the payment of any other amounts payable under the award,

and if such sum is insufficient to meet such payment such other amounts and any amount payable on account of an unsecured debt for the recovery of which a decree has been passed by a Civil Court, and of which details are given in the award under clause (c) of sub-section (1) of section 25, shall rank equally between themselves for purposes of payment:

Provided that if any instalment has been paid under the award, for the year when an instalment fell due for the recovery of which application has been made under sub-section (1) of section 28, any instalment which fell due in that year, but which has not been paid, shall be given priority;

(c) any surplus remaining after payment of the creditors in accordance with the foregoing provisions of this section shall be paid by the Certificate Officer to the debtor.

(Sections 30, 31.)

(3) The proceedings of a Certificate Officer under this section shall be in accordance with rule made under this Act.

(4) Notwithstanding anything contained in the Bengal Public Demands Recovery Act, 1913, if any amount payable under an award in respect of a debt secured by a mortgage, lien or charge on any immovable property of a debtor which is exempted from sale under the said Act cannot be recovered as a public demand, the Certificate Officer shall recover such amount by the sale of such immovable property and shall pay to the debtor the balance (if any) remaining after payment of such amount. The procedure under the Bengal Public Demands Recovery Act, 1913, shall be applicable to such sale.

Ben. Act
III of
1913

(5) If the Certificate Officer fails to recover as a public demand or under the provisions of sub-section (4) any amount payable under the award, he shall certify that it is irrecoverable and thereupon the award shall cease to subsist and any amount that was payable under it shall be recoverable within three years from the date on which the award ceased to subsist as if a decree of the Civil Court had been passed for its payment on such date:

Provided that the Certificate Officer, instead of at once certifying any part of such amount to be irrecoverable, may make a report to the Board which may pass an order declaring that the debtor is insolvent and thereupon the provisions of sub-section (5) of section 22 shall as far as possible apply to such insolvent.

Distribution of balance of sale proceeds when land is sold in execution of a decree or certificate for arrears of rent.

30. Notwithstanding anything in any other Act, when any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 is sold in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the balance of the sale proceeds which remains after the payment of the amounts referred to in clauses (a), (b) and (c) of sub-section (1) of section 169 of the Bengal Tenancy Act, 1885, or in clauses (a), (b) and (c) of sub-section (1) of section 26 of the Bengal Public Demands Recovery Act, 1913, shall be paid to the Certificate Officer, or retained by him as the case may be, for distribution in the manner provided in section 29 of this Act.

VIII of
1885.

Settlement of debts of a member of a co-operative society.

31. No settlement under this Act of the debts of a member of a co-operative society registered under the Co-operative Societies Act, 1912, who owes any amount to such society, shall be valid without the previous approval in writing of a prescribed authority.

II of 1912.

of 1936.]

(Sections 32—35.)

32. If a debtor informs the Board at the earliest opportunity that the decree referred to in the proviso to sub-section (1) of section 18 was obtained *ex parte* and that he intends to apply to the Civil Court to set it aside the Board may stay further proceedings for such time as it may consider necessary to enable the debtor to set aside the decree.

Stay of proceedings before the Board.

33. Except as provided in this Act, no Civil or Revenue Court shall entertain a suit, application or proceeding against the debtor in respect of—

Bar to suits and proceedings in Civil and Revenue Courts.

(a) any debt included in an application under section 8 or in a statement under sub-section (1) of section 13, proceedings in connection with which are pending before a Board; or

(b) any debt for which any amount is payable under an award, except in accordance with the provisions of sub-section (5) of section 29.

34. When an application under section 8 or a statement under sub-section (1) of section 13 includes any debt in respect of which a suit or other proceeding is pending before a Civil or Revenue Court, the Board shall give notice thereof to such Court in the prescribed manner, and thereupon the suit or proceeding shall be stayed until the Board has either dismissed the application in respect of such debt or made an award thereon, and if the Board includes any part of such debt under clause (d) of sub-section (1) of section 25 in the award or the Board decides that the debt does not exist the suit or proceeding shall abate so far as it relates to such debt.

Stay and abatement of suits and proceedings.

35. Notwithstanding anything contained in any Act, no decree of a Civil Court or certificate under the Bengal Public Demands Recovery Act, 1913, shall be executed—

Bar to execution of certain decrees and certificates.

Ben. Act III of 1913.

(i) for the recovery of a debt included in an application under section 8 or in a statement under sub-section (1) of section 13, until—

(a) the application has been dismissed by the Board in respect of such debt; or

(b) an award in which such debt is included has ceased to subsist under sub-section (5) of section 29;

(Sections 36—39.)

- (ii) except as provided in clause (a) of sub-section (1) of section 29, for the recovery of arrears of rent which became due from a debtor after the date of an application under section 8 in respect of his debts, unless notice of such decree or certificate has been given to the Board in the prescribed manner, and three months have elapsed since such notice was given;
- (iii) for the recovery of a debt incurred by a debtor after the date of an application under section 8 in respect of his debts, until all the amounts payable under the award have been paid or such award has ceased to subsist under sub-section (5) of section 29.

Certain decrees to be treated as nullities.

36. Notwithstanding anything contained in any Act, any decree of a Civil Court passed in regard to a debt after the date of an application under section 8 shall be treated as a nullity in so far as—

- (a) it is inconsistent with any order passed by a Board under sub-section (2) of section 13 regarding any debt or with any determination by the Board under section 18 of the principal and the arrears of interest of any debt included in a subsisting award; or
- (b) it relates to a debt the documents in respect of which being in the possession or under the control of the creditor have not been produced before the Board and marked by the Board as required by section 14 unless it is proved to the satisfaction of the Civil Court that there were sufficient reasons for non-production of the documents before the Board.

Attachment of debtor's immovable property.

37. After receipt of an application under section 8 the Board may attach the immovable property of the debtor in the prescribed manner and thereupon such property shall be deemed to be under attachment under the provisions of the Code of Civil Procedure, 1908, until such attachment is withdrawn or cancelled by the Board.

Act V of 1908.

Bar to appeal or revision.

38. No appeal or application for revision shall lie against any decision or order of or award by a Board except as provided in this Act.

Transfer of applications from one Board to another.

39. (1) The Local Government may authorise the Collector, subject to rules made under this Act, to transfer from one Board to another, for disposal, applications made under section 8.

of 1936.]

(Section 40.)

(2) A Board to which an application is transferred under sub-section (1) may continue the proceedings in connection with the application from the stage which has been reached when the application is transferred.

40. (1) An appeal may be made in the prescribed Appeals. manner to an Appellate Officer to be appointed by the Local Government against—

- (a) any decision or order of a Board under this Act or of a Certificate Officer under sub-section (2) of section 28 or section 29,
- (b) any award,
- (c) the grant of a certificate under section 21, or
- (d) any failure on the part of a Board to perform its functions under this Act or any abuse by a Board of its powers:

Provided that in the case of appeals against any order under sub-section (2) of section 13, section 18, clause (b) of sub-section (1) of section 19, section 21, section 22, or section 29, the Appellate Officer appointed under this section shall be a person who has had such judicial experience as may be prescribed by rules made under this Act.

(2) An appeal under sub-section (1) shall lie if made within thirty days of the date of the decision, order, award or certificate referred to in that sub-section.

(3) The Local Government may make rules regarding the procedure to be followed by the Appellate Officer, and for the control and inspection of his work.

(4) The Appellate Officer may after giving the appellant an opportunity of being heard reject an appeal summarily if he considers that there is no sufficient ground for interfering.

(5) If the Appellate Officer does not reject the appeal summarily, he shall hear the parties, if they appear, and consider any reasons which the Board may submit in regard to the grounds of such appeal, and may then either confirm or modify the decision or order of the Board or direct the Board to take such action as he thinks fit.

(6) The orders of the Appellate Officer shall be final.

(7) An appeal for the purpose of this section includes an application for revision.

(8) No appeal shall lie against a decision or order passed by a Board with the consent of the debtor and the creditor.

(Sections 41—45.)

Power of Appellate Officer to transfer application.

41. Whenever it appears to the Appellate Officer that for the ends of justice it is expedient to transfer from one Board to another an application made under section 8, he may order that the application be transferred to such Board as may be specified in the order and unless he otherwise directs, the provisions of sub-section (2) of section 39 shall be applicable to the proceedings in connection with such application.

Reference to Appellate Officer.

42. Subject to rules made under this Act, a Board may, if it thinks necessary, make a reference to the Appellate Officer stating the question upon which his opinion, advice or direction is required and the Appellate Officer shall give his opinion, advice or direction, as the case may be, thereon as soon as possible.

Control over Board.

43. (1) A Board shall, in all proceedings under this Act, be subject to the control of the Local Government.

(2) Any person appointed by the Local Government in this behalf may inspect or cause to be inspected any property, books or documents in the possession or under the control of the Board and require the Board to furnish such statements, accounts, reports, copies of documents or such other information relating to the proceedings and duties of the Board, as he thinks fit to call for.

Power of Board to review its order.

44. Subject to any rules made under this Act—

(a) a Board may, on an application made by any person interested, review any decision or order passed by it and pass such order in reference thereto as it thinks fit,

(b) an Appellate Officer may, on an application made by any person interested, review any decision or order passed by him or his predecessor and pass such order in reference thereto as he thinks fit:

Provided that no order shall be varied or reversed unless an opportunity has been given to the person interested to appear and be heard in support of such order.

Certain Acts not to apply to the proceedings under this Act.

45. (1) Except as otherwise provided in this Act, the provisions of—

(a) the Indian Evidence Act, 1872, and

(b) the Code of Civil Procedure, 1908,

shall not apply to any proceedings before a Board.

I of 1872.
Act V of
1908.

of 1936.]

(Sections 46—52.)

(2) The procedure to be followed by a Board in any proceedings before it shall, subject to the provisions of this Act, be in accordance with rules prescribed under this Act.

XVIII of
1879.

46. Subject to any rules made under this Act, no legal practitioner as defined in the Legal Practitioners Act, 1879, shall represent any party in any proceedings before a Board, nor shall any other agent, without the permission of the Board, represent any party in any such proceedings.

Representation
of a party
before a Board.

XVI of
1908.

47. (1) Every award and every certificate granted under section 21 or sub-section (5) of section 22, shall be registered under the Indian Registration Act, 1908, by the Chairman of the Board in such manner and within such period as may be prescribed.

Registration of
awards and
certificates.

(2) For the purpose of the registration under sub-section (1) of an award or a certificate the Chairman shall be deemed to be an officer of Government empowered to execute such instrument within the meaning of section 88 of the Indian Registration Act, 1908.

Act XLV
of 1860.

48. A copy of any order made by a Board under sub-section (2) of section 13, and a copy of any award shall be published in such manner as may be prescribed by the Local Government.

Publication of
orders and
awards.

49. The Chairman and the other members of a Board shall be deemed to be public servants within the meaning of the Indian Penal Code.

Chairman and
members of
Boards deemed
to be public
servants.

50. All proceedings under this Act shall be deemed to be judicial proceedings within the meaning of section 228 of the Indian Penal Code.

Proceedings
deemed to be
judicial
proceedings.

51. No suit, prosecution or legal proceeding whatever shall lie against any Chairman or other member of a Board, Appellate Officer or Certificate Officer in respect of anything in good faith done or intended to be done under this Act.

Indemnity.

52. Notwithstanding anything contained in any other Act, when the period of limitation is calculated for any application, suit or appeal regarding a debt which has been the subject of any proceedings under this Act, the time during which such proceedings continued and the time during which the person interested in such debt was debarred by any provision of this Act from making or instituting the application, suit or appeal, or executing the decree in question, as the case may be, shall be excluded.

Extension of
period of
limitation.

(Sections 53—55.)

Negotiability of
awarded
amounts.

53. The right to receive any amount payable under an award shall be assignable in the prescribed manner.

Penalties.

54. (1) Whoever—

- (a) intentionally makes any false statement in writing or makes any false statement which has been recorded whether on oath or not before any Board or an Appellate Officer, in any proceeding under this Act;
- (b) intentionally produces before a Board any false copy or translation of a document;
- (c) falsely personates another and in such assumed character produces any document or makes any admission or statement or does any other act in any proceeding under this Act; or
- (d) abets any act punishable under this section;

shall, on conviction, be liable to imprisonment for a term which may extend to three years or to fine or to both.

(2) No prosecution for any offence under this section may be commenced except by, or with the permission of, the Collector.

Power to make
rules.

55. (1) The Local Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Local Government may make rules to provide for all or any of the following matters, namely:—

- (a) the maximum amount of debt which can be dealt with under the provisions of this Act;
- (b) the fees to be paid for anything done under this Act and the persons by whom and the manner in which such fees shall be paid;
- (c) the allowances, if any, to be paid to the Appellate Officer, the Chairman and other members of a Board;
- (d) the office establishment of a Board, the pay, allowances and conditions of service of such establishment;
- (e) the procedure of a Board, and the quorum for a meeting of a Board;

of 1936.]

(Section 55.)

- (f) the forms of application under section 8, of statements of debt under section 11, of awards, of certificates under section 21, of requisitions under sub-section (2) of section 22, and of certificates of discharge under sub-section (5) of section 22;
- (g) the transfer of applications under sub-section (3) of section 8 or sub-section (1) of section 39 and disposal of applications under sub-section (3) of section 8;
- (h) the manner of signing and verification of applications under section 8;
- (i) the manner of giving notice under sub-section (2) of section 12, sub-section (1) of section 13 and sub-section (2) of section 25;
- (j) the marking of original documents produced under sub-section (2) of section 14;
- (k) the amicable settlement by a Board of debts under section 15;
- (l) the summoning and examination by a Board of parties and their witnesses, and the production of documents, under sub-section (1) of section 16;
- (m) the determination by a Board under sub-section (2) of section 18 of the amount of the principal of a debt and the amount of interest due thereon;
- (n) the settlement of debts by a Board under section 19;
- (o) the grant of a certificate under section 21;
- (p) the declaration by a Board under sub-section (1) of section 22 that a debtor is insolvent, the sale of his property and the reduction of his debts;
- (q) the determination of a portion of the immovable property of a debtor as his dwelling house under sub-section (1) of section 24;
- (r) the movable property of an insolvent debtor which shall be exempt under sub-section (3) of section 24 from sale;
- (s) the order of payment of the amount referred to in clause (d) of sub-section (1) of section 25;
- (t) the period within which an application under sub-section (3) of section 13 and sub-section (1) of section 28 shall be made;
- (u) the grant of time under sub-section (2) of section 28 for payment of the amount due;

(Section 56.)

- (v) the distribution of sale proceeds and the proceedings of a Certificate Officer under section 29;
 - (w) the authorities whose approval is required under section 31;
 - (x) the manner of giving notice under section 34 and under section 35;
 - (y) the manner of attachment of immovable property under section 37;
 - (z) the transfer and disposal of applications under section 39;
 - (za) the manner of making an appeal under sub-section (1) of section 40;
 - (zb) the judicial experience required in the case of certain Appellate Officer under proviso to sub-section (1) of section 40;
 - (zc) the procedure of an Appellate Officer and the control and inspection of his work under sub-section (3) of section 40;
 - (zd) the manner of review under section 44 of a decision or order passed by a Board or an Appellate Officer;
 - (ze) the representation of a party in proceedings before a Board;
 - (zf) the manner in which and the period within which awards and certificates shall be registered under sub-section (1) of section 47;
 - (zg) the publication under section 48 of awards and of certain orders; and
 - (zh) the manner of assignment of an award under section 53.
- (3) The power of making rules conferred by clause (b) of sub-section (2) is subject to the condition that the rules be made after previous publication.

Penalty for
breach of rules.

56. In making any rule under this Act the Local Government may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues.



Government of Bengal

Legislative Department

Bengal Act VII of 1936

**The Bengal
Agricultural Debtors Act, 1935**

As modified up to 11th July 1940

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STATEMENT OF REPEALS AND AMENDMENTS.

REPEALED IN PART AND AMENDED	Ben. Act VIII of 1940
AMENDED .. .. .	..	The Government of India (Adaptation of Indian Laws) Order, 1937.

The following changes have been made in reprinting the Act:—

- (1) repealed matter has been omitted, explanatory notes being inserted;
- (2) amendments have been inserted in their proper places, with explanatory foot-notes;
- (3) the number and year of Acts referred to in the text have been noted in the inner margin.

Bengal Act VII of 1936.

THE BENGAL AGRICULTURAL DEBTORS ACT, 1935.

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21. Grant of certificate in respect of certain debts.
22. Adjustment of an insolvent debtor's debts.
23. The principal of certain debts not to be reduced.
24. Exemption of certain property of an insolvent debtor from sale.
25. Awards.
26. Special provision for arrears of rent.
27. Existing mortgages, etc., to subsist.
28. Recovery of amounts included in an award.
29. Distribution of sale proceeds.
30. Distribution of balance of sale proceeds when land is sold in execution of a decree or certificate for arrears of rent.
31. Settlement of debts of a member of a co-operative society.
32. Stay of proceedings before the Board.
33. Bar to suits and proceedings in Civil and Revenue Courts.
34. Stay and abatement of suits and proceedings.
35. Bar to execution of certain decrees and certificates.
36. Certain decrees to be treated as nullities.

SECTION.

37. Attachment of debtor's immovable property.
38. Bar to appeal or revision.
39. Transfer of applications from one Board to another.
40. Appeals.
- 40A. Revision.
41. (*Repealed.*)
42. Reference to Appellate Officer.
43. Control over Board.
44. Power of Board to review its order.
45. Certain Acts not to apply to the proceedings under this Act.
46. Representation of a party before a Board.
47. Registration of awards and certificates.
48. Publication of orders and awards.
49. Chairman and members of Boards deemed to be public servants.
50. Proceedings deemed to be judicial proceedings.
51. Indemnity.
52. Extension of period of limitation.
53. Negotiability of awarded amounts.
54. Penalties.
55. Power to make rules.
56. Penalty for breach of rules.
57. Certain fees recoverable as public demands.

Bengal Act VII of 1936.

THE BENGAL AGRICULTURAL DEBTORS ACT, 1935.¹

(As modified up to the 11th July 1940.)

[9th April 1936.]

An Act to provide for the relief of indebtedness of agricultural debtors in Bengal.

WHEREAS it is expedient to provide for the relief of indebtedness of agricultural debtors and to amend the law governing the relations between agricultural debtors and their creditors;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Agricultural Debtors Act, 1935.

Short title,
extent and
commencement.

(2) It extends to the whole of Bengal.

(3) It shall come into force in such areas on such dates as the ²[Provincial Government] may, by notification, direct.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "agriculture" includes horticulture and dairy farming and the use of land for any purpose of husbandry inclusive of the keeping or breeding of live-stock, poultry or bees and the growing of fruits, vegetables and the like;

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, Extraordinary, dated the 12th August 1935, page 65; and for report of the Select Committee, see *Calcutta Gazette*, 1935, Part IV, page 200; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Volume XLVI, No. 2, pages 492 and 559, and *ibid* XLVII, No. 1, pages 60, 76, 113, 143, 176, 205, 244, 277, 309, 343, 395 and 429, and *ibid* No. 2, pages 17, 49, 98, 141, 291 and 350.

²These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

5 and 6
Geo.
V, c. 61;
6 and 7
Geo.
V, c. 37;
9 and 10
Geo. V,
c. 101.

(Section 2.)

(2) "amount payable under an award" means an amount included under clause (d) of sub-section (1) of section 25 in an award as payable by a debtor in respect of any debt, or any part of such amount which remains unpaid, together with any interest on such amount or part thereof which is due under the award;

(3) "Appellate Officer" means an officer appointed under section 40;

(4) "award" means an award as made by a Board under sub-section (2) of section 19 or sub-section (6) of section 22, or as confirmed or modified by an Appellate Officer under sub-section (5) of section 40;

(5) "Board" means a Debt Settlement Board established under sub-section (1) of section 3, and includes an officer or the Collector authorised under the proviso to section 4;

(6) "Certificate-officer" means a Certificate-officer as defined in the Bengal Public Demands Recovery Act, 1913;

Ben. Ac
III of
1913.

¹[(6A) "Civil Court" means a Civil Court within the meaning of the Bengal, Agra and Assam Civil Courts Act, 1887, and includes any Court exercising appellate or revisional jurisdiction over any such Court;]

XII of
1887.

(7) "Collector" includes any officer appointed by the ²[Provincial Government] to exercise any of the powers of a Collector under this Act;

(8) "debt" includes all liabilities ³[incurred prior to the first day of January 1940] of a debtor in cash or in kind, secured or unsecured, whether payable under a decree or order of a Civil Court or otherwise, and whether payable presently or in future, but does not include the following:—

- (i) any amount the liability for the payment of which is only contingent;
- (ii) any rent not due at the time when a Board determines the amount of debts under section 18;
- (iii) any share of the produce of land payable on account of land cultivated under the system known as *adhi*, *barga* or *Bhag*;

¹This clause (6A) was inserted by section 2 (1) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²See footnote 2 on page 1, *ante*.

³These words were inserted by section 2 (2) (a) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

GOVERNMENT OF BENGAL.

Legislative Department.

Correction Slips for the Reprint of the Bengal Agricultural Debtors Act, 1935 (Ben. Act VII of 1936) as modified up to the 11th July 1940, showing the amendments made therein by the Bengal Agricultural Debtors (Amendment) Act, 1942 (Ben. Act II of 1942).

Page 2—

In section 2, in clause (4), after the figures "22" insert the words, figures, letter and brackets "or sub-section (5) of section 37A" and after the figures "40" insert the words, figures and letter "or under section 40A", respectively.

[Inserted by Ben. Act II of 1942, section 2(1).]

Page 2—

In section 2, in clause (6A), after the words "any such court" insert the words and figures "and also includes a union court established under the Bengal Village Self-Government Act, 1919".

Ben. Act
V of 1919.

[Inserted by Ben. Act II of 1942, section 2(2).]

Page 3—

In section 2, in clause (9), after the figure "9" insert the words, figures, letter and brackets "and any person who, by virtue of the provisions of sub-section (7) of section 37A shall be deemed to be a debtor".

[Inserted by Ben. Act II of 1942, section 2(3).]

~~and includes a group of persons who join in making an application under the provisions of sub-section (1) of section 9;~~

(10) "loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of a Board, in substance a loan.

¹The word "and" was omitted by section 2 (2) (b) (i) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²The word "and" and sub-clause (iv) (c) were inserted by section 2 (2) (b) (ii), *ibid.*

³These words were substituted for the words "by limitation; or" by section 2 (2) (c), *ibid.*

⁴This sub-clause (vii) was inserted by section 2 (2) (d), *ibid.*

of 1936.]

(Section 2.)

(iv) any amount recoverable as a public demand, except—

- (a) an amount referred to in sub-section (1) of section 28, ¹ * *
- (b) arrears of rent payable on account of the use or occupation of land held by a tenant; ²[and
- (c) any sum referred to in Article 12A of Schedule I to the Bengal Public Demands Recovery Act, 1913, or any sum ordered by a liquidator under any Act of the Provincial Legislature, for the time being in force, relating to co-operative societies to be recovered as a contribution to the assets of a co-operative society or as the cost of liquidation thereof;]

Ben. Act
III of
1913.

(v) any amount a suit or application for the recovery of which is barred ³[by limitation, or which is otherwise irrecoverable under the law;]

II of 1934.

(vi) any debt due to any bank included in the Second Schedule to the Reserve Bank of India Act, 1934;

⁴[(vii) any tax or rate due to a Municipality or Union Board or Union Committee;]

(9) "debtor" means a debtor whose primary means of livelihood is agriculture and who—

- (a) is a *raiyat* or an under-*raiyat*, or
- (b) cultivates land himself or by members of his family or by hired labourers or by *adhidars*, *bargadars* or *bhagdars*;

and includes a group of persons who join in making an application under the provisions of sub-section (1) of section 9;

(10) "loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of a Board, in substance a loan.

¹ The word "and" was omitted by section 2 (2) (b) (i) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

² The word "and" and sub-clause (iv) (c) were inserted by section 2 (2) (b) (ii), *ibid.*

³ These words were substituted for the words "by limitation; or" by section 2 (2) (c), *ibid.*

⁴ This sub-clause (vii) was inserted by section 2 (2) (d), *ibid.*

4. *The Bengal Agricultural Debtors Act, 1935.*

[Ben. Act VII.]

(Sections 3, 4.)

(11) "notification" means a notification published in the ¹[*Official Gazette*];

²[(11A) "original principal" means the loan as originally borrowed, excluding any amount of interest on such loan which may at any time have been included as principal;]

(12) "prescribed" means prescribed by rules made under this Act;

(13) "settlement" includes an amicable settlement and a settlement or adjustment made by order of a Board;

(14) "supplementary income" means any income derived by the debtor from any source other than agriculture;

(15) the expressions "landlord", "*raiyat*", "*under-raiyat*" and "rent" have the same meanings as in the Bengal Tenancy Act, 1885.

VIII of
1885.

Establishment of
Debt Settlement
Boards.

3. (1) The ³[Provincial Government] may, by notification, establish one or more Debt Settlement Boards for any local area specified in the notification.

(2) Each Board shall consist of a Chairman and of not more than four other members, to be appointed by the ³[Provincial Government].

Power of Provin-
cial Government
to cancel appoint-
ments of Chair-
man and mem-
bers of, or to
dissolve, a Board.

4. The ³[Provincial Government] may, at any time, for reasons to be recorded in writing, cancel, by notification, the appointment of the Chairman or of any other member of a Board or dissolve any Board:

Provided that if, when a Board is dissolved, the ³[Provincial Government] does not consider the appointment of another Board to be necessary or desirable, it may authorise any ⁴[servant of the Crown] to exercise such of the powers of the Board in connection with the making of awards as it may specify and the Collector to exercise all or any of the other powers of the Board.

¹These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²This clause (11A) was inserted by section 2 (3) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

³See footnote 2 on page 1, *ante*.

⁴These words were substituted for the words "officer who has had judicial experience" by section 3 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

of 1936.]

(Sections 5—8.)

5. The ¹[Provincial Government] may, by notification, delegate its powers under sections 3 and 4 to the Commissioner. Delegation of power to Commissioner.

6. The Chairman and the other members of a Board shall be appointed for a term of not more than three years, but shall be eligible for reappointment. Tenure of office.

7. The ¹[Provincial Government] may, by notification, from time to time, empower a Board to exercise all or any of the powers under ²[sub-sections (2) or (3) of section 9], sub-section (2) of section 13, clause (b) ³[or clause (c)] of sub-section (1) of section 19, section 21, or sub-section (1) of section 22, and unless so empowered a Board shall not exercise any such-powers. Provincial Government may invest Boards with certain powers.

8. (1) Subject to the provisions of section 9, a debtor may make an application for the settlement of his debts to a Board established for the local area within which he ordinarily resides within five years after the first Board is established under sub-section (1) of section 3 for that local area. Application for settlement of debts.

(2) Unless the debtor has already made an application under sub-section (1) any of his creditors may make an application to a Board to which the debtor might have applied under that sub-section.

(3) If applications are made to more than one Board in respect of the debts of the same debtor, such applications shall, subject to rules made under this Act, be transferred to and dealt with by one Board.

(4) No objection as to the place of presentation of the application shall be allowed by the Appellate Officer unless such objection was taken, at the earliest opportunity, before the Board to which the application was made and unless there has been a consequent failure of justice.

(5) Notwithstanding anything contained in sub-section (1), a Board may for good and sufficient reason entertain a further application in respect of any debt incurred before the date of a first application under sub-section (1) or sub-section (2) whether such application was made to it or to any other Board, except when such application under either of the said sub-sections has

¹See footnote 2 on page 1, *ante*.

²These words, figures and brackets were substituted for the words, figures and brackets "sub-section (2) of section 9" by section 4 (a) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

³These words, letter and brackets were inserted after the word, letter and brackets "clause (b)" by section 4 (b), *ibid*.

(Section 9.)

been dismissed under sub-section (3) of section 13 or under clause (b) (ii) of sub-section (1) or sub-section (2) of section 17.

(6) A Board shall not entertain any further application for the settlement of any debt which has been incurred by a debtor (including any rent which has become due) after the date of application under sub-section (1) or sub-section (2).

Application for
settlement of
joint debts.

9. (1) An application may be made under sub-section (1) of section 8 for the settlement of—

- (a) an ancestral debt for which two or more persons are jointly liable if one of such persons is a debtor within the meaning of this Act, and they all join in making such application, or
- (b) a debt for which two or more persons are jointly liable if all such persons are debtors within the meaning of this Act and they all join in making such application,

and the Board may pass orders under this Act regarding any debt to which such application relates.

(2) If a debtor within the meaning of this Act is jointly liable with other persons for any debt other than a debt for arrears of rent such debtor may make an application under sub-section (1) of section 8 for relief in respect of his liability in regard to such debt, and the Board, after consideration of the facts and circumstances of the case, may, if so empowered under section 7, pass such order as it thinks fit under this Act regarding the debt so far as such applicant is concerned and such order of the Board shall not be questioned in any Civil Court or in any manner other than that provided in this Act:

Provided that an order of the Board under this sub-section shall not affect the liability of any other person who is jointly liable with the debtor for the debt, but in no case shall the creditor to whom the debt is due be entitled to realize more than his dues from the persons jointly liable.

¹[(3) If a debtor within the meaning of this Act is liable with other persons for a debt for arrears of rent, such debtor may, notwithstanding the provisions of clause (b) of sub-section (1), make an application under sub-section (1) of section 8 for relief in respect of the entire amount of such debt, and the Board, after

¹This sub-section (3) was added by section 5 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

[of 1936.]

(Sections, 10, 11.)

consideration of the facts and circumstances of the case, may, if so empowered, under section 7, pass such order as it thinks fit under this Act regarding the entire amount of such debt, and such order of the Board shall not be questioned in any Civil Court or in any manner other than that provided in this Act:

Provided that, notwithstanding anything contained in any other law,—

- (a) on compliance in full by the said debtor with an order of the Board under this sub-section, his liability and that of the said other persons to the landlord for the arrears of rent in respect of which such order is made, shall cease, but the said other persons shall be liable to contribute to the debtor in respect of the sum paid by him under the said order, and
- (b) during the period allowed in the said order for full compliance with the terms thereof relating to the arrears of rent, the landlord shall be debarred from instituting a suit for the recovery of the same, unless during such period the debtor fails to comply with the said terms.]

10. Every application under section 8 shall be in writing in the prescribed form and shall be signed and verified in the prescribed manner. Form and verification of application.

11. (1) Any application made by a debtor under sub-section (1) of section 8 shall contain a statement of debt, in the prescribed form, which shall include the following:— Statement of debts to be included in application.

- (a) the name of the place where he ordinarily resides;
- (b) the names and addresses of his creditors, the total amount claimed by each creditor, to be owing to him in respect of each debt, so far as is known to the debtor, and a note whether each such claim is admitted by the debtor;
- (c) the history of each such debt with particulars of the original principal and the rate of interest chargeable;
- (d) details of any debts for which the debtor is liable as a surety or is liable with other persons as a joint debtor or joint surety together with the names and addresses of all such persons;

(Section 11.)

¹[(*dd*) details of any liabilities incurred on or after the first day of January 1940;]

(*e*) particulars of the debtor's property both movable and immovable (including claims due to him), a specification of its value and of the places where it may be found, and details of any attachment, mortgage, lien or charge subsisting thereon together with the names and addresses of the co-sharers, if any, of the debtor;

²[(*ee*) particulars of any property as in clause (*e*) of which the creditor has taken possession either as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, together with the name and address of any person who may be in possession of any portion of such property under the creditor;]

(*f*) particulars of any property as in clause (*e*) which has been transferred by the debtor within two years previous to the date of his application together with the name and address of the transferee;

(*g*) particulars of any supplementary income of the debtor; and

(*h*) a declaration that all his debts and all his properties have been included in the statement.

(2) An application made by a creditor under sub-section (2) of section 8 shall contain a statement of debt, in the prescribed form, which shall include the following:—

(*a*) the name of the place where the debtor ordinarily resides;

(*b*) the total amount of every debt claimed by the creditor to be owing to him from the debtor;

(*c*) the history of each such debt with particulars of the original principal and the rate of interest chargeable;

(*d*) the names and addresses of the other creditors, so far as they are known to the creditor;

(*e*) particulars, so far as they are known to the creditor, of the debtor's property, as in clause (*e*) of sub-section (1);

¹This clause (*dd*) was inserted by section 6 (1) (a) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²This clause (*ee*) was inserted by section 6 (1)(b), *ibid.*

of 1936.]

(Sections 12, 13.)

- ¹[(*ee*) particulars of any property as in clause (*e*) of which the creditor has taken possession either as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, together with the name and address of any person who may be in possession of any portion of such property under the creditor;]
- (*f*) particulars, so far as they are known to the creditor, of any supplementary income of the debtor; and
- (*g*) a declaration that agriculture is the primary means of livelihood of the debtor.

12. (1) On receipt of an application under section 8, the Board shall pass an order fixing a date and place for consideration of the application, unless the application is dismissed forthwith under section 17. Procedure on receipt of application.

(2) The Board shall, in the prescribed manner, give notice of such order to the debtor (if he is not himself the applicant) or (if the debtor is the applicant) to all persons whose names and addresses are given in the application.

(3) The applicant may, at the discretion of the Board, be examined on oath or affirmation on the date fixed under sub-section (1) or on such other date as the Board may fix and a memorandum of the substances of the statement made by the applicant shall be recorded in writing by the Board.

(4) No woman who has made an application under section 8 shall, against her will, be required to appear in person before the Board for the purpose of being examined under this section.

13. (1) ²[At the time of giving the notice referred to in sub-section (2) of section 12, the Board shall,] in the prescribed manner, serve a notice on the debtor (unless the debtor is himself the applicant) and on every creditor whose name and address are given in the application and also publish a general notice requiring the debtor and all creditors to submit a statement of debt in the prescribed form within one month of the date of service of the notice, or publication of the general notice, Further statements of debts.

¹This clause (*ee*) was inserted by section 6 (2) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²These words, figures and brackets were substituted for the words and figure "If after consideration of the application the Board does not dismiss the application forthwith under section 17, it shall," by section 7 (a), *ibid.*

(Section 13.)

whichever is later ¹[and further requiring all creditors to produce on a date specified in the notices all documents (including entries in books of account) by which the creditor intends to prove any debt owing to him, together with a true copy of each such document]:

Provided that, if the Board is satisfied that the debtor or any creditor is for good and sufficient cause unable to comply with such notice, it may extend the period for the submission of his statement of debt ²[or the production of his documents and true copies thereof].

(2) If any creditor fails to comply with a notice under sub-section (1), the Board, if so empowered under section 7, may pass an order in writing declaring that the amount of any debt due to him from the debtor on the date of such order shall, for the purposes of this Act, be deemed to be the amount stated in the statement of debt submitted by the debtor, and that no debt of which the creditor has failed to submit a statement, other than a debt which the debtor has included in his statement of debt shall be payable;

and such order shall not be questioned in any Civil Court or in any manner other than that provided in this Act.

(3) If any debtor fails to comply with a notice under sub-section (1), the Board shall dismiss the application and may allow against the debtor such costs as the Board considers reasonable and such costs shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the same is due:

Provided that an order made under sub-section (2) or sub-section (3) may be varied or reversed by the Board on an application for review or by the Appellate Officer on appeal if it is proved to the satisfaction of the Board or of the Appellate Officer that the creditor or debtor or any person referred to in clause (d) of sub-section (1) of section 11, as the case may be, had no knowledge of the notice under sub-section (1) or that he has complied with it or that he had sufficient reason for non-compliance:

Provided further that when a Board has ceased to exist an order made under sub-section (2) or sub-section (3) may be varied or reversed by the Appellate Officer on an application if it is proved to his satisfaction that the creditor or debtor or any person referred to in clause (d) of sub-section (1) of section 11, as the case may be, had

¹These words were inserted by section 7 (b) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²These words were inserted by section 7 (c), *ibid.*

The Bengal Agricultural Debtors Act, 1935. 11

of 1935.]

(Sections 13A—16.)

no knowledge of the notice under sub-section (1) or that he has complied with it or that he had sufficient reason for non-compliance.

¹[13A. If in any statement of debt submitted by a creditor under sub-section (1) of section 13 any person who has not been served with a notice under sub-section (2) of section 12 is stated to be in possession of any portion of the immovable property of the debtor, the Board shall serve on such person in the prescribed manner a notice requiring him, if he desires to make any representation, to appear before the Board on such date as may be specified in the notice.]

Notice to persons in possession under a creditor.

14. (1) * * *

(2) The Board shall mark in the prescribed manner each original document ³[produced in compliance with the notice under sub-section (1) of section 13], keep the copy after verifying its correctness, and return the original to the creditor.

Production of documents.

(3) No document relating to a debt regarding which a creditor has failed to submit a statement under sub-section (2) of section 11 or sub-section (1) of section 13, and no document which being in the possession or under the control of the creditor has not been produced by him as required by sub-section (1) ⁴[of section 13], shall be admissible in evidence against the debtor or his successor in interest in any suit by the creditor or by any person claiming under him for the recovery of the debt to which such document relates unless it is proved to the satisfaction of the Civil Court that there were sufficient reasons for non-production of the document before the Board.

15. Subject to any rules made under this Act, the Board shall call upon the debtor and each creditor to explain his case regarding each debt, and shall use its best endeavours to induce them to arrive at an amicable settlement.

Board to attempt amicable settlement.

16. (1) Subject to rules made under this Act, a Board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a Civil Court by the Code of Civil Procedure, 1908.

Power of Board to require attendance of persons and production of documents and to receive evidence.

Act V of 1908.

¹This section 13A was inserted by section 8 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²Sub-section (1) of section 14 was omitted by section 9 (1), *ibid.*

³These words, figures and brackets were substituted for the words "so produced" by section 9 (2), *ibid.*

⁴These words and figure were inserted by section 9 (3), *ibid.*

(Sections 17, 18.)

(2) Any person present may be required by a Board to furnish any information or to produce any document then and there in his possession or power.

Dismissal of applications.

17. (1) An application under section 8 may be dismissed by the Board, at any stage of its proceedings, in respect of all or any of the debts to which it relates,—

(a) if, for reasons to be stated in writing, the Board does not consider it desirable or practicable to effect a settlement of debts, or

(b) if, in the opinion of the Board—

(i) the applicant fails to pursue his application with due diligence, or

(ii) the debtor is attempting to use the provisions of this Act with a view to defraud any creditor or any person referred to in clause (d) of sub-section (1) of section 11.

(2) An application under section 8 shall be dismissed by the Board, if in its opinion—

(a) such application includes a claim which is intended to defraud any creditor; or

(b) there has been transfer of any property by the debtor within two years previous to the date of such application with a view to defraud any creditor.

Determination of amounts

18. (1) If there is any doubt or dispute as to the existence or amount of any debt, the Board shall decide whether the debt exists and determine its amount:

Provided that a decree of a Civil Court relating to a debt shall be conclusive evidence as to existence and amount of the debt as between the parties to the decree.

(2) Before passing any order under sections 19, 21, or 22 the Board, after considering the statements of debt submitted under section 11 and sub-section (1) of section 13 and ¹[the evidence produced, if any, after having given an opportunity to the parties to appear and be heard,] shall, in accordance with rules made under this Act, determine in respect of each debt the

¹These words were substituted for the words "after hearing the parties and considering the evidence produced" by section 10 (1) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

of 1936.]

(Section 18.)

amount of the principal and the amount of the arrears of interest due thereon from the debtor up to the date of such determination.

(3) * * *

(4) When the Board has determined under sub-section (2) the amounts of the principal of a debt due from a debtor and of the arrears of interest due thereon, the decision of the Board in this respect shall not be questioned in any Civil Court or in any manner other than that provided in this Act.

[(5) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, where a creditor has taken possession on any terms whatsoever of any immovable property of the debtor as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, and where the Court has not pronounced a final decree for foreclosure or has not confirmed a sale held in execution of a final decree for the sale of the property, the Board shall, in making the determination under sub-section (2), prepare an account in the prescribed manner of the receipts of the creditor derived from the said property and after deducting the expenses properly incurred by the creditor (of which an account shall similarly be prepared) either for the cultivation or for the management of the said property, shall credit the sum of such receipts in reduction of the amount, if any, from time to time due to the creditor as interest on the original principal of the debt and, so far as such sum exceeds any interest due, in reduction or discharge, as the case may be, of such original principal.

(6) In determining under this section the amount of arrears of interest due—

(a) the rate of interest taken shall not, notwithstanding anything contained in any contract, exceed the rate recoverable in a suit or other proceedings for the recovery of the interest under any law for the time being in force, and

(b) where the debt relates to a loan in kind or where there is any stipulation for the payment of interest in kind, the money value of the principal or interest shall, where the circumstances require such calculation, be calculated in the manner prescribed.]

*Sub-section (3) of section 18 was omitted by section 10 (2) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

*These sub-sections (5) and (6) were added by section 10 (3), *ibid.*

(Section 19.)

Settlement of debts.

19. (1) Subject to rules made under this Act—

- (a) when any creditor agrees in respect of any debt owing to him to an amicable settlement with the debtor, the Board shall embody such settlement in writing; or
- (b) when creditors to whom there is owing not less than forty *per cent.* of the total debt, agree to an amicable settlement with the debtor, the Board, if it is so empowered under section 7 and if it considers that an offer made by the debtor for the settlement of any debt not included in the amicable settlement is a fair offer which the creditor concerned ought reasonably to accept, may pass an order that the debt to which the offer relates shall be settled in accordance with such offer:

Provided that for the purposes of this clause an offer shall not be considered by the Board to be a fair offer—

- (i) if its terms are less favourable than the terms of the amicable settlement relating to a debt of the same description, or

(ii) * * * * *

²[(c) when in respect of a debt referred to in sub-section (5) of section 18, the Board, if so empowered under section 7, considers that the debtor has made an offer for the settlement of the debt which the creditor ought reasonably to accept, it may order that the debt be settled in accordance with such offer, and may pass a further order directing the creditor to restore to the debtor by a specified date any immovable property of the debtor which is in his possession as security for or in lieu of payment of any portion of the principal of such debt or any portion of the interest thereon. Such date shall be fixed in consideration of the profits derived and the estimated profits which may be derived by the creditor from such property provided that in no case shall the date be fixed so as to allow the creditor to enjoy possession of the land of a *raiyat* or

¹Proviso (ii) to clause (b) of sub-section (1) of section 19 was omitted by section 11 (a) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²This clause was inserted by section 11 (b), *ibid.*

of 1936.]

(Section 19A.)

under-*raiyat* for a period exceeding fifteen years from the commencement of such possession.]

(2) The terms of any settlement of debt under sub-section (1) shall be embodied in an award to be made by the Board.

Explanation.—The words “total debt” mean the sum total of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute.

¹[19A. (1) If the creditor does not restore possession of the immovable property to the debtor by the date specified in an award under sub-section (2) of section 19, the debtor may apply to the Certificate-officer exercising jurisdiction in the area in which such property is situated, to be put in possession thereof. Delivery of immovable property to debtor.

(2) An application under sub-section (1) shall be accompanied by the prescribed process fee, and the Certificate-officer, after giving notice in the prescribed manner to the creditor and to any person who may be in possession under the creditor and after such inquiry as he considers necessary, may direct the creditor to pay to the debtor such compensation as appears to him to be fair and equitable in respect of the period during which the creditor or any person who may be in possession under him retained possession of the property in contravention of the said order of the Board together with costs incidental to the application under this section, and may also pass an order directing the creditor or any person who may be in possession under him to deliver possession of the property to the debtor by a specified date.

(3) If possession of the property is not delivered to the debtor by the date specified in an order under sub-section (2), the Certificate-officer shall on the application of the debtor, order delivery of possession to be made by putting in possession of the property the debtor or any other person whom he may appoint to receive delivery on his behalf, and in delivering possession, the Certificate-officer shall have the same powers as under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
III of 1913.

(4) Any compensation and costs payable under an order under this section shall be recoverable as a public demand.]

¹This section 19A was inserted by section 12 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

(Sections 20—22.)

Decision by Board as to whether a person is a debtor.

20. If any question arises in connection with proceedings before a Board under this Act, whether a person is a debtor or not ¹[or whether a liability is a debt or not] the Board shall decide the matter.

Grant of certificate in respect of certain debts.

21. Subject to any rules made under this Act, if any creditor does not accept an offer made by the debtor which in the opinion of the Board is fair and such as the creditor ought reasonably to accept, the Board if it is so empowered under section 7, instead of passing any other order which it is competent to pass, may grant to the debtor a certificate in the prescribed form in respect of the debt to which the offer relates,

and thereafter, notwithstanding the provision of any law for the time being in force, no Civil Court shall allow to the plaintiff, in any suit for the recovery of such debt any costs in such suit or any interest on the debt after the date of such certificate * * * and no decree for the recovery of such debt shall be executed until all amounts payable under an award in respect of other debts of the debtor have been paid, ³[or until the expiry of such period not exceeding ten years as may be specified in the certificate, whichever is later, or, if the award ceases to subsist under sub-section (5) of section 29, until the award has so ceased to subsist.]

Adjustment of an insolvent debtor's debts.

22. (1) When the Board is satisfied that the debts of a debtor are such that they cannot be reduced under the provisions of section 19 to an amount which he will be able to repay within twenty years, and that the debtor is a fit person to be given the benefit of this section, the Board if it is so empowered under section 7, may, subject to rules made under this Act, and after considering all the circumstances of the debtor, by a written order declare him to be insolvent and may by such order either—

- (a) reduce his debts to such amounts as it considers that he can pay within a period, not exceeding twenty years, to be mentioned in the order, or

¹These words were inserted by section 13 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²The words, figures and brackets "in excess of simple interest at the rate of six *per cent. per annum* on the principal of such debt as determined under sub-section (2) of section 18" were omitted by section 14 (a), *ibid.*

³These words, figures and brackets were substituted for the words, figures and brackets "or such award has ceased to subsist under sub-section (5) of section 29, or, if there is no award, until the expiry of such period not exceeding ten years as may be specified in the certificate" by section 14 (b), *ibid.*

of 1938.]

(Section 22.)

(b) if, for reasons to be recorded in writing, it does not consider the reduction of his debts under clause (a) to be desirable, direct that, subject to the provisions of sub-section (4) and of section 24, all his property shall be sold and the proceeds shall be utilised towards the payment of his debts in such manner as may be specified in the order.

Ben. Act
III of 1913.

(2) The Certificate Officer shall, on the requisition of the Board in the prescribed form, sell the property of the debtor referred to in clause (b) of sub-section (1) in the manner provided in the Bengal Public Demands Recovery Act, 1913, and the provisions of the said Act regarding sales in execution of certificates shall, subject to the provision of this Act, apply to such sale.

(3) When the Board reduces the debts of an insolvent under clause (a) of sub-section (1), it shall specify in the order what sum he shall pay in each year towards the settlement of the debts as so reduced and in what manner such sums shall be distributed among the creditors:

Provided that the sum to be paid in each year shall be fixed by the Board at an amount which, in its estimation, is likely, in a year of normal harvest, to leave to the insolvent as provision towards his maintenance one-half of the surplus which remains from the value of the produce of his land after paying to the landlord the current rent due for such land.

(4) When the Board directs the sale of an insolvent's property under clause (b) of sub-section (1), it shall set aside, as provision towards his maintenance, not more than one-third of the land held by him in his direct possession exclusive of the land occupied by his dwelling house.

Provided that, even if he holds less than three acres of land in his direct possession, the Board shall thus set aside not less than one acre of the land so held exclusive of the land occupied by his dwelling house:

Provided further that no portion of the immovable property of an insolvent shall be exempted under this sub-section from sale for realisation of arrears of rent.

(5) When the property of the insolvent referred to in clause (b) of sub-section (1) has been sold under sub-section (2) or when he has paid all the sums fixed by the Board under sub-section (3) or when his property has been sold under section 28, the Board shall make an

(Sections 23—25.)

order of discharge and grant him a certificate of discharge in the prescribed form. Such certificate shall release the insolvent from all debts which were or might have been included in the application under section 8:

Provided that if within five years of the order declaring the debtor insolvent any property is acquired by, devolves on, or is declared by a Civil Court or is discovered to belong to, the insolvent debtor such property shall, on application made by a creditor to the Board, be available for distribution among the creditors of the debtor, to the extent of their debts, in such manner as the Board may direct.

(6) An order passed by a Board under sub-section (1) shall be embodied in an award to be made by the Board.

The principal of certain debts not to be reduced.

23. The principal of any debt due in respect of arrears of rent or under section 171 of the Bengal Tenancy Act, 1885, shall not be reduced under clause (b) of sub-section (1) of section 19 or under section 22, and the provisions of section 21 shall not apply to the principal of any such debt.

VIII of
1885.

Exemption of certain property of an insolvent debtor from sale.

24. (1) When a debtor is declared insolvent under sub-section (1) of section 22, the Board shall, in the prescribed manner, determine what portion of his immovable property shall be deemed to be the dwelling house of the debtor for the purposes of this Act.

(2) Such dwelling house shall be exempt from sale under sub-section (2) of section 22 and from sale for the recovery of any unsecured debt under section 28, and notwithstanding anything contained in any other Act, the debtor shall be incompetent to mortgage, charge, lease or alienate the same in any way until he is granted a certificate of discharge under sub-section (5) of section 22.

(3) Notwithstanding anything contained in any other Act, no part of the property of a debtor who has been declared insolvent under sub-section (1) of section 22 shall be exempt from the sale under sub-section (2) of that section or under section 28 except such movable property as shall be prescribed, the immovable property excluded as provision towards his maintenance, and, subject to the provisions of sub-section (2), his dwelling house as determined under sub-section (1).

Awards.

25. (1) An award shall be in the prescribed form and shall include the following particulars:—

(a) a list of the immovable properties of the debtor with particulars of any mortgage, lien or charge subsisting thereon;

of 1936.]

(Section 25.)

- (b) a list of the movable properties of the debtor on which there is any mortgage, lien or charge with particulars of such mortgage, lien or charge;
- (c) details of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute;
- (d) the amount to be paid to each creditor for each debt owing to him under the terms of an amicable settlement or of an order of the Board under section 19 or section 22;
- (e) the manner and the order in which and the times at which the amounts referred to in clause (d) shall be paid:

Provided that the order in which such amounts shall be paid shall be in accordance with any rules made under this Act;

- (f) the rate of interest, if any, payable on each amount referred to in clause (d);
- (g) an order that all the properties mentioned in the list referred to in clause (a) or clause (b) except such properties as are exempt from sale shall, subject to any mortgage, lien or charge subsisting thereon, be security for the amounts payable under the award.

¹[(h) the date, if any, by which possession of immovable property is to be restored to the debtor under the terms of an award under sub-section (2) of section 19.]

(2) At a place and time of which notice shall be given to the parties in the prescribed manner the award shall be explained to the parties present and shall be signed by the Board; but the validity of an award shall not be affected by the absence of any of the parties.

(3) From the date of the signing of the award under sub-section (2) it shall, in supersession of all previous decisions of a Civil Court in respect of the debts mentioned in it, be binding on the debtor and his creditors and the successors in interest of such debtor and creditors.

¹This clause (h) was inserted by section 15 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

(Sections 26, 27.)

Special provision for arrears of rent.

26. Notwithstanding anything contained in this or any other Act—

(a) if any rent due for any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 falls into arrears, the landlord may include in a suit for the recovery of such arrears the amount of arrears of rent payable under such award;

(b) if any land referred to in clause (a) is advertised for sale in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the provisions of section 171 of the Bengal Tenancy Act, 1885, shall not apply, but any person whose interests are affected may pay into Court the amount requisite to prevent such sale, and thereupon the amount so paid, together with interest at the prescribed rate which shall not exceed twelve *per centum per annum*, shall be included by the Board in the award in accordance with rules made under this Act and such amount shall take priority of every other debt payable under the award and of every other charge on the land other than an arrear of rent.

Ben. Act III of 1913. VIII of 1885.

Existing mortgages, etc., to subsist.

27. (1) When an award is made as regards any debt which is secured by mortgage, lien or charge on any immovable property of a debtor such mortgage, lien or charge shall subsist to the extent of the amount payable in respect of such debt under the award until such amount has been paid or the property has been sold for the satisfaction of such debt or the debtor has been granted a certificate of discharge under sub-section (5) of section 22:

[Provided that where an award under sub-section (2) of section 19 directs the restoration of possession of immovable property to the debtor, the mortgage, charge or lien shall be subject to such modifications as to the period of possession as may be contained in the award.]

(2) Any mortgage, lien or charge upon any immovable property securing a debt on account of which any amount is payable under a decree of a Civil Court shall cease to subsist when such property is sold under the provisions of section 23 or sub-section (4) of section 29.

¹This proviso was added by section 16 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

of 1936.]

(Section 28.)

28. (1) If by the date fixed the debtor fails to pay any amount payable under an award such amount shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the amount is due. Recovery of amounts included in an award.

If the creditor does not so apply such amount shall, for the purposes of clause (iii) of section 35, be deemed to be a debt incurred by the debtor after the date of the signing of the award.

(2) Subject to any rules made under this Act, the Certificate Officer, if satisfied that there is good reason for the failure to pay by the fixed date, may allow time to the debtor within which to pay any amount due. If the Certificate Officer thus allows time, he may, if he thinks fit, further direct, that a similar period of time shall be given to the debtor after the time fixed in the award for payment of any other amount payable thereunder, within which to make such other payment, and the award shall be deemed to be modified accordingly.

(3) If the Certificate Officer does not allow time under sub-section (2), or if the debtor fails to pay within the time allowed, the Certificate Officer shall proceed to recover the amount in the manner provided in the Bengal Public Demands Recovery Act, 1913:

Ben. Act
III of
1913.

Provided that if such debtor has been declared insolvent under section 22, the Certificate Officer after allowing such time, if any, as he thinks fit, shall, forthwith, subject to the provisions of sub-section (4) of section 22 and section 24, sell such portion of the property of the debtor as will be sufficient to pay all the amounts payable whether under the award or under sub-section (1) of section 29.

(4) Subject to the proviso to sub-section (3), if the Certificate Officer fails to recover the full amount in respect of which an application has been made under sub-section (1) by sale of the movable property or agricultural produce of the debtor, he shall sell such portion of the immovable property of the debtor as will be sufficient to pay all amounts payable whether under the award or under sub-section (1) of section 29 or under any decree which has, to the knowledge of the Certificate Officer, been passed by a Civil Court in respect of a debt of which details are included in the award under clause (c) of sub-section (1) of section 25.

(5) When the Certificate Officer sells the immovable property of a debtor under sub-section (2) of section 22 or under this section he shall keep a separate account of the proceeds realised from the sale of any portion

(Section 29.)

of such property upon which a mortgage, lien or charge is shown as subsisting in the list included in the award under clause (a) of sub-section (1) of section 25.

(6) If any debt in respect of which no amount is payable under the award is secured by a mortgage, lien or charge shown in such lists the Certificate Officer shall sell the immovable property subject to such mortgage, lien or charge, unless a decree of a Civil Court for the recovery of the debt is outstanding in respect of such property. If such a decree is outstanding the Certificate Officer shall distribute the sale proceeds in accordance with the provisions of clause (a) of sub-section (2) of section 29.

Distribution of
sale proceeds.

29. (1) When a Certificate Officer has sold property of a debtor under sub-section (2) of section 22 or under section 28 he shall first pay from the proceeds of the sale and amount payable as costs of sale in execution of the certificate and next—

(a) any amount payable for arrears of rent under the award and as arrears of rent which may have fallen due between the date of determination of the debt under sub-section (2) of section 18 and the date of confirmation of the sale; and

(b) any amount due to the ¹[Provincial Government] included in a certificate issued under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
III of
1913.

(2) After making the payments under sub-section (1), if any, the Certificate Officer shall proceed as follows:—

(a) he shall, in the first instance, apply the surplus of the proceeds realised from the sale of any portion of the immovable property for which he has kept a separate account under the provisions of sub-section (5) of section 28 to the payment of any amounts payable under the award or under a decree of a Civil Court to creditors on account of debts which are secured by a mortgage, lien or charge upon such property in order of priority determined in accordance with the provisions of the Transfer of Property Act, 1882, and if such surplus is insufficient to meet such payments the balance of such amounts shall, unless the debt has been extinguished by such sale, rank equally with unsecured debts:

IV of
1882.

¹See footnote 2 on page 1, *ante*.

of 1935.]

(Section 29.)

Provided that if there is any dispute or doubt as to the priority of payment of such debts the Certificate Officer shall refer the matter to the Appellate Officer who shall determine the same according to the provisions of the aforesaid Act;

(b) when there is a surplus after payment of the amounts referred to in clause (a), the Certificate Officer shall apply the sum of such surplus and of any proceeds realised from the sale of other property of the debtor to the payment of any other amounts payable under the award,

and if such sum is insufficient to meet such payment such other amounts and any amount payable on account of an unsecured debt for the recovery of which a decree has been passed by a Civil Court, and of which details are given in the award under clause (c) of sub-section (1) of section 25, shall rank equally between themselves for purposes of payment:

Provided that if any instalment has been paid under the award, for the year when an instalment fell due for the recovery of which application has been made under sub-section (1) of section 28, any instalment which fell due in that year, but which has not been paid, shall be given priority;

(c) any surplus remaining after payment of the creditors in accordance with the foregoing provisions of this section shall be paid by the Certificate Officer to the debtor.

(3) The proceedings of a Certificate Officer under this section shall be in accordance with rule made under this Act.

Ben. Act
III of
1913.

(4) Notwithstanding anything contained in the Bengal Public Demands Recovery Act, 1913, if any amount payable under an award in respect of a debt secured by a mortgage, lien or charge on an immovable property of a debtor which is exempted from sale under the said Act cannot be recovered as a public demand, the Certificate Officer shall recover such amount by the sale of such immovable property and shall pay to the debtor the balance (if any) remaining after payment of such amount. The Procedure under the Bengal Public Demands Recovery Act, 1913, shall be applicable to such sale.

(Sections 30—33.)

(5) If the Certificate Officer fails to recover as a public demand or under the provisions of sub-section (4) any amount payable under the award, he shall certify that it is irrecoverable and thereupon the award shall cease to subsist and any amount that was payable under it shall be recoverable within three years from the date on which the award ceased to subsist as if a decree of the Civil Court had been passed for its payment on such date:

Provided that the Certificate Officer, instead of at once certifying any part of such amount to be irrecoverable, may make a report to the Board which may pass an order declaring that the debtor is insolvent and thereupon the provisions of sub-section (5) of section 22 shall as far as possible apply to such insolvent.

Distribution of balance of sale proceeds when land is sold in execution of a decree or certificate for arrears of rent.

30. Notwithstanding anything in any other Act, when any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 is sold in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the balance of the sale proceeds which remains after the payment of the amounts referred to in clauses (a), (b) and (c) of sub-section (1) of section 169 of the Bengal Tenancy Act, 1885, or in clauses (a), (b) and (c) of sub-section (1) of section 26 of the Bengal Public Demands Recovery Act, 1913, shall be paid to the Certificate Officer, or retained by him as the case may be, for distribution in the manner provided in section 29 of this Act. VIII of 1885.

Settlement of debts of a member of a co-operative society.

31. No settlement under this Act of the debts of a member of a co-operative society registered under the Co-operative Societies Act, 1912, who owes any amount to such society, shall be valid without the previous approval in writing of a prescribed authority. II of 1912.

Stay of proceedings before

32. If a debtor informs the Board at the earliest opportunity that the decree referred to in the proviso to sub-section (1) of section 18 was obtained *ex parte* and that he intends to apply to the Civil Court to set it aside the Board may stay further proceedings for such time as it may consider necessary to enable the debtor to set aside the decree.

Bar to suits and proceedings in Civil and Revenue Courts.

33. Except as provided in this Act, no Civil or Revenue Court shall entertain a suit, application or proceeding against the debtor in respect of—

(a) any debt included in an application under section 8 or in a statement under sub-section (1)

(Sections 30—33.)

(5) If the Certificate Officer fails to recover as a public demand or under the provisions of sub-section (4) any amount payable under the award, he shall certify that it is irrecoverable and thereupon the award shall cease to subsist and any amount that was payable under it shall be recoverable within three years from the date on which the award ceased to subsist as if a decree of the Civil Court had been passed for its payment on such date:

Provided that the Certificate Officer, instead of at once certifying any part of such amount to be irrecoverable, may make a report to the Board which may pass an order declaring that the debtor is insolvent and thereupon the provisions of sub-section (5) of section 22 shall as far as possible apply to such insolvent.

Distribution of balance of sale proceeds when land is sold in execution of a decree or certificate for arrears of rent.

30. Notwithstanding anything in any other Act, when any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 is sold in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the balance of the sale proceeds which remains after the payment of the amounts referred to in clauses (a), (b) and (c) of sub-section (1) of section 169 of the Bengal Tenancy Act, 1885, or in clauses (a), (b) and (c) of sub-section (1) of section 26 of the Bengal Public Demands Recovery Act, 1913, shall be paid to the Certificate Officer, or retained by him as the case may be, for distribution in the manner provided in section 29 of this Act.

VIII of 1885.

Settlement of debts of a member of a co-operative society.

31. No settlement under this Act of the debts of a member of a co-operative society registered under the Co-operative Societies Act, 1912, who owes any amount to such society, shall be valid without the previous approval in writing of a prescribed authority.

II of 1912.

Stay of proceedings before

32. If a debtor informs the Board at the earliest opportunity that the decree referred to in the proviso to sub-section (1) of section 18 was obtained *ex parte* and that he intends to apply to the Civil Court to set it aside the Board may stay further proceedings for such time as it may consider necessary to enable the debtor to set aside the decree.

Bar to suits and proceedings in Civil and Revenue Courts.

33. Except as provided in this Act, no Civil or Revenue Court shall entertain a suit, application or proceeding against the debtor in respect of—

(a) any debt included in an application under section 8 or in a statement under sub-section (1)

of 1936].

(Sections 34, 35.)

of section 13; proceedings in connection with which are pending before a Board¹ [or an Appellate Officer or a District Judge or an Additional District Judge]; or

- (b) any debt for which any amount is payable under an award, except in accordance with the provisions of sub-section (5) of section 29.

²[34. When an application under section 8 or a statement under sub-section (1) of section 13 includes any debt in respect of which a suit or other proceeding is pending before a Civil or Revenue Court, or when an Appellate Officer entertains an appeal or a District Judge or an Additional District Judge entertains an application for revision, relating to such a debt, the Board or the Appellate Officer or the District Judge or the Additional District Judge, as the case may be, shall give notice thereof to such court in the prescribed manner, and thereupon the suit or the proceeding shall be stayed until the Board has either dismissed the application in respect of such debt or made an award thereon or until the Appellate Officer has disposed of such appeal or the District Judge or the Additional District Judge has disposed of such application for revision, and if the Board or the Appellate Officer or District Judge or Additional District Judge includes any part of such debt in clause (d) of sub-section (1) of section 25 in the award or decides that the debt does not exist the suit or proceeding shall abate so far as it relates to such debt.

Stay and abatement of suits and proceedings

Explanation.—For the purpose of this section an execution proceeding for the sale of any property shall be deemed to be pending and the debt in respect of which the sale takes place shall be deemed to exist until such sale become absolute.]

35. Notwithstanding anything contained in any Act, no decree of a Civil Court or certificate under the Bengal Public Demands Recovery Act, 1913, shall be executed—

Bar to execution of certain decrees and certificates.

Ben. Act III of 1913.

- (i) for the recovery of a debt included in an application under section 8 or in a statement under sub-section (1) of section 13, until—

(a) the application has been dismissed by the Board in respect of such debt; or

¹These words were inserted by section 17 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²This section was substituted for section 34 by section 18, *ibid*.

(Section 36.)

- (b) an award in which such debt is included has ceased to subsist under sub-section (5) of section 29;
- (ii) except as provided in clause (a) of sub-section (1) of section 29, for the recovery of arrears of rent which became due from a debtor ¹[on or after the first day of January, 1940, or] after the date of an application under section 8 in respect of his debts, unless notice of such decree or certificate has been given to the Board in the prescribed manner, and three months have elapsed since such notice was given;
- (iii) for the recovery of ²[any sum in respect of any loan other than a loan recoverable as a public demand] incurred by a debtor ³[on or after the first day of January, 1940, or] after the date of an application under section 8 in respect of his debts, until all the amounts payable under the award have been paid or such award has ceased to subsist under sub-section (5) of section 29.

Certain decrees to be treated as nullities.

36. Notwithstanding anything contained in any Act, any decree of a Civil Court passed in regard to a debt after the date of an application under section 8, shall be treated as a nullity in so far as—

- (a) it is inconsistent with any order passed by a Board under sub-section (2) of section 13 regarding any debt or with any determination by the Board under section 18 of the principal and the arrears of interest of any debt included in a subsisting award; or
- (b) it relates to a debt the documents in respect of which being in the possession or under the control of the creditor have not been produced before the Board and marked by the Board as required by section 14 unless it is proved to the satisfaction of the Civil Court that there were sufficient reasons for non-production of the documents before the Board.

¹These words and figures were inserted by section 19(1) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²These words were substituted for the words "a debt" by section 19(2)(a), *ibid.*

³These words and figures were inserted by section 19(2)(b), *ibid.*

After section 37. insert the following section:—

“37A. (1) When any immovable property of any person has been sold after the twelfth day of August, 1935, in execution of a decree of a Civil Court or a certificate under the Bengal Public Demands Recovery Act, 1913, relating to a debt, other than a certificate for the recovery of any amount payable under an award, such person or his heir, executor or administrator may, notwithstanding anything contained in this Act or in any other law for the time being in force or in any agreement, apply for relief under this section, if the following conditions are fulfilled, namely:—

Applications for restoration to possession of immovable property sold in decrees or certificates for debt.

Ben. Act
III of
1913.

(a) if, on the date of the sale, such person was a debtor,

(b) if the sale was held—

(i) before an appointment was made under sub-section (2) of section 3 in relation to the Board established for the local area within which such person ordinarily resided at the time of the sale, or

(ii) notwithstanding the issue by such Board of a notice under section 34, or

(iii) before the commencement of the Bengal Agricultural Debtors (Amendment) Act, 1940, in the case of a debt for arrears of rent in respect of which such person was liable jointly with any other person, and

Ben. Act
VIII of
1940.

(c) if the property sold was in the possession of the decree-holder on or after the twentieth day of December, 1939, or was alienated by the decree-holder before that date in any manner otherwise than by—

(i) a *bona fide* gift by a *heba* whether by registered instrument or not, or

(ii) any other *bona fide* gift by registered instrument, or

(iii) a *bona fide* lease for valuable consideration whether by registered instrument or not, or

(iv) any other *bona fide* transfer for valuable consideration (excepting a mortgage) by registered instrument.

(2) The application referred to in sub-section (1) shall be made to the Board established for the local area within which the applicant ordinarily resides and within one year from the date of the commencement of the Bengal Agricultural Debtors (Amendment) Act, 1942, or from the date on which possession of the property was delivered to the decree-holder, whichever is later, notwithstanding that on the date of such application the period of five years from the establishment of

of 1936.]

(Sections 37—40.)

Act V
of 1908.

37. After receipt of an application under section 8 the Board may attach the immovable property of the debtor in the prescribed manner and thereupon such property shall be deemed to be under attachment under the provisions of the Code of Civil Procedure, 1908, until such attachment is withdrawn or cancelled by the Board.

Attachment of debtor's immovable property.

38. No appeal or application for revision shall lie against any decision or order of or award by a Board except as provided in this Act.

Bar to appeal or revision.

39. (1) The ¹[Provincial Government] may authorise the Collector, subject to rules made under this Act, to transfer from one Board to another, for disposal, applications made under section 8.

Transfer of applications from one board to another.

(2) A Board to which an application is transferred under sub-section (1) may continue the proceedings in connection with the application from the stage which has been reached when the application is transferred.

40. (1) An appeal may be made in the prescribed manner to an Appellate Officer to be appointed by the ¹[Provincial Government] against—

Appeals.

(a) any decision or order of a Board under this Act or of a Certificate Officer under sub-section (2) of section 28 or section 29,

(b) any award,

(c) the grant of a certificate under section 21, or

(d) any failure on the part of a Board to perform its functions under this Act or any abuse by a Board of its powers:

²[Provided that an appeal against any order under section 21, section 22 or section 29, and no other appeal shall be made to an Appellate Officer appointed under this section who has had such judicial experience as may be prescribed.]

(2) An appeal under sub-section (1) shall lie if made within thirty days of the date of the decision, order, award or certificate referred to in that sub-section.

(3) The ¹[Provincial Government] may make rules regarding the procedure to be following by the Appellate Officer, and for the control and inspection of his work.

¹See footnote 2 on page 1, ante.

²This proviso was substituted for the existing proviso to sub-section (1) of section 40, by section 20(1) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

(Section 40A.)

(4) The Appellate Officer may after giving the appellant an opportunity of being heard reject an appeal summarily if he considers that there is no sufficient ground for interfering.

¹[(4A) The Appellate Officer may stay any order directing the restoration of possession of immovable property to a debtor under clause (c) of sub-section (1) of section 19 pending the disposal of an appeal preferred to him against such order.]

(5) If the Appellate Officer does not reject the appeal summarily, he shall hear the parties, if they appear, and consider any reasons which the Board may submit in regard to the grounds of such appeal, and may then either confirm or modify the decision or order of the Board or direct the Board to take such action as he thinks fit.

²[(6) Subject to the provisions of section 40A the orders of the Appellate Officer shall be final.]

(7) An appeal for the purpose of this section includes an application for revision.

(8) No appeal shall lie against a decision or order passed by a Board with the consent of the debtor and the creditor.

Revision.

³[40A. (1) An application may be made in the prescribed manner for revision by the District Judge of an order made by an Appellate Officer.

(2) An application under sub-section (1) shall lie if made within thirty days of the date of the order referred to in that sub-section.

(3) Every such application shall be made to the Appellate Officer who shall forward to the District Judge the record of the case, the application and any explanation which he may desire to offer in respect of the application.

(4) The District Judge shall consider such papers as may be forwarded to him by the Appellate Officer, but shall not hear the parties or any person appearing on their behalf.

(5) If the District Judge does not reject the application, he may, if he is satisfied that there has been a substantial failure of justice by reason of any illegality or

¹This section (4A) was inserted by section 20(2) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²This sub-section was substituted for the existing sub-section (6) of section 40, by section 20(3), *ibid.*

³This section 40A was inserted by section 21, *ibid.*

of 1936.]

(Sections 41—44.)

irregularity contained in the order of the Appellate Officer, or for any other sufficient cause either modify or reverse the order or any portion thereof:

Provided that the District Judge may transfer to an Additional District Judge subordinate to him any papers forwarded to him by an Appellate Officer under subsection (3) and such Additional District Judge shall in respect of the applications so transferred exercise the same powers and perform the same duties as those respectively conferred and imposed upon the District Judge under this section.]

41. [Power of Appellate Officer to transfer application.] Omitted by section 22 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

42. Subject to rules made under this Act, a Board may, if it thinks necessary, make a reference to the Appellate Officer stating the question upon which his opinion, advice or direction is required and the Appellate Officer shall give his opinion, advice or direction, as the case may be, thereon as soon as possible.

Reference to Appellate Officer.

43. (1) A Board shall, in all proceedings under this Act, be subject to the control of the ¹[Provincial Government].

Control over Board.

(2) Any person appointed by the ¹[Provincial Government] in this behalf may inspect or cause to be inspected any property, books or documents in the possession or under the control of the Board and require the Board to furnish such statements, accounts, reports, copies of documents or such other information relating to the proceedings and duties of the Board, as he thinks fit to call for.

44. Subject to any rules made under this Act—

Power of Board to review its order.

(a) a Board may, on an application made by any person interested ²[or of its own motion], review any decision or order passed by it and pass such order in reference thereto as it thinks fit,

(b) an Appellate Officer may, on an application made by any person interested ³[or of his own motion], review any decision or order passed by him or his predecessor and pass such order in reference thereto as he thinks fit:

¹See footnote 2 on page 1, *ante*.

²These words were inserted by section 23(a) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

³These words were inserted by section 23(b), *ibid*.

(Sections 45—50.)

Provided that no order shall be varied or reversed unless an opportunity has been given to the person interested to appear and be heard in support of such order.

Certain Acts not to apply to the proceedings under this Act.

45. (1) Except as otherwise provided in this Act, the provisions of—

- (a) the Indian Evidence Act, 1872, and
- (b) the Code of Civil Procedure, 1908,

I of 1872.
Act V of
1908.

shall not apply to any proceedings before a Board.

(2) The procedure to be followed by a Board in any proceedings before it shall, subject to the provisions of this Act, be in accordance with rules prescribed under this Act.

Representation of party before a Board.

46. Subject to any rules made under this Act, no legal practitioner as defined in the Legal Practitioners Act, 1879, shall represent any party in any proceedings before a Board, nor shall any other agent, without the permission of the Board, represent any party in any such proceedings.

XVIII of
1879.

Registration of awards and certificates.

47. (1) Every award and every certificate granted under section 21 or sub-section (5) of section 22, shall be registered under the Indian Registration Act, 1908, by the Chairman of the Board in such manner and within such period as may be prescribed.

XVI of
1908.

(2) For the purpose of the registration under sub-section (1) of an award or a certificate the Chairman shall be deemed to be an officer of Government empowered to execute such instrument within the meaning of section 88 of the Indian Registration Act, 1908.

Publication of orders and awards.

48. A copy of any order made by a Board under sub-section (2) of section 13, and a copy of any award shall be published in such manner as may be prescribed by the ¹[Provincial Government].

Chairman and members of Boards deemed to be public servants.

49. The Chairman and the other members of a Board shall be deemed to be public servants within the meaning of the Indian Penal Code.

Act XLV
of 1860.

Proceedings deemed to be judicial proceedings.

50. All proceedings under this Act shall be deemed to be judicial proceedings within the meaning of section 228 of the Indian Penal Code.

¹See footnote 2 on page 1, ante.

of 1936.]

(Sections 51—55.)

51. No suit, prosecution or legal proceeding whatever shall lie against any Chairman or other member of a Board, Appellate Officer or Certificate Officer in respect of anything in good faith done or intended to be done under this Act. Indemnity.

52. Notwithstanding anything contained in any other Act, when the period of limitation is calculated for any application, suit or appeal regarding a debt which has been the subject of any proceedings under this Act, the time during which such proceedings continued and the time during which the person interested in such debt was debarred by any provision of this Act from making or instituting the application, suit or appeal, or executing the decree in question, as the case may be, shall be excluded. Extension of period of limitation.

53. The right to receive any amount payable under an award shall be assignable in the prescribed manner. Negotiability of awarded amounts.

54. (1) Whoever—

Penalties.

(a) intentionally makes any false statement in writing or makes any false statement which has been recorded whether on oath or not before any Board or an Appellate Officer, in any proceeding under this Act;

(b) intentionally produces before a Board any false copy or translation of a document;

(c) falsely personates another and in such assumed character produces any document or makes any admission or statement or does any other act in any proceeding under this Act; or

(d) abets any act punishable under this section;

shall, on conviction, be liable to imprisonment for a term which may extend to three years or to fine or to both.

(2) No prosecution for any offence under this section may be commenced except by, or with the permission of, the Collector.

55. (1) The ¹[Provincial Government] may make rules for carrying out the purposes of this Act. Power to make rules.

¹See footnote 2 on page 1, ante.

(Section 55.)

(2) In particular and without prejudice to the generality of the foregoing power the ¹[Provincial Government] may make rules to provide for all or any of the following matters, namely:—

- (a) the maximum amount of debt which can be dealt with under the provisions of this Act;
- (b) the fees to be paid for anything done under this Act and the persons by whom and the manner in which such fees shall be paid;
- (c) the allowances, if any, to be paid to the Appellate Officer, the Chairman and other members of a Board;
- (d) the office establishment of a Board, the pay, allowances and conditions of service of such establishment;
- (e) the procedure of a Board, and the quorum for a meeting of a Board;
- (f) the forms of application under section 8, of statements of debt under section 11, of awards, of certificates under section 21, of requisitions under sub-section (2) of section 22, and of certificates of discharge under sub-section (5) of section 22;
- (g) the transfer of applications under sub-section (3) of section 8 or sub-section (1) of section 39, and disposal of applications under sub-section (3) of section 8;
- (h) the manner of signing and verification of applications under section 8;
- (i) the manner of giving notice under sub-section (2) of section 12, sub-section (1) of section 13, ²[section 13A, sub-section (2) of section 19A] and sub-section (2) of section 25;
- (j) the marking of original documents produced under sub-section (2) of section 14;
- (k) the amicable settlement by a Board of debts under section 15;
- (l) the summoning and examination by a Board of parties and their witnesses, and the production of documents, under sub-section (1) of section 16;

¹See footnote on page 2, *ante*.

²These words, letters, figures and brackets were inserted by section 24(a) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

of 1936.]

(Section 55.)

- (m) the determination by a Board under sub-section (2) of section 18 of the amount of the principal of a debt and the amount of interest due thereon;
- ¹[(ma) the preparation of accounts of receipts and expenses of a creditor under sub-section (5) of section 18;
- (mb) the calculation of the money value of principal or interest referred to in sub-section (6) of section 18;]
- (n) the settlement of debts by a Board under section 19;
- (o) the grant of a certificate under section 21;
- (p) the declaration by a Board under sub-section (1) of section 22 that a debtor is insolvent, the sale of his property and the reduction of his debts;
- (q) the determination of a portion of the immovable property of a debtor as his dwelling house under sub-section (1) of section 24;
- (r) the movable property of an insolvent debtor which shall be exempt under sub-section (3) of section 24 from sale;
- (s) the order of payment of the amount referred to in clause (d) of sub-section (1) of section 25;
- (t) the period within which an application under sub-section (3) of section 13 and sub-section (1) of section 28 shall be made;
- (u) the grant of time under sub-section (2) of section 28 for payment of the amount due;
- (v) the distribution of sale proceeds and the proceedings of a Certificate Officer under section 29;
- (w) the authorities whose approval is required under section 31;
- (x) the manner of giving notice under section 34 and under section 35;
- (y) the manner of attachment of immovable property under section 37;
- (z) the transfer and disposal of applications under section 39;
- (za) the manner of making an appeal under sub-section (1) of section 40;

¹These clauses (ma) and (mb) were inserted by section 24(b) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

(Sections 56, 57.)

- (zb) the judicial experience required in the case of certain Appellate Officer under proviso to sub-section (1) of section 40;
 - (zc) the procedure of an Appellate Officer and the control and inspection of his work under sub-section (3) of section 40;
 - (zd) the manner of review under section 44 of a decision or order passed by a Board or an Appellate Officer;
 - (ze) the representation of a party in proceedings before a Board;
 - (zf) the manner in which and the period within which awards and certificates shall be registered under sub-section (1) of section 47;
 - (zg) the publication under section 48 of awards and of certain orders; and
 - (zh) the manner of assignment of an award under section 53.
- (3) The power of making rules conferred by clause (b) of sub-section (2) is subject to the condition that the rules be made after previous publication.

Penalty for breach of rules.

56. In making any rule under this Act the ¹[Provincial Government] may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues.

Certain fees recoverable as public demands.

²[**57.** The fees which may be prescribed under clause (b) of sub-section (2) of section 55 for an order of determination under sub-section (2) of section 18 and which have not been paid by the date fixed by the Board shall be recoverable as public demands payable to the Collector.]

¹See footnote 2 on page 1, *ante*.

²This section 57 was inserted by section 25 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).



Government of Bengal

Legislative Department

Bengal Act VIII of 1940

3

**The Bengal Agricultural Debtors
(Amendment) Act, 1940**

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STATEMENT OF REPEALS AND AMENDMENTS.

REPEALED IN PART AND AMENDED	Ben. Act VIII of 1940
AMENDED .. .. .	..	The Government of India (Adaptation of Indian Laws) Order, 1937.

The following changes have been made in reprinting the Act:—

- (1) repealed matter has been omitted, explanatory notes being inserted;
- (2) amendments have been inserted in their proper places, with explanatory foot-notes;
- (3) the number and year of Acts referred to in the text have been noted in the inner margin.

Bengal Act VIII of 1940.

THE BENGAL AGRICULTURAL DEBTORS (AMENDMENT) ACT, 1940.

[Passed by the Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette* of the 2nd May 1940.]

An Act to amend the Bengal Agricultural Debtors Act, 1935.

Ben. Act
VII of
1936.

WHEREAS it is expedient to amend the Bengal Agricultural Debtors Act, 1935, in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Agricultural Debtors (Amendment) Act, 1940. Short title and commencement.

(2) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In section 2 of the Bengal Agricultural Debtors Act, 1935 (hereinafter referred to as the said Act)— Amendment of section 2 of Bengal Act VII of 1936.

(1) after clause (6) the following clause shall be inserted, namely:—

“(6A) ‘Civil Court’ means a Civil Court within the meaning of the Bengal, Agra and Assam Civil Courts Act, 1887, and includes any Court exercising appellate or revisional jurisdiction over any such Court;”;

XII of
1887.

(2) in clause (8)—

(a) after the word “liabilities” the words and figures “incurred prior to the first day of January 1940” shall be inserted;

(b) in sub-clause (iv)—

(i) after the word and figure “section 28” the word “and” shall be omitted, and

(ii) after the words “held by a tenant” the following shall be inserted, namely:—

“and

(c) any sum referred to in Article 12A of Schedule I to the Bengal Public Demands Recovery Act, 1913, or any sum ordered by a liquidator under any Act of the Provincial Legislature, for the time being in force, relating

Ben. Act
III of
1913.

2 *The Bengal Agricultural Debtors (Amendment) Act, 1940.*

[Ben. Act VIII

(Sections 3—5.)

to co-operative societies, to be recovered as a contribution to the assets of a co-operative society or as the cost of liquidation thereof;”;

(c) in sub-clause (v) for the words “by limitation; or” the words “by limitation, or which is otherwise irrecoverable under the law;” shall be substituted; and

(d) after sub-clause (vi) the following sub-clause shall be inserted, namely:—

“(vii) any tax or rate due to a Municipality or Union Board or Union Committee;”
and

(3) after clause (11) the following clause shall be inserted, namely:—

“(11A) ‘original principal’ means the loan as originally borrowed, excluding any amount of interest on such loan which may at any time have been included as principal;”.

Amendment of section 4.

3. In the proviso to section 4 of the said Act for the words “officer who has had judicial experience” the words “servant of the Crown” shall be substituted.

Amendment of section 7.

4. In section 7 of the said Act—

(a) for the words, figures and brackets “sub-section (2) of section 9” the words, figures and brackets “sub-sections (2) or (3) of section 9” shall be substituted, and

(b) after the word, letter and brackets “clause (b)” the words, letter and brackets “or clause (c)” shall be inserted.

Amendment of section 9.

5. To section 9 of the said Act the following sub-section shall be added, namely:—

“(3) If a debtor within the meaning of this Act is liable with other persons for a debt for arrears of rent, such debtor may, notwithstanding the provisions of clause (b) of sub-section (1), make an application under sub-section (1) of section 8 for relief in respect of the entire amount of such debt, and the Board, after consideration of the facts and circumstances of the case, may, if so empowered under section 7, pass such order as it thinks fit under this Act regarding the entire

The Bengal Agricultural Debtors (Amendment) Act, '3
1940.

of 1940.]

(Section 6.)

amount of such debt, and such order of the Board shall not be questioned in any Civil Court or in any manner other than that provided in this Act:

Provided that, notwithstanding anything contained in any other law,—

- (a) on compliance in full by the said debtor with an order of the Board under this sub-section, his liability and that of the said other persons to the landlord for the arrears of rent in respect of which such order is made, shall cease, but the said other persons shall be liable to contribute to the debtor in respect of the sum paid by him under the said order, and
- (b) during the period allowed in the said order for full compliance with the terms thereof relating to the arrears of rent, the landlord shall be debarred from instituting a suit for the recovery of the same, unless during such period the debtor fails to comply with the said terms."

6. In section 11 of the said Act—

Amendment of
section 11.

(1) in sub-section (1)—

(a) after clause (d) the following clause shall be inserted, namely:—

“(dd) details of any liabilities incurred on or after the first day of January 1940;” and

(b) after clause (e) the following clause shall be inserted, namely:—

“(ee) particulars of any property as in clause (e) of which the creditor has taken possession either as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, together with the name and address of any person who may be in possession of any portion of such property under the creditor;”;

(2) in sub-section (2)—

after clause (e) the following clause shall be inserted, namely:—

“(ee) particulars of any property as in clause (e) of which the creditor has taken possession either as security for, or in lieu of payment of, any portion of the principal of the

**4 The Bengal Agricultural Debtors (Amendment) Act,
1940.**

[Ben. Act VIII]

(Sections 7—9.)

debt or any portion of the interest thereon, together with the name and address of any person who may be in possession of any portion of such property under the creditor;”.

**Amendment of
section 13.**

7. In sub-section (1) of section 13 of the said Act—

(a) for the words and figure “If after consideration of the application the Board does not dismiss the application forthwith under section 17, it shall,” the words, figures and brackets “At the time of giving the notice referred to in sub-section (2) of section 12, the Board shall,” shall be substituted;

(b) after the words “whichever is later” the following shall be inserted, namely:—

“and further requiring all creditors to produce on a date specified in the notices all documents (including entries in books of account) by which the creditor intends to prove any debt owing to him, together with a true copy of each such document”; and

(c) in the proviso after the words “his statement of debt” the words “or the production of his documents and true copies thereof” shall be inserted.

**Insertion of
new section 13A.**

8. After section 13 of the said Act the following section shall be inserted, namely:—

“13A. If in any statement of debt submitted by a creditor under sub-section (1) of section 13 any person who has not been served with a notice under sub-section (2) of section 12 is stated to be in possession of any portion of the immovable property of the debtor, the Board shall serve on such person in the prescribed manner a notice requiring him, if he desires to make any representation, to appear before the Board on such date as may be specified in the notice.”

**Amendment of
section 14.**

9. In section 14 of the said Act—

(1) sub-section (1) shall be omitted;

(Section 10.)

- (2) in sub-section (2) for the words "so produced" the words, figures and brackets "produced in compliance with the notice under sub-section (1) of section 13" shall be substituted; and
- (3) in sub-section (3) after the words, figure and brackets "as required by sub-section (1)" the words and figure "of section 13" shall be inserted.

10. In section 18 of the said Act—

Amendment of
section 18.

(1) in sub-section (2) for the words "after hearing the parties and considering the evidence produced" the words "the evidence produced, if any, after having given an opportunity to the parties to appear and be heard," shall be substituted;

(2) sub-section (3) shall be omitted; and

(3) after sub-section (4) the following sub-sections shall be added, namely:—

"(5) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, where a creditor has taken possession on any terms whatsoever of any immovable property of the debtor as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, and where the Court has not pronounced a final decree for foreclosure or has not confirmed a sale held in execution of a final decree for the sale of the property, the Board shall, in making the determination under sub-section (2), prepare an account in the prescribed manner of the receipts of the creditor derived from the said property and after deducting the expenses properly incurred by the creditor (of which an account shall similarly be prepared) either for the cultivation or for the management of the said property, shall credit the sum of such receipts in reduction of the amount, if any, from time to time due to the creditor, as interest, on the original principal of the debt and, so far as such sum exceeds any interest due, in reduction or discharge, as the case may be, of such original principal.

6 *The Bengal Agricultural Debtors (Amendment) Act, 1940.*

[Ben. Act VIII]

(Section 11.)

(6) In determining under this section the amount of arrears of interest due—

(a) the rate of interest taken shall not, notwithstanding anything contained in any contract, exceed the rate recoverable in a suit or other proceedings for the recovery of the interest under any law for the time being in force, and

(b) where the debt relates to a loan in kind or where there is any stipulation for the payment of interest in kind, the money value of the principal or interest shall, where the circumstances required such calculation, be calculated in the manner prescribed."

Amendment of section 19.

11. In sub-section (1) of section 19 of the said Act—

(a) proviso (ii) to clause (b) shall be omitted, and

(b) after clause (b) the following clause shall be inserted, namely:—

“(c) when in respect of a debt referred to in sub-section (5) of section 18, the Board, if so empowered under section 7, considers that the debtor has made an offer for the settlement of the debt which the creditor ought reasonably to accept, it may order that the debt be settled in accordance with such offer, and may pass a further order directing the creditor to restore to the debtor by a specified date any immovable property of the debtor which is in his possession as security for or in lieu of payment of any portion of the principal of such debt or any portion of the interest thereon. Such date shall be fixed in consideration of the profits derived and the estimated profits which may be derived by the creditor from such property provided that in no case shall the date be fixed so as to allow the creditor to enjoy possession of the land of a *raiyat* or under-*raiyat* for a period exceeding fifteen years from the commencement of such possession.”

The Bengal Agricultural Debtors (Amendment) Act, 1940. 7

of 1940.]

(Sections 12, 13.)

12. After section 19 of the said Act the following section shall be inserted, namely:— Insertion of new section 19A.

“19A. (1) If the creditor does not restore possession of the immovable property of the debtor to the debtor by the date specified in an award under sub-section (2) of section 19, the debtor may, apply to the Certificate-officer exercising jurisdiction in the area in which such property is situated, to be put in possession thereof.

(2) An application under sub-section (1) shall be accompanied by the prescribed process fee, and the Certificate-officer, after giving notice in the prescribed manner to the creditor and to any person who may be in possession under the creditor and after such inquiry as he considers necessary, may direct the creditor to pay to the debtor such compensation as appears to him to be fair and equitable in respect of the period during which the creditor or any person who may be in possession under him retained possession of the property in contravention of the said order of the Board together with costs incidental to the application under this section, and may also pass an order directing the creditor or any person who may be in possession under him to deliver possession of the property to the debtor by a specified date.

(3) If possession of the property is not delivered to the debtor by the date specified in an order under sub-section (2), the Certificate-officer shall on the application of the debtor, order delivery of possession to be made by putting in possession of the property the debtor or any other person whom he may appoint to receive delivery on his behalf, and in delivering possession, the Certificate-officer shall have the same powers as under the Bengal Public Demands Recovery Act, 1913.

(4) Any compensation and costs payable under an order under this section shall be recoverable as a public demand.”

13. In section 20 of the said Act, after the word “not,” the words “or whether a liability is a debt or not” shall be inserted. Amendment of section 20.

Ben. Act
III of
1913.

8 *The Bengal Agricultural Debtors (Amendment) Act, 1940.*

[Ben. Act VIII]

(Sections 14—17.)

Amendment of
section 21.

14. In section 21 of the said Act—

(a) the words, figures and brackets “in excess of simple interest at the rate of six *per cent. per annum* on the principal of such debt as determined under sub-section (2) of section 18” shall be omitted, and

(b) for the words, figures and brackets “or such award has ceased to subsist under sub-section (5) of section 29, or, if there is no award, until the expiry of such period not exceeding ten years as may be specified in the certificate” the following words, figures and brackets shall be substituted, namely:—

“or until the expiry of such period not exceeding ten years as may be specified in the certificate, whichever is later, or, if the award ceases to subsist under sub-section (5) of section 29, until the award has so ceased to subsist.”

Amendment of
section 25.

15. In sub-section (1) of section 25 of the said Act, after clause (g) the following clause shall be inserted, namely:—

“(h) the date, if any, by which possession of immovable property is to be restored to the debtor under the terms of an award under sub-section (2) of section 19.”

Amendment of
section 27.

16. To sub-section (1) of section 27 of the said Act the following proviso shall be added, namely:—

“Provided that where an award under sub-section (2) of section 19 directs the restoration of possession of immovable property to the debtor, the mortgage, charge or lien shall be subject to such modification as to the period of possession as may be contained in the award.”

Amendment of
section 33.

17. In clause (a) of section 33 of the said Act, after the words “before a Board” the words “or an Appellate Officer or a District Judge or an Additional District Judge” shall be inserted.

of 1940.]

(Sections 18, 19.)

18. For section 34 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 34.

“34. When an application under section 8 or a statement under sub-section (1) of section 13 includes any debt in respect of which a suit or other proceeding is pending before a Civil or Revenue Court, or when an Appellate Officer entertains an appeal or a District Judge or an Additional District Judge entertains an application for revision, relating to such a debt, the Board or the Appellate Officer or the District Judge or the Additional District Judge, as the case may be, shall give notice thereof to such court in the prescribed manner, and thereupon the suit or the proceeding shall be stayed until the Board has either dismissed the application in respect of such debt or made an award thereon or until the Appellate Officer has disposed of such appeal or the District Judge or the Additional District Judge has disposed of such application for revision, and if the Board or the Appellate Officer or District Judge or Additional District Judge includes any part of such debt in clause (d) of sub-section (1) of section 25 in the award or decides that the debt does not exist the suit or proceeding shall abate so far as it relates to such debt.

Explanation.—For the purpose of this section an execution proceeding for the sale of any property shall be deemed to be pending and the debt in respect of which the sale takes place shall be deemed to exist until such sale becomes absolute.”

19. In section 35 of the said Act—

Amendment of section 35.

(1) in clause (ii) after the word “debtor” the words and figures “on or after the first day of January, 1940, or ” shall be inserted; and

(2) in clause (iii)—

(a) for the words “a debt” the words “any sum in respect of any loan other than a loan recoverable as a public demand” shall be substituted, and

(b) after the word “debtor” the words and figures “on or after the first day of January, 1940, or” shall be inserted.

10 *The Bengal Agricultural Debtors (Amendment) Act, 1940.*

[Ben. Act VIII]

(Sections 20, 21.)

Amendment of
section 40.

20. In section 40 of the said Act—

(1) for the proviso to sub-section (1) the following proviso shall be substituted, namely:—

“Provided that an appeal against any order under section 21, section 22 or section 29, and no other appeal shall be made to an Appellate Officer appointed under this section who has had such judicial experience as may be prescribed.”

(2) after sub-section (4) the following sub-section shall be inserted, namely:—

“(4A) The Appellate Officer may stay any order directing the restoration of possession of immovable property to a debtor under clause (c) of sub-section (1) of section 19 pending the disposal of an appeal preferred to him against such order.”

(3) for sub-section (6) the following shall be substituted, namely:—

“(6) subject to the provisions of section 40A the orders of the Appellate Officer shall be final.”

Insertion of new
section 40A.

21. After section 40 of the said Act the following section shall be inserted, namely:—

“40A. (1) An application may be made in the prescribed manner for revision by the District Judge of an order made by an Appellate Officer.

(2) An application under sub-section (1) shall lie if made within thirty days of the date of the order referred to in that sub-section.

(3) Every such application shall be made to the Appellate Officer who shall forward to the District Judge the record of the case, the application and any explanation which he may desire to offer in respect of the application.

(4) The District Judge shall consider such papers as may be forwarded to him by the Appellate Officer, but shall not hear the parties or any person appearing on their behalf.

(5) If the District Judge does not reject the application, he may, if he is satisfied that there has been a substantial failure of justice by reason of any illegality or irregularity contained in the order of the Appellate Officer,

The Bengal Agricultural Debtors (Amendment) Act, 1940. 11

of 1940.]

(Sections 22—25.)

or for any other sufficient cause either modify or reverse the order or any portion thereof:

Provided that the District Judge may transfer to an Additional District Judge subordinate to him any papers forwarded to him by an Appellate Officer under sub-section (3) and such Additional District Judge shall in respect of the applications so transferred exercise the same powers and perform the same duties as those respectively conferred and imposed upon the District Judge under this section."

22. Section 41 of the said Act shall be omitted.

Omission of section 41.

23. In section 44 of the said Act—

Amendment of section 44.

(a) in clause (a) after the words "person interested" the words "or of its own motion", and

(b) in clause (b) after the words "person interested" the words "or of his own motion"

shall be inserted.

24. In sub-section (2) of section 55 of the said Act—

Amendment of section 55.

(a) in clause (i) after the word and figure "section 13" the words, letters, figures and brackets "section 13A, sub-section (2) of section 19A" shall be inserted;

(b) after clause (m) the following clauses shall be inserted, namely:—

"(ma) the preparation of accounts of receipts and expenses of a creditor under sub-section (5) of section 18;

(mb) the calculation of the money value of principal or interest referred to in sub-section (6) of section 18;"

25. After section 56 of the said Act the following section shall be inserted, namely:—

Insertion of new section 57.

"57. The fees which may be prescribed under Certain fees clause (b) of sub-section (2) recoverable as of section 55 for an order of public demands. determination under sub-section (2) of section 18 and which have not been paid by the date fixed by the Board shall be recoverable as public demands payable to the Collector."

Bengal Act VIII of 1942

THE BENGAL AGRICULTURAL DEBTORS (SECOND AMENDMENT) ACT, 1942.

[Passed by the Bengal Legislature.]

[Assent of the Governor General was first published in the *Calcutta Gazette* of the 7th January 1943.]

An Act further to amend the Bengal Agricultural Debtors Act, 1935.

Ben.
Act VII
of 1936.

WHEREAS it is expedient further to amend the Bengal Agricultural Debtors Act, 1935, for the purpose and in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Agricultural Debtors (Second Amendment) Act, 1942. Short title and commencement.

(2) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In sub-section (1) of section 8 of the Bengal Agricultural Debtors Act, 1935 (hereinafter referred to as the said Act), for the words "five years" the words "seven years" shall be substituted. Amendment of section 8 of Bengal Act VII of 1936.

3. In sub-section (2) of section 37A of the said Act, for the words "five years" the words "seven years" shall be substituted. Amendment of section 37A.

Price—Indian, anna 1; English, 2d.

X 9(1) : 6 : (2262)

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X62:1: (2262)

Bengal Act VII of 1933.

THE BENGAL MONEY-LENDERS ACT, 1933.

[Published in the *Calcutta Gazette* of the 26th October, 1933.]

An Act to provide more effectual control of money-lending in Bengal.

4

WHEREAS it is expedient to make better provision for the control of money-lending and to give additional powers to Courts to deal with money-lending in Bengal;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

5 & 6 Geo.
V, c. 61;
6 & 7 Geo.
V, c. 37;
9 & 10
Geo. V,
c. 101.

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Money-lenders Act, 1933.

Short title,
extent and
commencement.

(2) It extends to the whole of Bengal:

Provided that nothing in this Act shall apply to any loan made within the limits of the Ordinary Original Jurisdiction of the High Court or under a contract made within those limits.

(3) It shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context—

Definitions.

(1) "money-lender" means any person who grants a loan of money; and

(2) "prescribed" means prescribed by rules made under this Act.

(Sections 3—7.)

Presumption in case of certain loans.

3. Where in any suit in respect of any money lent by a money-lender after the commencement of the Usurious Loans Act, 1918, it is found that the interest charged exceeds the rate of fifteen *per cent. per annum* in the case of a secured loan or twenty-five *per cent. per annum* in the case of an unsecured loan or that there is a stipulation for rests at intervals of less than six months, the Court shall, until the contrary is proved, presume for the purpose of section 3 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was harsh and unconscionable and was substantially unfair, but this provision shall be without prejudice to the powers of the Court under the said section where the Court is satisfied that the interest charged, though not exceeding fifteen *per cent. per annum* or twenty-five *per cent. per annum*, as the case may be, is excessive. X of 1918.

Power to limit interest recoverable in certain cases.

4. Notwithstanding anything in any other Act, where in any suit in respect of any money lent by a money-lender before the commencement of this Act it is found that the arrears of interest amount to a sum greater than the principal of the loan, the Court, unless it is satisfied that the money-lender had reasonable grounds for not enforcing his claim earlier, shall limit the amount of such interest recoverable in the suit to an amount equal to the principal of the loan.

Maximum rate of interest recoverable under a contract which provides for the payment of compound interest.

5. No money-lender shall recover by suit interest of any kind at a rate exceeding ten *per cent. per annum* in respect of any loan made after the commencement of this Act under a contract which provides for the payment of compound interest.

Bar to recovery of interest exceeding the principal.

6. No Court shall, in respect of any loan made after the commencement of this Act, decree on account of arrears of interest a sum greater than the principal of the loan.

Money-lender to supply debtor with particulars of loan:

7. (1) Every money-lender, on demand made in the prescribed form by a debtor by registered post, shall supply such debtor with such particulars as may be prescribed concerning any loan made by him to the debtor on account of which any sum is due from the debtor.

(2) A money-lender who sends by registered post to the debtor at the address mentioned in the form of demand the particulars referred to in sub-section (1) shall be presumed to have complied with the demand made under that sub-section.

of 1933.]

(Sections 8—10.)

(3) Where a money-lender has complied with a demand made by a debtor under sub-section (1) the debtor shall not be entitled to make a further demand under the said sub-section in respect of the same loan within a period of six months from the date of such compliance.

8. If a money-lender to whom a demand has been made in accordance with the provisions of sub-section (1) of section 7 fails without reasonable excuse to comply therewith within a month from the date of the service of the demand, interest shall not be chargeable in respect of the loan concerning which the demand was made for so long as the default continues.

Failure to supply particulars under section 7.

9. (1) Where a debtor has sent to a money-lender by postal money-order any sum of money due from him to the money-lender in respect of a loan and the money-lender has refused to accept the same the debtor may apply in the prescribed manner to the lowest Civil Court having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the money-lender and the Court on receiving the prescribed fee from the debtor shall keep the said sum in deposit and shall send a notice of the deposit in the prescribed manner to the money-lender.

Deposit in Court of money due to money-lender.

(2) If a money-lender accepts money sent in the manner specified in sub-section (1) by a debtor or withdraws money deposited under the said sub-section he shall not be bound by any statement made by the debtor in remitting or depositing the money.

10. (1) The Local Government may make rules for carrying out the purposes of this Act. Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the form of a demand by a debtor and the particulars to be supplied by a money-lender under sub-section (1) of section 7; and

(ii) the manner in which an application for deposit is to be made under sub-section (1) of section 9, the fee to be paid for such application, and the manner in which a notice of the deposit is to be sent to the money-lender.

STATEMENT OF AMENDMENTS.

AMENDED The Government of India
(Adaptation of Indian
Laws) Order, 1937.

NOTE.—In reprinting this Act,—

- (1) the amendments made by the Adaptation Order have been inserted in their proper places with explanatory footnotes ;
- (2) some further footnotes have been added for convenience of reference.

Bengal Act VII of 1933.

THE BENGAL MONEY-LENDERS ACT, 1933.¹

(As modified up to the 1st March 1941.)

(26th October, 1933.)

An Act to provide more effectual control of money-lending in Bengal.

WHEREAS it is expedient to make better provision for the control of money-lending and to give additional powers to Courts to deal with money-lending in Bengal ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

5 & 6 Geo.
V, c. 61 ;
6 & 7-Geo.
V, c. 37 ;
9 & 10
Geo. V,
c. 101.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Money-lenders Act, 1933.

Short title,
extent and
commencement.

(2) It extends to the whole of Bengal :

Provided that nothing in this Act shall apply to any loan made within the limits of the Ordinary Original Jurisdiction of the High Court or under a contract made within those limits.

(3) It shall come into force on such date² as the³ [Provincial Government] may, by notification in the ⁴[*Official Gazette*], appoint.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1932, Pt. IV, p. 441 ; and for Report of the Select Committee, see *ibid*, 1933, Pt. IV, p. 2, and for further report of the Select Committee, see *ibid*, 1933, Pt. IV, p. 178 ; and for Proceedings of Council, see the Proceedings of the Bengal Legislative Council, Vol. XXXIX, No. 6, p. 201, and *ibid*, Vol. XL, No. 1, p. 82, and *ibid*, Vol. XLII, No. 1, p. 230, and *ibid*, No. 2, pages 57, 107, 167 and 214.

²The Act came into force on the 1st July 1934, vide Notification No. 9039J., dated the 19th December 1933, published in the *Calcutta Gazette*, dated the 28th December 1933, Pt. I, p. 1908.

³These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "*Calcutta Gazette*," *ibid*.

[Ben. Act VII

(Sections 2—7.)

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

- (1) “money-lender” means any person who grants a loan of money; and
 (2) “prescribed” means prescribed by rules made under this Act.

Presumption in case of certain loans.

3. Where in any suit in respect of any money lent by a money-lender after the commencement of the Usurious Loans Act, 1918, it is found that the interest charged exceeds the rate of fifteen *per cent. per annum* in the case of a secured loan or twenty-five *per cent. per annum* in the case of an unsecured loan or that there is a stipulation for rests at intervals of less than six months, the Court shall, until the contrary is proved, presume for the purpose of section 3 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was harsh and unconscionable and was substantially unfair, but this provision shall be without prejudice to the powers of the Court under the said section where the Court is satisfied that the interest charged, though not exceeding fifteen *per cent. per annum* or twenty-five *per cent. per annum*, as the case may be, is excessive. X of 1918.

Power to limit interest recoverable in certain cases.

4. Notwithstanding anything in any other Act, where in any suit in respect of any money lent by a money-lender before the commencement of this Act it is found that the arrears of interest amount to a sum greater than the principal of the loan, the Court, unless it is satisfied that the money-lender had reasonable grounds for not enforcing his claim earlier, shall limit the amount of such interest recoverable in the suit to an amount equal to the principal of the loan.

Maximum rate of interest recoverable under a contract which provides for the payment of compound interest.

5. No money-lender shall recover by suit interest of any kind at a rate exceeding ten *per cent. per annum* in respect of any loan made after the commencement of this Act under a contract which provides for the payment of compound interest.

Bar to recovery of interest exceeding the principal.

6. No Court shall, in respect of any loan made after the commencement of this Act, decree on account of arrears of interest a sum greater than the principal of the loan.

Money-lender to supply debtor with particulars of loan.

7. (1) Every money-lender, on demand made in the prescribed form by a debtor by registered post, shall supply such debtor with such particulars as may be prescribed concerning any loan made by him to the debtor on account of which any sum is due from the debtor.

of 1933.]

(Sections 8—10.)

(2) A money-lender who sends by registered post to the debtor at the address mentioned in the form of demand the particulars referred to in sub-section (1) shall be presumed to have complied with the demand made under that sub-section.

(3) Where a money-lender has complied with a demand made by a debtor under sub-section (1) the debtor shall not be entitled to make a further demand under the said sub-section in respect of the same loan within a period of six months from the date of such compliance.

8. If a money-lender to whom a demand has been made in accordance with the provisions of sub-section (1) of section 7 fails without reasonable excuse to comply therewith within a month from the date of the service of the demand, interest shall not be chargeable in respect of the loan concerning which the demand was made for so long as the default continues.

Failure to supply particulars under section 7.

9. (1) Where a debtor has sent to a money-lender by postal money-order any sum of money due from him to the money-lender in respect of a loan and the money-lender has refused to accept the same the debtor may apply in the prescribed manner to the lowest Civil Court having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the money-lender and the Court on receiving the prescribed fee from the debtor shall keep the said sum in deposit and shall send a notice of the deposit in the prescribed manner to the money-lender.

Deposit in Court of money due to money-lender.

(2) If a money-lender accepts money sent in the manner specified in sub-section (1) by a debtor or withdraws money deposited under the said sub-section he shall not be bound by any statement made by the debtor in remitting or depositing the money.

10. (1) The ¹[Provincial Government] may make rules for carrying out the purposes of this Act. Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (i) the form of a demand by a debtor and the particulars to be supplied by a money-lender under sub-section (1) of section 7 ; and

¹See foot-note 3 on p. 1, ante.

[Ben. Act VII of 1933.]

(Section 10.)

- (ii) the manner in which an application for deposit is to be made under sub-section (1) of section 9, the fee to be paid for such application, and the manner in which a notice of the deposit is to be sent to the money-lender.

¹[(3) The powers conferred by this section on the Provincial Government shall, in relation to banking business carried on by any Corporation, be powers of the Central Government.]

¹Sub-section (3) was inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.



Government of Bengal
Legislative Department

5

Bengal Act X of 1940

The Bengal Money-Lenders
Act, 1940

X62:1:(2282).

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THE BENGAL MONEY-LENDERS ACT, 1940.

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Bengal Act X of 1940.

THE BENGAL MONEY-LENDERS ACT, 1940.

[Passed by the Bengal Legislature.]

[Assent of the Governor-General was first published in the *Calcutta Gazette* of the 1st August 1940.]

An Act further to regulate transactions of money-lending in Bengal.

WHEREAS it is expedient to make further and better provision for the control of money-lenders and for the regulation and control of money-lending :

It is hereby enacted as follows :—

CHAPTER I.

Introductory.

1. (1) This Act may be called the Bengal Money-lenders Act, 1940. Short title,
extent and
commencement.
- (2) It extends to the whole of Bengal.
- (3) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.
 - (1) "bank" means a banking company as defined in section 277F of the Indian Companies Act, 1913, whether incorporated in or outside British India ;
 - (2) "borrower" means a person to whom a loan is advanced and includes a successor-in-interest or surety ;
 - (3) "Calcutta" means the area within the limits of the ordinary original civil jurisdiction of the High Court in Calcutta ;
 - (4) "commercial loan" means a loan advanced to any person to be used by such person solely for the purposes of any business or concern relating to trade, commerce, industry, mining, planting, insurance, transport, banking or entertainment, or to the occupation of wharfinger, warehouseman or contractor or any other venture of a mercantile nature, whether as proprietor or principal or agent or guarantor ;

[Ben. Act X

(Chapter I.—Introductory.—Section 2.)

Explanation.—Notwithstanding anything contained in any agreement relating thereto, a loan shall not be deemed to be a commercial loan unless it is in substance a loan to be used solely for any of the purposes referred to in this clause.

- (5) “co-operative life insurance society”, “mutual insurance company” and “provident society” have the same meanings as in the Insurance Act, 1938; IV of 1938.
- (6) “co-operative society” means a society registered under the Co-operative Societies Act, 1912, or any Act of the Provincial Legislature, for the time being in force, relating to such societies; II of 1912.
- (7) “insurance company” means—
- (a) in relation to any loan advanced before the commencement of the Insurance Act, 1938, an insurance company within the meaning of the Indian Insurance Companies Act, 1928, and IV of 1938. XX of 1928.
- (b) in relation to any loan advanced after the commencement of the Insurance Act, 1938, an insurance company within the meaning of that Act; IV of 1938.
- (8) “interest” includes any sum by whatsoever name called, in excess of the principal paid or payable to a lender in consideration of, or otherwise in respect of, a loan whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged by a lender in accordance with the provisions of this Act or any other law for the time being in force for or on account of costs, charges or expenses;
- (9) “lender” means a person who advances a loan and includes a money-lender;
- (10) “licence” means a licence granted under this Act;
- (11) “life assurance company” has the same meaning as in the Indian Life Assurance Companies Act, 1912; VI of 1912.
- (12) “loan” means an advance, whether of money or in kind, made on condition of repayment with interest and includes any transaction which is in substance a loan but does not include—
- (a) a deposit of money or other property,

of 1940.]

(Chapter I.—Introductory.—Section 2.)

XXI of
1860.

(b) a loan to, or by, or a deposit with, any society or association registered under the Societies Registration Act, 1860, or under any other law relating to public, religious or charitable objects ;

(c) a loan taken or advanced by any Government in British India or by any local authority in Bengal ;

(d) a loan advanced before or after the commencement of this Act—

(i) by a bank which was a scheduled bank on the first day of January, 1939, or by a bank which has been declared to be a notified bank under section 3, whether or not such bank was a scheduled bank or was so declared to be a notified bank, as the case may be, at the time the loan was advanced ; or

(ii) by a co-operative life insurance society, co-operative society, insurance company, life assurance company, mutual insurance company, provident insurance society or provident society or from a provident fund ;

XXVI of
1881.

(e) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note ;

(f) a commercial loan ;

(g) a loan advanced to any person for the purchase or construction of a house or for the construction of a house together with the purchase of the site thereof, within the limits of the area defined by clause (II) of section 3 of the Calcutta Municipal Act, 1923, or of any area which has been or may hereafter be constituted a municipality under the provisions of the Bengal Municipal Act, 1932, if such loan is subject to the condition of repayment by instalments extending over a period of ten years or more ;

Ben. Act
III of
1923.

Ben. Act
XV of
1932.

(h) a loan made to or by the Administrator-General and Official Trustee of Bengal or the Commissioner of Wakfs or the Official

(Chapter I.—Introductory.—Section 2.)

Assignee or the Official Receiver of the High Court in Calcutta ;

(i) a loan or debenture in respect of which dealings are listed on any Stock Exchange ;

- (13) “ money-lender ” means a person who carries on the business of money-lending in Bengal or who has a place of such business in Bengal, and includes a pawnee as defined in section 172 of the Indian Contract Act, 1872 ; IX of 1872.
- (14) “ money-lending business ” and “ business of money-lending ” mean the business of advancing loans either solely or in conjunction with any other business ;
- (15) “ prescribed ” means prescribed by rules made under this Act ;
- (16) “ principal ” means in relation to a loan the amount actually advanced to the borrower ;
- (17) “ provident fund ” has the same meaning as in the Provident Funds Act, 1925 ; XIX of 1925.
- (18) “ provident insurance society ” means a society registered under the Provident Insurance Societies Act, 1912 ; V of 1912.
- (19) “ register ” means a register of money-lenders maintained under section 7 ;
- (20) “ scheduled bank ” has the same meaning as in the Reserve Bank of India Act, 1934 ; II of 1934.
- (21) “ suit ” includes an appeal ;
- (22) “ suit to which this Act applies ” means any suit or proceeding instituted or filed on or after the 1st day of January, 1939, or pending on that date and includes a proceeding in execution—
- (a) for the recovery of a loan advanced before or after the commencement of this Act ;
- (b) for the enforcement of any agreement entered into before or after the commencement of this Act, whether by way of settlement of account or otherwise, or of any security so taken, in respect of any loan advanced whether before or after the commencement of this Act ; or
- (c) for the redemption of any security given before or after the commencement of this Act in respect of any loan advanced whether before or after the commencement of this Act.

of 1940.]

(Chapter I.—Introductory.—Chapter II.—Competent Courts and Procedure.—Chapter III.—Registration and Licensing of Money-lenders.—Sections 3—6.)

3. The Provincial Government may, by notification in the *Official Gazette*, declare any bank to be a notified bank for the purposes of this Act:

Notified bank.

Provided that no bank shall be so declared to be a notified bank unless it complies with such conditions as may, with the approval of the Provincial Legislature, be prescribed.

CHAPTER II.

Competent Courts and Procedure.

4. Notwithstanding anything contained in any other law, the Courts (hereinafter referred to as Competent Courts) which have jurisdiction to entertain proceedings under sections 16 and 19 and to pass orders therein are the Courts hereinafter specified, within the local limits of whose jurisdiction the money-lender actually and voluntarily resides or carries on the business of money-lending—

Competent Courts under this Act:

- (a) in Calcutta, the Court of Small Causes of Calcutta;
- (b) outside Calcutta, the Court of the District Judge (hereinafter called a "District Court") and any Court to which he may transfer the proceedings.

5. (1) Subject to the provisions of this Act, a Competent Court shall, in proceedings under section 19, have the same powers and shall follow the same procedure as it has and follows in civil suits, and the provisions of section 24 of the Code of Civil Procedure, 1908, shall apply to such proceedings.

Procedure in Competent Courts.

V of 1908.

(2) Every order made by a Competent Court under this Act shall be subject to appeal in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals.

V of 1908.

(3) An appeal from a decision made by the Court of Small Causes of Calcutta under this Act shall lie to the High Court as if it were an appeal under sub-section (2) to the High Court from a decision made by a District Court.

CHAPTER III.

Registration and Licensing of Money-lenders.

6. There shall be a Provincial Registrar for the purposes of this Act and as many Registrars and Sub-Registrars of money-lenders for assisting the Registrar as the Provincial Government may from time to time determine. The Provincial Government may define, by notification in the *Official Gazette*, the area within which each such officer shall exercise

Appointment of Provincial and other Registrars.

*(Chapter III.—Registration and Licensing of Money-lenders.—
Sections 7—12.)*

his powers and perform his duties and may prescribe the control which shall be exercised by the Provincial Registrar over Registrars and Sub-Registrars and by a Registrar over Sub-Registrars :

Provided that no person who is not a servant of the Crown in India shall be empowered to act as a Provincial Registrar, Registrar or Sub-Registrar under this Act.

Register of money-lenders.

7. Each Sub-Registrar shall maintain in the prescribed form a register of money-lenders holding licences issued by him.

Money-lending business not to be carried on except under licence.

8. After such date not less than six months after the commencement of this Act as the Provincial Government shall, by notification in the *Official Gazette*, appoint in this behalf, no money-lender shall carry on the business of money-lending unless he holds an effective licence.

Explanation.—An effective licence for the purposes of this Act comprises a licence issued to a person who is not disqualified for holding a licence.

Licences.

9. (1) A licence shall be valid throughout the whole of Bengal for a period of three years from the date of its issue or until it is cancelled.

(2) On the expiration of the period for which the licence was granted or on the cancellation of a licence it shall be returned by the money-lender to the Sub-Registrar who issued it.

Licence fee.

10. There shall be paid to the Provincial Government a fee of fifteen rupees for a licence issued under this Act :

Provided that the Provincial Government may, by notification in the *Official Gazette*, remit any part of such fee either generally or for any particular class of money-lenders.

Application for licences.

11. An application for the grant of a licence shall be made in the prescribed form and manner to the Sub-Registrar within the local limits of whose jurisdiction the money-lender has a place of money-lending business and shall contain such particulars as may be prescribed.

Entry in register and grant of licences.

12. On receipt of an application under section 11 and on payment in the prescribed manner of the licence fee specified in section 10, the Sub-Registrar shall, subject to the provisions of section 16, enter the name of the applicant in the register and grant the applicant a licence in such form as may be prescribed.

of 1940.]

(Chapter III.—Registration and Licensing of Money-lenders.—Sections 13, 14.)

13. (1) No Court shall pass a decree or order in favour of a money-lender in any suit instituted by a money-lender for the recovery of a loan advanced after the date notified under section 8, or in any suit instituted by a money-lender for the enforcement of an agreement entered into or security taken, or for the recovery of any security given, in respect of such loan, unless the Court is satisfied that, at the time or times when the loan or any part thereof was advanced, the money-lender held an effective licence.

Stay of suit when money-lender does not hold licence.

(2) If during the trial of a suit to which sub-section (1) applies, the Court finds that the money-lender did not hold such licence, the Court shall, before proceeding with the suit, require the money-lender to pay in the prescribed manner and within the period to be fixed by the Court such penalty as the Court thinks fit, not exceeding three times the amount of the licence fee specified in section 10.

(3) If the money-lender fails to pay the penalty within the period fixed under sub-section (2) or within such further time as the Court may allow, the Court shall dismiss the suit: if the money-lender pays the penalty within such period, the Court shall proceed with the suit.

(4) The provisions of this section shall apply to a claim for a set-off by or on behalf of a money-lender.

(5) In this section, the expression "money-lender" includes an assignee of a money-lender, if the Court is satisfied that the assignment was made for the purposes of avoiding the payment of licence fee and penalty which may be ordered to be paid under this section.

14. (1) A person shall be disqualified for holding a licence—

Disqualification of persons for holding a licence.

(a) if so ordered by a Court under section 20, for the period ordered;

(b) if he has been convicted of any offence specified in the Schedule to this Act and if such conviction has not been set aside by any Court of appeal or revision under any law for the time being in force.

(2) The Provincial Government may, at any time, on application in the prescribed form accompanied by the prescribed fee, remove a disqualification referred to in sub-section (1), having regard to the time which has elapsed since the order and the circumstances under which it was made or to the time which has elapsed since the conviction and to the nature of the offence.

(Chapter III.—Registration and Licensing of Money-lenders.—Sections 15, 16.)

Proof of conviction or order for disqualification.

15. Where it is required to be proved for the purposes of this Act that any person has been convicted of an offence specified in the Schedule to this Act or has been disqualified by an order of a Court for holding a licence, such conviction or order may be proved, in addition to any other mode provided by any law for the time being in force—

- (a) by an extract certified under the signature of the officer having the custody of the records of the Court in which such conviction was had, or such order was passed, to be a copy of the sentence or order, or
- (b) in the case of a conviction, by a certificate signed by the officer in charge of the jail, in which the punishment or any part thereof was undergone, or by the production of the warrant of commitment under which the punishment was suffered,

together with, in each of such cases, evidence as to the identity of the person so convicted or in respect of whom such order was passed.

Refusal to grant licence.

16. (1) The grant of a licence shall not be refused except on one or more of the following grounds, namely :—

- (a) that the applicant has not complied with the provisions of this Act or of the rules made thereunder in respect of an application for the grant of a licence ;
- (b) that the applicant or any person responsible or proposed to be responsible for the management of the applicant's money-lending business is under this Act disqualified for holding a licence.

(2) A Sub-Registrar refusing a licence—

- (i) under clause (a) of sub-section (1) shall record his reasons for such refusal ;
- (ii) under clause (b) of sub-section (1) shall record the evidence of the disqualification.

(3) An appeal from the orders of a Sub-Registrar refusing a licence shall, if made within thirty days from the date of such order, lie to a Registrar authorised under section 6 to hear such appeal.

(4) A Registrar referred to in sub-section (3) may decide, if such appeal is allowed, as to the Sub-Registrar to whom application for a licence shall be made and his decision shall, subject to the provisions of sub-section (5), be final for

of 1940.]

(Chapter III.—Registration and Licensing of Money-lenders.—
Sections 17—20.)

all purposes, and shall be binding on such Sub-Registrar whether he be under the control of such Registrar or not.

(5) A Competent Court may, on application made within ninety days from the date of the decision of the Registrar in appeal under sub-section (3), revise such decision.

(6) The procedure to be followed by a Competent Court or by a Registrar in proceedings under this section shall be in accordance with rules prescribed under this Act.

(7) The provisions of sections 4, 5 and 12 of the Indian Limitation Act, 1908, shall apply to all appeals and applications for revision made under this section, and for the purposes of the said sections a Registrar shall be deemed to be a Court.

IX of
1908.

17. Any Sub-Registrar may, after giving the money-lender to whom a licence entered in the register maintained by such Sub-Registrar was issued an opportunity of being heard, cancel the licence if it is proved that such money-lender was disqualified for holding a licence at the time when such licence was issued; and thereupon the provisions of clause (ii) of sub-section (2) and of sub-sections (3), (4), (5), (6) and (7) of section 16 shall apply.

Cancellation of
licence by a
Sub-Registrar.

18. For the purposes of an inquiry under this Act relating to a disqualification for holding a licence a Registrar or a Sub-Registrar shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of enforcing the attendance of any person and examining him on oath.

Power to
Registrar and
Sub-Registrar
to examine
any person
on oath.

V of
1908.

19. Any borrower may, in respect of any money-lender from whom he has taken a loan, make an application to a Competent Court for an order under section 20 on the ground that such money-lender has committed such contravention of the provisions of this Act or the rules made thereunder as render him unfit to carry on the business of money-lending, and on receipt of such application, the said Court shall hold such inquiry as it deems necessary.

Application for
cancellation of
licence.

20. (1) A Competent Court on an application under section 19 or a Court trying a suit to which this Act applies or a Court passing an order of conviction upon a money-lender for an offence under this Act, if satisfied that the money-lender has committed such contravention of the

Court's power
to cancel
a licence.

[Ben. Act X]

*(Chapter III.—Registration and Licensing of Money-lenders.—
Section 20.)*

provisions of this Act or of the rules made thereunder as, in its opinion, makes him unfit to carry on the business of money-lending—

- (a) shall cause the particulars of the conviction, if any, and of any order passed by the Court under this sub-section to be endorsed on the licence held by the money-lender or by any other person affected by such order ; and
- (b) may declare such money-lender or any person responsible for the management of his money-lending business or both disqualified for holding a licence for such period as the Court may think fit and shall cancel and impound the licence held by the money-lender :

Provided that, except in the case of an order passed by a District Court, or by the Court of an Additional District Judge or by the Court of Small Causes of Calcutta, the period of disqualification shall not exceed one year.

(2) If a Court other than a District Court, or the Court of an Additional District Judge or the Court of Small Causes of Calcutta is of opinion that a period of disqualification exceeding one year should be imposed, it shall record its opinion and forward the proceedings to the District Court having jurisdiction in the place where such Court is held.

(3) The District Court to which such proceedings are submitted may, if it thinks fit, examine the parties and recall and examine any person who has already given evidence in the proceedings, and may call for and take any further evidence, and shall pass such order in the case as it thinks fit in accordance with the provisions of sub-section (1).

(4) Any person aggrieved by the decision of a Court under this section may appeal against such order, in the case of the Court of Small Causes of Calcutta to the High Court and in the case of any other Court to the Court to which an appeal ordinarily lies from the decision of the Court passing the order ; and the Court which passed the order or the Court of appeal may, if it thinks fit, stay the operation of the order under this section pending the disposal of the appeal :

Provided that where the Court of appeal sets aside or varies an order passed under this section, it shall order that any endorsements made in pursuance thereof upon a licence held by a money-lender shall be erased or modified.

of 1940.]

(Chapter III.—Registration and Licensing of Money-lenders.—Chapter IV.—Regulation of Accounts of Money-lenders.—Sections 21—24.)

(5) The substance of any order passed under sub-section (1), sub-section (3) or sub-section (4) shall be sent forthwith in the prescribed form by the Court passing the order to the Provincial Registrar and also together with the cancelled licence to the Sub-Registrar who maintains the register in which the licence affected has been entered for entry in the said register and for such circulation of the substance of the said order to other Registrars as may be prescribed.

(6) Any licence required by a Court for endorsement under sub-section (1) shall be produced in such manner and at such time as the Court may direct by the person by whom it is held, and any person who without reasonable cause makes default herein shall be liable on conviction to a fine not exceeding fifty rupees for each day of the period during which the default continues.

(7) The powers conferred on a Court under sub-section (1) may be exercised by a Court in appeal or in revision.

21. A person whose licence has been cancelled shall not be entitled to any compensation on such account nor to the refund of any licence fee paid in respect of such licence.

No compensation for cancellation of licence.

22. All licence fees and all penalties imposed under this Act shall be recoverable as public demands.

Licence fees and penalties recoverable as public demands.

23. (1) Whoever being disqualified for holding a licence, applies for or obtains a licence during the pendency of such disqualification, without disclosing the fact thereof, shall be punishable, on conviction, with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both, and any licence so obtained shall not be deemed to be an effective licence.

Offences in respect of licences.

(2) Whoever obliterates or causes to be obliterated or attempts to obliterate an endorsement entered on a licence under this Act or abets such obliteration or attempt shall be punishable, on conviction, with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

CHAPTER IV.

Regulation of Accounts of Money-lenders.

24. (1) Every money-lender shall keep and maintain at least a cash book, a ledger and a receipt book in such form or forms as may be prescribed, and the same shall be written in Bengali or English in the regular course of business.

Duty of money-lender to keep accounts.

[Ben. Act X

*(Chapter IV.—Regulation of Accounts of Money-lenders.—
Section 25.)*

(2) Every money-lender shall—

- (a) deliver to the borrower at the time a loan is advanced a statement in Bengali or English as the borrower may desire, in such form as may be prescribed and showing such details of the conditions of the loan and such other information connected therewith as may be prescribed ;
- (b) give to the borrower a plain and complete receipt for every payment made on account of any loan at the time of such payment ;
- (c) upon repayment in full of a loan mark indelibly with words indicating full payment or cancellation every paper signed by the borrower, and discharge any mortgage, restore any pledge, return any note and cancel any assignment given by the borrower as security.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in sub-section (1) shall, if certified in such manner as may be prescribed, be admissible as evidence of the contents of such account.

Money-lenders
to furnish
statements
of accounts.

25. (1) Every money-lender shall, within two months of the commencement of each year, furnish each of his borrowers with a legible statement of accounts in Bengali or English as the borrower may desire signed by the money-lender or his agent and showing the amount outstanding against the borrower : such statement shall be in the prescribed form and shall show—

- (a) the amounts of principal and interest due to the money-lender at the commencement of the year ;
- (b) the amounts of any sums advanced to the borrower from time to time since the commencement of the year and the dates on which they were advanced ;
- (c) the amounts of any payments received from the borrower since the commencement of the year in respect of loans outstanding and the dates on which they were received ;
- (d) the amount of every sum due from the borrower remaining unpaid and the date on which each such sum became due and the amount of interest accrued due and unpaid in respect of every such sum ;
- (e) the amount of every sum not yet due which remains outstanding and the date upon which each such sum will become due ; and
- (f) such other particulars as may be prescribed.

of 1940.]

(Chapter IV.—Regulation of Accounts of Money-lenders.—
Sections 26, 27.)

(2) In respect of any particular loan, whether advanced before or after the commencement of this Act, a money-lender shall, on demand being made in writing by the borrower at any time while the loan or any portion thereof remains outstanding, supply to the borrower or to any person specified in that behalf in the demand, within thirty days from the date of receipt of the written demand by the money-lender or his duly authorised agent, a statement in Bengali or English as the borrower may desire, signed by the money-lender or his agent and showing in the prescribed form any or all of the particulars specified in sub-section (1) :

Provided that the money-lender shall not be bound to comply with such demand if he has complied with a demand made not more than six months prior to the date thereof, or if within such period of six months he has furnished the statement required by sub-section (1).

(3) A money-lender shall, on a demand in writing by the borrower, supply to the borrower or to any person specified in that behalf in the demand a copy of any document evidencing an agreement to secure repayment of a loan advanced to the borrower :

Provided that a money-lender shall not be bound to comply with such a demand if he has previously furnished the borrower with such copy, except on payment of such fee as may be prescribed.

(4) In this section the expression " year " means the year for which the accounts of the money-lender are ordinarily maintained in his own books.

26. A borrower to whom a statement of accounts has been furnished under section 25 shall not be bound to acknowledge or deny its correctness, and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the account.

Borrower not bound by money-lender's statement of accounts.

27. Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act applies—

Procedure in suits relating to loans by money-lenders.

(a) a Court shall, before deciding the claim on its merits, frame and decide the issue whether the money-lender has in respect of the claim in suit complied with the provisions of sections 24 and 25 ; and

(b) if the Court finds that the provisions of either of the said sections have not been so complied with, it may, if the plaintiff's claim is established either wholly or in part, disallow the whole or such portion of the interest found due as may,

(Chapter IV.—Regulation of Accounts of Money-lenders.—

Chapter V.—Assignment of Loans.—Section 28.)

in the circumstances of the case, appear reasonable to the Court, and may also disallow costs, or in computing the amount of interest due upon the loan, the Court may exclude any period for which the money-lender omitted to comply with the provisions of either of the said sections :

Provided that if the money-lender has, after the time specified in the said sections, given the receipt or furnished the statement, as the case may be, and if he satisfies the Court that he had sufficient cause for not doing so earlier, the Court may include any such period in computing the interest.

Explanation.—A money-lender who has given a receipt or furnished a statement in the prescribed form shall be held to have complied with the provisions of section 24 or section 25, as the case may be, in spite of any errors and omissions in such receipt or statement, if the Court finds that such errors and omissions are neither material nor made fraudulently.

CHAPTER V.

Assignment of loans.

Notice and information to be given on assignment of loans by lenders.

28. (1) Where any debt in respect of—

- (i) a loan advanced by a lender, whether before or after the commencement of this Act, or
- (ii) interest on any such debt, or
- (iii) the benefit of any agreement made, or security taken, in respect of any such debt or interest,

is assigned to any person, the assignor (whether he is the lender by whom the loan was advanced or any person to whom the debt has been previously assigned) shall, before the assignment is made,—

- (a) give to the assignee notice in writing that the debt, interest thereon, agreement or security is affected by the operation of this Act, and
- (b) where the debt is in respect of a loan advanced by a money-lender, supply to the assignee in such form as may be prescribed all information as to the state of the loan together with copies of documents relating thereto.

of 1940.]

(Chapter V.—Assignment of Loans.—Section 29.)

(2) Any person who acts in contravention of any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention, and shall also be punishable, on conviction, with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

(3) In this section the expression "assigned" means assigned by an assignment *inter vivos* other than an assignment by operation of law; and the expressions "assignor" and "assignee" have corresponding meanings.

29. (1) Subject as hereinafter provided, the provisions of this Act shall continue to apply as respects any debt due to a lender or money-lender in respect of loans advanced by him after the commencement of this Act or in respect of interest on such loans or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and except where the context otherwise requires, references in this Act to a lender or money-lender shall accordingly be construed as including any such assignee as aforesaid :

Application of Act as respects assignees.

Provided that, notwithstanding anything contained in this Act—

(a) any agreement with, or security taken by, a lender or money-lender in respect of a loan advanced by him after the commencement of this Act shall be valid in favour of any *bona fide* assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and

(b) any payment or transfer of money or property made *bona fide* by any person, whether acting in a fiduciary capacity or otherwise on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid;

but in every such case the lender or money-lender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section, and nothing in this proviso shall render valid an agreement or security in favour of, or apply to proceedings instituted by, an assignee or holder for value who is himself a money-lender.

(2) The provisions of this Act shall apply and be deemed always to have applied and shall continue to apply as respects any debt due to a lender or money-lender in respect of loans

[Ben. Act X.]

(Chapter V.—Assignment of Loans.—Chapter VI.—Interest and other charges.—Section 30.)

advanced by him before the commencement of this Act or in respect of interest on such loans or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and except where the context otherwise requires, references in this Act to a lender or money-lender shall accordingly be construed as including any such assignee as aforesaid.

(3) Nothing in this section shall render valid for any purpose any agreement, security or other transaction which would, apart from the provisions of this Act, have been void or unenforceable.

CHAPTER VI.

Interest and other charges.

Limitations as to amount and rate of interest recoverable.

30. Notwithstanding anything contained in any law for the time being in force, or in any agreement,

(1) no borrower shall be liable to pay after the commencement of this Act—

(a) any sum in respect of principal and interest which together with any amount already paid or included in any decree in respect of a loan exceeds twice the principal of the original loan,

(b) on account of interest outstanding on the date up to which such liability is computed, a sum greater than the principal outstanding on such date,

(c) interest at a rate *per annum* exceeding in the case of—

(i) unsecured loans, ten *per centum* simple,

(ii) secured loans, eight *per centum* simple,

whether such loan was advanced or such amount was paid or such decree was passed or such interest accrued before or after the commencement of this Act ;

no borrower shall after the commencement of this Act, be deemed to have been liable to pay before the date of such commencement in respect of interest paid before such date or included in a

of 1940.]

(Chapter VI.—Interest and other charges.—Sections 31—33.)

decree passed before such date, interest at rates *per annum* exceeding those specified in sub-clause (c) of clause (1) ;

- (3) a lender shall be entitled to institute a suit at any time after the commencement of this Act in respect of a transaction to which either or both of the preceding clauses applies or apply.

31. Notwithstanding anything contained in any law for the time being in force, no Court shall, in any decree passed in any suit to which this Act applies—

Prohibition of interest on decretal amount.

(a) if the loan to which the decree relates was advanced before the commencement of this Act, allow any interest on the decretal amount, or

(b) if the loan to which the decree relates was advanced after the commencement of this Act, allow any interest other than interest not exceeding six *per centum per annum* on the principal sum adjudged.

32. In the case of loans in kind, the money value of the commodity at the time when, and in the locality where, the loan was advanced shall, for the purposes of this Act, be deemed to be the principal of the loan, and in determining the amount which may, subject to the provisions of this chapter, be decreed in respect of any loan repayable in kind, the Court shall take into consideration the market value of the commodity in the said locality at the date or dates of repayment.

Computation of interest on loans in kind.

33. Any agreement between a lender and a borrower or intending borrower for the payment to the lender of any sum on account of costs, charges or expenses incidental or relating to the negotiations for, or the granting of, the loan or proposed loan, shall be illegal, and if any sum is paid to a lender by the borrower or intending borrower as, for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly:

Prohibition of charges for expenses on loans.

Provided that nothing in this section shall debar a lender from recovering the costs of investigating title, of stamp duty and registration of documents and other necessary and incidental expenses in cases where the agreement includes a stipulation that property is to be given as security or by way of mortgage, or the costs of stamp duty and registration of documents in the case of unsecured loans, if both

(Chapter VI.—Interest and other charges.—Chapter VII.—
Miscellaneous.—Section 34.)

parties have agreed to such expenditure and the reimbursement thereof, nor from recovering such costs, charges or expenses as are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force. IV of
1882.

CHAPTER VII.

Miscellaneous.

Power of Court
to direct
payment by
instalments.

34. (1) Notwithstanding anything contained in any law for the time being in force, or in any agreement, the Court shall—

- (a) in suits in respect of loans to which the provisions of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, apply, on the application of the defendant and after hearing the plaintiff, notwithstanding the limit of six months provided therein, direct at the time of the passing of the preliminary decree under rule 2 or rule 4 of the said Order to the effect mentioned in sub-clause (i) of clause (c) of sub-rule (1) of the said rule 2,— V of
1908.
- (i) that the payment of the amount found or declared due under sub-rule (1) of rule 2 or sub-rule (1) of rule 4 of the said Order, as the case may be, is to be made, subject to such conditions as the Court may impose in such number of annual instalments and on such dates as the Court thinks fit having regard to the circumstances of the plaintiff and the defendant and the amount of the decree; and
- (ii) that in default of payment of any such instalment the plaintiff shall, after giving to the defendant such notice as may be prescribed, be entitled to apply for a final decree under sub-clause (ii) of clause (c) of sub-rule (1) of the said rule 2 or under sub-rule (1) of the said rule 4, as the case may be, and the date of such default shall be deemed to be the date fixed under sub-clause (i) of clause (c) of sub-rule (1) of the said rule 2 for payment of the whole amount found or declared due under or by the preliminary decree :

of 1940.]

(Chapter VII.—Miscellaneous.—Section 34.)

Provided that nothing in this clause shall affect the power of the Court to allow extension of time under sub-rule (2) of rule 2 or sub-rule (2) of rule 4 of the said Order :

Provided further that if the defendant, after receiving the notice referred to in sub-clause (ii) and before a final decree is passed, makes payment into Court of the amount due from him in respect of any such instalment, the payment of such instalment shall not be deemed to be in default and the Court shall not pass a final decree ;

(b) in suits in respect of loans advanced before the commencement of this Act other than those referred to in clause (a)—

(i) on the application of a defendant and after hearing the plaintiff, order at the time of the passing of the decree, or

(ii) on the application of a judgment-debtor against whom a decree in such suit has been passed whether before or after the commencement of this Act and after notice to the decree-holder, order at any time after the decree has been passed,

that the amount of the decree shall, subject to such conditions as the Court may impose, be payable without interest in such number of annual instalments, on such dates and within such period not exceeding twenty years as the Court thinks fit having regard to the circumstances of the plaintiff and the defendant or the decree-holder and the judgment-debtor and the amount of the decree, and that, if default is made in making payment of any instalment, that instalment and not the whole of the decretal amount shall be recoverable ;

(c) during the pendency of any enquiry under sub-clause (ii) of clause (b) order, subject to such conditions as the Court may impose, the stay of execution of the decree.

(2) In default of payment of any instalment referred to in clause (b) of sub-section (1), the decree-holder shall, after giving to the judgment-debtor such notice as may be prescribed, be entitled to apply for execution of the decree in respect of such instalment together with interest thereon at the rate of not more than six per centum per annum from the date of such default :

(Chapter VII.—Miscellaneous.—Sections 35, 36.)

Provided that nothing in this sub-section shall affect the power of the Court to allow, prior to an order for execution of the decree, an extension of time of not less than one year for the payment of any instalment, and that if such extension of time is allowed, the payment of such instalment shall not be deemed to be in default :

Provided further that if the judgment-debtor, after receiving the notice referred to in this sub-section and prior to an order for execution of the decree, makes payment into Court of the amount due from him in respect of any such instalment, the payment of such instalment shall not be deemed to be in default and the Court shall not order execution of the decree.

(3) Any order made under sub-clause (ii) of clause (b) of sub-section (1) shall be deemed to have been passed under section 47 of the Code of Civil Procedure, 1908.

V of 1903.

Sale of property
in execution
of decrees in
respect of loans.

35. Notwithstanding anything contained in any other law for the time being in force, the proclamation of the intended sale of property in execution of a decree passed in respect of a loan shall specify only so much of the property of the judgment-debtor as the Court considers to be saleable at a price sufficient to satisfy the decree, and the property so specified shall not be sold at a price which is less than the price specified in such proclamation :

Provided that, if the highest amount bid for the property so specified is less than the price so specified, the Court may sell such property for such amount, if the decree-holder consents in writing to forego so much of the amount decreed as is equal to the difference between the highest amount bid and the price so specified.

Reopening of
transactions.

36. (1) Notwithstanding anything contained in any law for the time being in force, if in any suit to which this Act applies, or in any suit brought by a borrower for relief under this section whether heard *ex parte* or otherwise, the Court has reason to believe that the exercise of one or more of the powers under this section will give relief to the borrower, it shall exercise all or any of the following powers as it may consider appropriate, namely, shall—

- (a) reopen any transaction and take an account between the parties ;
- (b) notwithstanding any agreement, purporting to close previous dealings and to create new obligations, reopen any account already taken between the parties ;
- (c) release the borrower of all liability in excess of the limits specified in clauses (1) and (2) of section 30 ;

of 1940.]

(Chapter VII.—Miscellaneous.—Section 36.)

- (d) if anything has been paid or allowed in account on or after the first day of January, 1939, in respect of the liability referred to in clause (c), order the lender to repay any sum which the Court considers to be repayable in respect of such payment or allowance in account as aforesaid :

Provided that in the case of a loan to which the provisions of sub-section (2) of section 29 apply the lender or money-lender and each of his assignees shall be liable to repay the sum which the Court considers to be repayable in respect of and in proportion to the sum received by such lender or money-lender and such assignee ;

- (e) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the lender has parted with the security, order him to indemnify the borrower in such manner and to such extent as it may deem just :

Provided that in the exercise of these powers the Court shall not—

- (i) reopen any adjustment or agreement, purporting to close previous dealings and to create new obligations, which has been entered into at a date more than twelve years prior to the date of the suit by the parties or any person through whom they claim, or
- (ii) do anything which affects any decree of a Court, other than a decree in a suit to which this Act applies which was not fully satisfied by the first day of January, 1939, or anything which affects an award made under the Bengal Agricultural Debtors Act, 1935.

Ben. Act
VII of
1936.

Explanation.—A decree shall not, for the purposes of this section, be deemed to have been fully satisfied so long as there remains undisposed of an application by the decree-holder for possession of property purchased by him in execution of the decree.

(2) If in exercise of the powers conferred by sub-section (1) the Court reopens a decree, the Court—

- (a) shall, after affording the parties an opportunity of being heard, pass a new decree in accordance with the provisions of this Act, and may award to the decree-holder such costs in respect of the reopened decree as it thinks fit,

[Ben. Act X

(Chapter. VII.—Miscellaneous.—Section 36.)

- (b) shall not do anything which affects any right acquired *bona fide* by any person, other than the decree-holder, in consequence of the execution of the reopened decree,
- (c) shall order the restoration to the judgment-debtor of such property, if any, of the judgment-debtor acquired by the decree-holder in consequence of the execution of the reopened decree as may be in the possession of the decree-holder on the date on which the decree was reopened,
- (d) shall order the judgment-debtor to pay to the decree-holder, in such number of instalments as it may think fit, the whole amount of the new decree passed under clause (a), and
- (e) shall direct that, in default of the payment of any instalment ordered under clause (d), the decree-holder shall be put into possession of the property referred to in clause (c) and that the amount for which the decree-holder purchased such property in execution of the reopened decree shall be set off against so much of the amount of the new decree as remains unsatisfied.

(3) In this section the expression "suit to which this Act applies" includes a proceeding in respect of any application relating to the admission or amount of a proof of a loan advanced before or after the commencement of this Act in any insolvency proceedings.

(4) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan or for the redemption of any such security.

(5) Nothing in this section shall affect the rights of any assignee or holder for value if the Court is satisfied that the assignment to him was *bona fide*, and that he had not received the notice referred to in clause (a) of sub-section (1) of section 28.

(6) Notwithstanding anything contained in any law for the time being in force,—

- (a) the Court which, in a suit to which this Act applies, passed a decree which was not fully satisfied by the first day of January, 1939, may exercise the powers conferred by sub-sections (1) and (2)—
 - (i) in any proceedings in execution of such decree, or
 - (ii) on an application for review of such decree made within one year of the date of commencement of this Act, and the provisions

of 1940.]

(Chapter VII.—Miscellaneous.—Sections 37, 38.)

V of 1908. of rules 2 and 5 of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908, shall not apply to any such application ;

(b) any Court before which an appeal is pending in respect of a decree referred to in clause (a) may either itself exercise the like powers as may be exercised under sub-sections (1) and (2), or refer the case to the Court which passed the decree directing such Court to exercise such powers, and such Court shall after exercise thereof return the record with the additional evidence, if any, taken by it and its findings and the reasons therefor to the Appellate Court and thereupon the provisions of rule 26 of Order XLI of the First Schedule to the Code of Civil Procedure, 1908, shall apply.

V of 1908.

37. Notwithstanding anything contained in any law for the time being in force, no Court shall order execution of a decree passed in any suit to which this Act applies by arrest and detention in prison of the judgment-debtor.

Prohibition of execution of decrees by arrest and detention in prison.

38. (1) Any borrower may make an application at any time to a Court which would have jurisdiction to entertain a suit by the lender for the recovery of the principal and interest of a loan made before or after the commencement of this Act for taking accounts and for declaring the amount due to the lender. Such application shall be in the prescribed form and shall be accompanied by a fee of one rupee, and on receipt of such application the Court shall cause a notice thereof to be served on the lender.

Inquiry for taking accounts and declaring the amount due.

(2) The Court shall thereafter take an account of the transactions between the parties and shall declare the amounts, if any,—

- (a) payable and already due,
(b) payable but not yet due

by the borrower to the lender, whether as principal or interest or both. In taking accounts under this section the Court shall follow the same procedure as it does in regard to civil suits and, so far as may be, the provisions of Chapters IV, VI and VII.

V of 1908. (3) A proceeding under this section shall be deemed to be a suit for the purposes of section 11 of the Code of Civil Procedure, 1908, and a declaration under this section shall be subject to appeal, if any, as if it were a decree of the Court, and every decision in appeal shall be subject to appeal to the High Court in the same manner as a decree passed in appeal.

(Chapter VII.—Miscellaneous.—Sections 39, 40.)

Deposit in
Court of
money due to
lender.

39. (1) Where any sum of money has been declared under sub-section (2) of section 38 to be payable by the borrower to the lender as principal or interest or both, or where a borrower has sent to a lender by postal money order any sum of money due from him to the lender in respect of a loan and the lender has refused to accept the same, the borrower may apply in the prescribed manner to the Civil Court of the lowest grade having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the lender, and the Court shall keep the said sum in deposit.

(2) The Court shall thereupon cause notice of the deposit to be served on the lender, and the lender may on presenting a petition, verified as for a plaint and stating the sum then due in respect of the loan and his willingness to accept the money so deposited, receive the sum :

Provided that in accepting any sum deposited under this section, a lender shall not be bound by any statement made by the borrower in depositing the same :

Provided also that, if the Court is satisfied that the lender has, without reasonable excuse, refused to accept any sum sent to him by postal money order by the borrower in respect of the loan, it may direct the payment to the borrower, from the money so deposited or otherwise, of such sum as damages and costs as it thinks fit.

(3) Notwithstanding any agreement between the parties, when the borrower has deposited in Court under this section any sum due in respect of the loan, if such sum is in payment of the principal or any part thereof, the interest on such principal or part shall cease from the date of the service of notice on the lender under sub-section (2).

(4) Nothing in this section shall affect the operation of sections 83 and 84 of the Transfer of Property Act, 1882, in IV of 1882, regard to loans to which those sections apply.

Entry of an
amount in a
bond, etc.,
different to
the amount
actually
lent to be
an offence.

40. (1) No lender shall take from a borrower or intending borrower any note, promise to pay, power of attorney, bond or security which does not state the actual amount of the loan, the rate of interest charged and the time, if any, within which the principal is stipulated to be repaid in full, or which states any of such particulars incorrectly, nor shall he take from any borrower or intending borrower any instrument in which any entry is left blank for completion at a later date.

(2) Whoever intentionally contravenes the provisions of sub-section (1) shall, on conviction, be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

of 1940.]

(Chapter VII.—Miscellaneous.—Section 41.)

(3) No money-lender shall take from any borrower or intending borrower any note, promise to pay, power of attorney, bond or security which describes or refers to as a commercial loan any loan which is not a commercial loan.

(4) Notwithstanding anything contained in any law for the time being in force, any note, promise to pay, power of attorney, bond, security or document referred to in sub-section (1) or sub-section (3) shall be void and unenforceable.

(5) Notwithstanding anything contained in any law for the time being in force, in any suit, or proceeding the burden of proving that a loan is a commercial loan shall be on the money-lender who advanced the loan.

41. (1) Whoever molests, or abets the molestation of, a debtor for the purpose of recovering or attempting to recover, a debt shall be punishable, on conviction, with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both. Penalty for molestation.

Explanation.—For the purposes of this section, a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing,—

- (a) obstructs or uses violence to or intimidates such other person, or
- (b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in the use thereof, or
- (c) loiters or does any similar act at or near a house, building or place where such other person resides or works or receives his pay or wages or carries on business or happens to be—

shall be deemed to molest such other person :

Provided that a person who attends at or near such house, building or place for the purpose only of making a formal demand for repayment of a loan due or of obtaining or communicating information shall not be deemed to molest.

V of 1898.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this section shall be cognisable and bailable.

Ben. Act
IV of
1935.

(3) Nothing in this section shall be deemed to restrict the provisions of the Bengal Workmen's Protection Act, 1934.

(Chapter VII.—Miscellaneous.—Sections 42, 43.)

General provisions regarding penalties.

42. (1) When any money-lender or any servant or agent of, or any person responsible for the management of the money-lending business of, a money-lender knowingly and wilfully commits, authorises or permits any default in complying with, or any contravention of, any provision of this Act, if the money-lender or such servant, agent or person is—

- (a) an individual, such individual, or
- (b) an undivided Hindu joint family, any member of such family who is knowingly and wilfully a party to such default or contravention, or
- (c) a body corporate, any director or officer of such body who is knowingly and wilfully a party to such default or contravention, or
- (d) an unincorporated body, any member of such body who is knowingly and wilfully a party to such default or contravention,

shall, where a specific penalty has been provided in this Act, be punishable under the provisions of this Act providing such penalty, and where no such specific penalty has been provided, be punishable on conviction—

- (i) for the first offence, with fine which may extend to two hundred rupees,
- (ii) for the second offence, with fine which may extend to five hundred rupees, and
- (iii) for any subsequent offence, with rigorous imprisonment which may extend to three months and shall also be liable to fine.

(2) No Court shall take cognizance of an offence punishable under sub-section (1) except on the complaint in writing of the Provincial Registrar or a Registrar or of a person authorised in this behalf by the Provincial Registrar or a Registrar.

(3) The Provincial Registrar may order the withdrawal of a complaint made under sub-section (2), and, if he does so, shall forward a copy of such order to the Court, and upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

(4) No Court inferior to that of a Presidency Magistrate or a Subdivisional Magistrate or a Magistrate of the first class shall try an offence punishable under sub-section (1).

Protection to persons acting under this Act.

43. No suit, prosecution or proceeding shall lie against any servant of the Crown in India for anything which is in good faith done or intended to be done under this Act.

of 1940.]

(Chapter VII.—Miscellaneous.—Section 44.)

44. (1) The Provincial Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the following matters, namely:—

- (a) the conditions referred to in the proviso to section 3 ;
- (b) the control to be exercised by the Provincial Registrar over Registrars and Sub-Registrars and by a Registrar over Sub-Registrars ;
- (c) the form in which registers under section 7 shall be maintained ;
- (d) the form and manner in which an application for the grant of a licence shall be made, and the particulars to be therein contained ;
- (e) the manner in which licence fees and penalties shall be paid ;
- (f) the form of licences ;
- (g) the form of, and the fee payable on, an application under sub-section (2) of section 14 ;
- (h) the procedure to be followed by a Competent Court or by a Registrar in proceedings under section 16 ;
- (i) the form in which a Court shall send the substance of the order referred to in sub-section (5) of section 20, and the method of circulation of the same to other Registrars ;
- (j) the form in which a money-lender shall maintain his cash book, ledger and receipt book ;
- (k) the form of, and the particulars to be contained in, the statement to be delivered under sub-section (2) of section 24 ;
- (l) the form of the statements to be furnished under section 25 and the fee to be paid under the proviso to sub-section (3) of that section ;
- (m) the form in which information shall be supplied to an assignee under clause (b) of sub-section (1) of section 28 ;
- (n) the form in which notice shall be given by the plaintiff to the defendant under sub-clause (ii) of clause (a) of sub-section (1) of section 34, and by the decree-holder to the judgment-debtor under sub-section (2) of that section ;
- (o) the form of an application under section 38 ; and
- (p) the manner in which an application under section 39 shall be made.

[Ben. Act X of 1940.]

(Chapter VII.—Miscellaneous.—The Schedule.—Section 45.)

Bengal Act VII
of 1933 not to
apply to loans
to which this
Act applies.

45. The Bengal Money-lenders Act, 1933, shall not apply to any loan to which this Act applies nor to any transaction connected with such loan

THE SCHEDULE.

[See sections 14(I)(b) and 15.]

Any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 379 to 382, 384 to 389, 392 to 404, 406 to 409, 411 to 414, 417 to 424, 449, 450, 451 (with intent to commit theft), 454 (with intent to commit theft), 455, 457 (with intent to commit theft), 458 to 462, 465, 477 and 477A or under section 52 of the Indian Post Office Act, 1898. XLV of 1860. VI of 1898



Government of Bengal

Judicial Department

6

**The Bengal Money-Lenders
Rules, 1940**

X62:1:(2262)

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NOTIFICATION.

No. 4054J.—10th December 1940.—In exercise of the powers conferred by section 44 of the Bengal Money-Lenders Act, 1940 (Bengal Act X of 1940), the Governor is pleased to make the following rules, namely:—

The Bengal Money-Lenders Rules, 1940.

1. These rules may be called the Bengal Money-Lenders Rules, 1940.

2. In these rules, unless there is anything repugnant in the subject or context,—

(1) "form" means a form appended to these rules;

(2) "section" means a section of the Act;

(3) "the Act" means the Bengal Money-Lenders Act, 1940.

3. The Provincial Registrar shall exercise general supervision and control over Registrars and Sub-Registrars and Registrars shall exercise general supervision and control over Sub-Registrars. Registrars are authorised under section 6 to hear appeals under sections 16 and 17 from the orders of Sub-Registrars functioning within their respective jurisdictions.

4. An application for appeal under section 5 shall bear a court-fee stamp of Re. 1.

5. A Register of money-lenders referred to in section 7 shall be maintained in form I by Sub-Registrars. Every Registrar shall maintain one such register and the Provincial Registrar shall maintain as many such registers as may be necessary to show in a consolidated manner the names of the registered money-lenders within their respective jurisdictions.

6. Every application for licence under section 11 shall be made in form II.

7. (1) An application for licence on behalf of a firm shall be signed by all the persons constituting the firm or their representative or representatives duly empowered, or in the case where any such person is a minor by the person representing him in the business.

(2) Every such application shall be also verified, in the manner provided in the Code of Civil Procedure, 1908, for the verification of pleadings, by one of the persons signing the application.

8. Every application for licence shall be presented by the applicant personally or by an agent authorised in this behalf in writing by the applicant:

Provided that where there are more applicants than one for the licence any one of them may present the application.

9. Every application for a licence shall be accompanied by an affidavit stating whether any Court has, at any time, made any order in relation to the applicant or any person responsible or proposed to be responsible for the management of the applicant's money-lending business, in regard to any of the matters mentioned in section 14.

10. (1) After making such enquiries as he thinks necessary the Sub-Registrar shall, if he finds that there is no reason to refuse the grant of the licence, direct the applicant to pay within a specified time a sum representing the fee specified in section 10 in court-fee stamps. These shall be affixed to the application and shall be duly punched and cancelled by the Sub-Registrar who shall put his initials and the date across each court-fee label.

(2) A record signed by the Sub-Registrar shall be kept of every enquiry referred to in sub-rule (1) and such record shall contain a brief memorandum of the substance of evidence taken, if any, and a summary of any conclusion regarding facts elicited during the enquiry.

11. After the applicant has paid in accordance with rule 10 the fee referred to in section 10 the Sub-Registrar shall grant him a licence in form III.

Necessary entries shall then be made in the Register maintained in the office of the Sub-Registrar. Two copies of such entries shall be sent twice every month to the Registrar having jurisdiction for record in the Register kept in his office under rule 5. The Registrar in his turn shall send one such copy to the Provincial Registrar for incorporation in the Register kept in the office of the Provincial Registrar.

A money-lender to whom a licence has been issued may, during the validity of such licence, secure as many duplicates of such licence as he may require from the Sub-Registrar who issued the original licence on payment of a fee of Rs. 2 only in court-fee stamps for each such duplicate.

A money-lender holding a licence may apply for renewal of his licence before the date on which it is due to expire.

12. When a Court requires the money-lender under sub-section (2) of section 13 to pay any penalty imposed by it under that sub-section, it shall direct the money-lender to deposit in the Government treasury a sum representing the said penalty and to file the treasury chalan of such deposit within a time to be fixed by it.

In stations where there are no treasuries the deposit ordered under this rule may be accepted by the Court as a Government receipt and disposed of in accordance with the rules applicable to Government receipts in Civil Courts.

13. An application for removing a disqualification referred to in sub-section (1) of section 14 shall be made in form IV to the Secretary to the Government of Bengal in the Judicial Department. A fee of Rs. 50 shall be deposited in the Government treasury and the receipt (chalan) thereof shall be forwarded with the application:

Provided that the Provincial Government may in any special case on previous application of the party remit any part of such fee, but the fee shall in no case be less than Rs. 15.

14. (1) Every appeal under sub-section (3) of section 16 against an order of a Sub-Registrar refusing a licence and every application under sub-section (5) of that section for revision of any decision of a Registrar shall be preferred in the form of a memorandum stamped as required under article 1(b) of Schedule II to the Court Fees Act, 1870 (VII of 1870), and shall respectively be accompanied by an attested copy of the order appealed against and of the decision for the revision of which the application has been made.

(2) As soon as any appeal is filed the Registrar shall cause notice of the same to be given to the Sub-Registrar against whose order the appeal is made, and shall call for the records of the case.

(3) An appeal shall not stay the operation of the order appealed against except so far as the Registrar may direct.

(4) When a memorandum of appeal is filed it shall be entered in a book to be kept for the purpose, to be called "Register of Appeals".

(5) The Registrar shall fix a day for hearing the appellant or his pleader and hearing him if he appears on that day, the Registrar shall give his decision. The Registrar may also give his decision if the appellant or his pleader does not appear on the day fixed. The decision may be for confirming, varying or reversing the order against which the appeal is preferred.

(6) The procedure laid down in sub-rules (2), (3), (4), and (5) shall apply *mutatis mutandis* to the hearing of applications for revision under sub-section (5) of section 16.

(7) A record shall be kept of the hearing of every appeal by a Registrar in the form of an ordinary Revenue miscellaneous case while the record of the hearing of an application for revision by a Competent Court shall be kept in the manner provided in the High Court Civil Rules and Orders for the keeping of records in the case of miscellaneous appeals and miscellaneous cases in the Civil Courts.

(8) The provisions of this rule shall apply to appeals and revisions contemplated in section 17.

15. (1) Every order of cancellation of licence passed under section 17, and the substance of every order passed under sub-section (1), sub-section (3) or sub-section (4) of section 20 shall be entered by the Sub-Registrar in the Register in which the licence affected has been entered, and intimation of all such orders shall be also given by the Sub-Registrar through the Registrar having jurisdiction to the Provincial Registrar as early as possible.

(2) The Provincial Registrar shall take steps to circulate the substance of any order passed under sub-section (1) or sub-section (3) or sub-section (4) of section 20 to other Registrars as soon as he receives it from the Court which passed the order, and shall also cause the same to be published in such local newspaper or newspapers as may be selected by him. The Provincial Registrar may also in particular cases publish the substance of such order in the *Calcutta Gazette*.

16. Every application under section 11 or section 19 shall bear a court-fee stamp as laid down in article 1(b) in Schedule II to the Court Fees Act, 1870 (VII of 1870).

17. Every application for cancellation of licence under section 19 shall be in form V and shall be signed and verified in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.

18. The substance of the order referred to in sub-section (5) of section 20 shall be embodied in form VI, form VII or form VIII as the case may be. It shall be sent to the Provincial Registrar and the Sub-Registrar concerned as laid down in the said sub-section. The Provincial Registrar shall take necessary steps to circulate the substance of such orders periodically to all Registrars of the Province.

19. (1) The cash book, the ledger and the receipt book referred to in sub-section (1) of section 24 shall be maintained by the money-lender in forms IX, X and XI, respectively. He may, however, add additional items to the forms for his convenience.

(2) The statement showing details of the conditions of the loan and other information connected therewith under clause (a) of sub-section (2) of section 24 shall be delivered by a money-lender to a borrower in form XII.

20. A copy of the account referred in sub-section (1) of section 24 shall be admissible as evidence of the contents of such account if it is certified to be a true copy of such account, under the signature of the money-lender or his authorised agent, the signature being attested by the President or any other member of a union board, or a Magistrate, Honorary or Stipendiary, or any gazetted officer of Government.

21. The statement of accounts which the money-lender shall, within two months of the commencement of each year, furnish each of his borrowers under sub-section (1) of section 25 or the statement to be supplied by the money-lender to his borrower under sub-section (2) of that section shall be in form XIII.

22. A borrower shall pay to the money-lender under the proviso to sub-section (3) of section 25 a fee of Rs. 2 in order to obtain a subsequent copy of any document evidencing an agreement to secure repayment of a loan advanced to the borrower, a copy of which has previously been furnished to him by the money-lender under the said sub-section. The fee shall be sent by postal money order and the number and date of the postal receipt shall be mentioned in the demand in writing made by the borrower.

23. The statement of information to be supplied to an assignee under clause (b) of sub-section (1) of section 28 shall be in form XIV.

24. (1) The notice to be given to the defendant by the plaintiff under sub-clause (ii) of clause (a) of sub-section (1) of section 34 shall be in form XV.

(2) The notice to be given by the decree-holder to the judgment-debtor under sub-section (2) of section 34 shall be in form XVI.

25. An application for review of decree made under sub-clause (ii) of clause (a) of sub-section (6) of section 36 shall bear a court-fee stamp as laid down in article 11(a)(ii) of Schedule II of the Court-Fees Act, 1870 (VII of 1870).

26. The application to be made by a borrower under sub-section (1) of section 38 shall be made in form XVII.

For the service of notice of such application on the lender under the said sub-section process fees shall be payable by the borrower in court-fee stamps according to the scale laid down by the High Court for service of summons on defendants, and no notice shall be issued unless such process fees have been paid. (Appendix A.)

27. (1) The application to be made by the borrower to a Court for permission to deposit a sum under sub-section (1) of section 39 shall be made in form XVIII and shall bear a court-fee stamp of 12 annas as required by article 1 (b) of Schedule II to the Court Fees Act, 1870 (VII of 1870).

(2) The Court shall thereupon cause notice of the deposit to be served on the lender under sub-section (2) of section 39 in form XIX for which process fees in accordance with the scale laid down by the

High Court for service of summons on defendants shall be charged. (Appendix A.)

(3) The lender may present a petition for the withdrawal of the sum in form XX and the procedure to be followed in connection with such withdrawal shall be the same as in the case of withdrawal of other civil deposits. Every such petition shall be accompanied by a verified statement on plain paper as required under sub-section (2) of section 39, and shall, except in cases in which the original deposit does not exceed Rs. 25 in amount, be stamped with court-fees chargeable under the fourth paragraph of clause (a) or the second paragraph of clause (b) of Article I of Schedule II to the Court Fees Act, 1870 (VII of 1870), as the case may be.

28. The Provincial Government may provide such ministerial and menial staff as in its opinion may be required from time to time by the Provincial Registrar and any Registrar and Sub-Registrar, and may regulate the conditions of employment of such staff and fix the salaries and allowances payable to them.

29. Every Sub-Registrar and Registrar shall keep an Inspection Book.

30. Every Sub-Registrar and Registrar shall at all times permit any officer authorised in this behalf by the Provincial Government to have access to all his books, proceedings and records.

31. Every Sub-Registrar shall maintain a register of applications for licence and for cancellation of licence in form XXI.

32. A Register of Fees and a Register of Miscellaneous Applications shall be maintained by every Sub-Registrar and Registrar in Forms "XXII and XXIII."

FORM I.

(Section 7 and Rule 5.)

Register of Money-lenders.

Office of the Sub-Registrar of _____ Subdivision _____ District _____

Serial No.	Name, father's husband's name, caste or religion and full address of the money-lender.	Full details of the principal place of business and of the branches thereof.	Date and serial number of previous licence, if any.	Number and date of gazette notification, if any, remitting part of licence fee.	Date of the issue of the present licence.	Serial number of application.	Cancellation of licence,* if any, with date and particulars.	Orders of Appellate Authority, if any.	Substance of any order passed under sub-section (1), sub-section (3) or sub-section (4) of section 20.	Number of duplicate licences issued with dates.	Signature of Sub-Registrar.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13

(1) In the case of a money-lending firm or company column 2 should show the name of the firm or company, the name and style under which it carries on or desires to carry on business as a money-lender and, in the case of a firm, the names and father's or husband's names of the existing owners or partners of the firm

(2) Column 12 should be left blank in the office of the Registrar and the Provincial Registrar.

*In column 8—Section of the Act applied should be entered when filling up this column.

FORM II.

(Rule 6.)

Application for the grant of a licence to a money-lender.

(Section 11 of the Bengal Money-Lenders Act, 1940.)

In the office of the Sub-Registrar of.....

P. O.
 Subdivision.
 District.

- (a) Name of the applicant, with father's or husband's name, caste, residence and address in full.
- (b) In cases where the applicant is a firm, the names of all persons constituting it, with father's or husband's name, caste, residence and address in full of each.
- (c) In cases where the applicant is a firm, whether it is a Hindu joint family firm or otherwise constituted, and whether it has been registered under the Indian Partnership Act, 1932.
- (d) Name or style under which the applicant carries on his money-lending business.
- (e) Names of the district or districts within which the applicant has his business on the date of the application.
- (f) Names of persons responsible or proposed to be responsible for the management of the applicant's money-lending business.
- (g) Location of the applicant's principal place of business, with full particulars thereof and the name, father's or husband's name, caste and address of the person in charge.
- (h) Has the applicant any office at any other station? If so, give complete particulars, with the name, father's or husband's name, caste and address of the person in charge of each office.

- (i) What is the extent of the total business of the applicant on the date of the application?
- (j) For how long has the applicant carried on the business of money-lending?
- (k) Whether any application for registration had previously been made by the applicant, or where the applicant is a firm, by any one or more of its members singly or jointly *inter se* or with any other person under any name. If so, when, where and with what result.
- (l) (i) In case the applicant had previously been registered and licensed, give full particulars of the licence.
- (ii) State whether any licence granted previously to the applicant (or where the applicant is a firm, to any one or more of its members singly or jointly *inter se* or with any other person) has been refused or cancelled. If so, full particulars should be given, including the name of the officer and the date and terms of the order cancelling the licence.
- (m) Whether money-lending is the sole business of the applicant or whether he is engaged in any other business, profession or calling.

Certified that all the facts set out in the application are true to my knowledge except paragraphs , which are true to my belief being based on information supplied by

Signature of the person making
the verification with date and
place of so doing.

Signature of the applicant with
date.

FORM III.

(Rule 11.)

Money-Lender's Licence.

(Section 12 of the Bengal Money-Lenders Act, 1940.)

District _____

Subdivision _____

Town _____
Village _____Post Office _____
Police Station _____

Licence No. _____

This licence has been granted to _____
to carry on the business of money-lending on the following terms:—

- (a) The licence will be valid up to _____
or until it is cancelled.
- (b) It shall entitle the licensee to carry on the business of money-lending within the whole of the Province of Bengal.
- (c) The licensee shall surrender the licence when ordered to do so by the Sub-Registrar granting it or by the Registrar having jurisdiction or by the Provincial Registrar or by any Court.

Signed _____

Sub-Registrar.

(Seal of the Sub-Registrar.) Dated _____

*The licence shall show the names of all the applicants or the names of all the partners of a firm.

The registered firm is constituted by—

- | | | | | | | | |
|----|-------|--------|-------|-------|-------|-------------|-------|
| 1. | ..... | son of | ..... | caste | ..... | resident of | ..... |
| 2. | ..... | " | ..... | " | ..... | " | ..... |
| 3. | ..... | " | ..... | " | ..... | " | ..... |
| 4. | ..... | " | ..... | " | ..... | " | ..... |

N.B.—The word "Duplicate" should be written in bold type on each duplicate licence issued and the duplicate should bear the same licence number as the original.

Back.

Endorsement, if any.

Signature.

Remarks.

FORM IV.

(Rule 13.)

**Form of application to the Provincial Government under section 14(2)
of the Bengal Money-Lenders Act, 1940.**

To

The Secretary to the Government of Bengal.

I/We, the undermentioned applicant/applicants, hereby apply under sub-section (2) of section 14 of the Bengal Money-Lenders Act, 1940, for removal of $\frac{\text{my}}{\text{our}}$ disqualification(s) for holding a licence under section _____ of the said Act. Particulars relating to $\frac{\text{my}}{\text{our}}$ case are given below.

The chalan showing the deposit of the prescribed fee of Rs. _____ is attached herewith.

Particulars.

1. Name of applicant with description.
2. Residence.
3. Number of licence with date of cancellation.
4. Conviction, if any, with particulars, date, section, etc.
5. Special grounds, if any.
6. Remarks.

Signature.

FORM V.

(Rule 17.)

**Form of application for cancellation of licence under section 19 of the
Bengal Money-Lenders Act, 1940.**

Stamp.

In the Court of _____

Application under section 19 of the Bengal Money-Lenders Act,
1940, for cancellation of licence.

Name of applicant _____ (full name).

Occupation and address—

Name of money-lender—

Details of the loan taken from the money-lender—

Grounds on which cancellation is applied for—

Particulars.

The applicant prays for cancellation of licence of the money-lender
abovenamed.

Verification—

FORM VI.

(Rule 18.)

[Substance of order under section ²⁰⁽¹⁾/₂₀₍₃₎ of the Bengal Money-Lenders Act, 1940.]

In the Court of _____

Case No. _____ o

_____ ^{son}
_____ daughter of
_____ wife

the firm _____

resident of _____

is disqualified on conviction under section _____

_____ for holding a licence under the Bengal

Money-Lenders Act, 1940, for a period _____

_____ and the licence previously granted

to him
her has been cancelled and impounded.
them



Signature.

N.B.—Delete portions as are not necessary.

FORM VII.

(Rule 18.)

[Substance of order under section 20(4) of the Bengal Money-Lenders Act, 1940.]

In the Court of _____

Case No. _____

_____ Appellant.

_____ Respondent.

The above appellant having applied for stay of operation of the order passed under section 20 of the Bengal Money-Lenders Act, 1940, in Case No. _____ of the Court of _____

it has been ordered that the operation of the said order will be stayed pending the decision of the appeal or until further orders.



Signature.

FORM VIII.

(Rule 8.)

[Substance of order under section 20(4), Proviso of the Bengal Money-Lenders Act, 1940.]

In the Court of _____

Appeal Case No. _____

_____ Appellant.

Description.

_____ Respondent.

Description.

The above appeal having been heard and allowed (state if in part)
dismissed

the order of cancellation of the licence under section 20 of the Bengal Money-Lenders Act, 1940, passed against the appellant on _____

by the Court of _____ in Case No. _____ of _____

is set aside
modified and the endorsements on the licence are erased
upheld modified

He is accordingly debarred from holding a licence for a period of _____ only from _____



Signature.

N.B.—Unnecessary portions to be deleted.

FORM IX.
[Rule 19(1).]
Cash Book.

Dr.		Receipts.			Disbursements.			Cr.	
Date.	Particulars.	Ledger follo.	Amount.		Date.	Particulars.	Ledger follo.	Amount.	
			Rs. a. p.	Rs. a. p.				Rs. a. p.	Rs. a. p.
1940.			6,000 0 0		1940.				
	Brought forward ..								
August 2	Interest received from Jagat Oh. Mookerji on the mortgage bond dated from to ..	..	25 0 0		August 2	Lent to R. C. Sen Rupees five thousand, interest 7½ per cent. per annum		5,000 0 0	5,000 0 0
				6,025 0 0					1,025 0 0
									6,025 0 0
August 3	To balance ..	..	1,025 0 0						

15

In case of loans in kind the entry shall contain clear reference to the commodity advanced with market value of same at the date of each transaction.

FORM X.

[Rule 19 (I).]

Ledger.

Account No.

Name of debtor(s)—Ram Chandra Sen.

Address—

Date of loan

Amount of loan

Rate of interest per annum.

Due date

Other particulars, if any

Dr.

Cr.

Date.	Parti- culars.	Cash book folio.	Amount due.		Date.	Parti- culars.	Cash book folio.	Amount paid.		Remarks.
			Principal.	Interest.				Principal.	Interest.	
1940.					1940.					
Au gust ..	Principal	..	..	..	Sept. 10 ..	Interest ..	..	..	..

FORM XI.

[Rule 19 (I).]

Receipt Book.

Serial No.—	Serial No.—
Name of debtor—	Name of debtor—
Address—	Address—
Re. Loan*—	Re. Loan*—
Date—	Date—
Received from—	Received from—
On account of (a) Principal—	On account of (a) Principal—
(b) Interest—	(b) Interest—
The total sum of—	The total sum of—
Date of credit in Cash Book with page No.—	

Signed.

Signature of the Creditor or his Agent.

* *N.B.*—Particulars to be stated giving brief reference to documents, if any, with date and names of parties.

In case of payment in kind state also market price of commodity on the date of each payment.

FORM XII.

[Rule 19(2).]

[Section 24(2) (a) of the Bengal Money-Lenders Act, 1940.]

Statement showing details of conditions of the loan; etc.

Name of debtor—

Address—

1. Date of loan—
2. Amount of loan—
3. Rate of interest per annum—
4. Particulars of document, if any—
5. Any special conditions on which the loan has been made—
6. Other connected information—

Signature of money-lender—

Address—

Date—

N.B.—A separate statement shall be furnished in respect of each loan transaction.

In case of loans in kind there shall be reference to the commodity advanced along with market value of the same at the date of each transaction.

FORM XIII

(Rule 21.)

Statement under section 25(1) or 25(2) of the Bengal Money-Lenders Act, 1940, for the year.....

Particulars concerning loans.

*Date of receipt of demand for particulars—

1. The amounts of principal and interest due to the money-lender at the commencement of the year—
2. The amounts of any sums advanced to the borrower from time to time since the commencement of the year and the dates on which they were advanced—
3. The amounts of any payments received from the borrower since the commencement of the year in respect of loans outstanding and the dates on which they were received—
4. The amount of every sum due from the borrower remaining unpaid at the commencement of the year and the date on which each such sum became due and the amount of interest accrued due and unpaid in respect of every such sum—
5. The amount of every sum not yet due which remains outstanding and the date upon which each such sum will become due—
6. Other special particulars, if any—

(1) *N.B.*—A separate statement shall be given for each loan; the document, if any, for such loan shall be mentioned in each statement.

(2) *N.B.*—In case of loans in kind state money value of the commodity at the date of payment, and in cases of amounts outstanding when same become payable.

Signature of Money-lender or his Agent—

Date—

*For statement under section 25(2) only.

FORM XIV.

(Rule 23.)

Statement of information to be supplied to the Assignee under section 28(1)(b) of the Bengal Money-Lenders Act, 1940.

Name of money-lender including subsequent assignees, if any,
and his address
their addresses

Name of debtor—

Address—

1. Date of loan—
2. Amount of loan—
3. Rate of interest per annum—
4. Total repayments made by the debtor up to date—
 - (a) Principal—
 - (b) Interest—
 - (c) Total—
5. Amount outstanding on the date of information—
 - (a) Principal—
 - (b) Interest—
 - (c) Total—
6. Particulars of documents including previous assignments, if any—
7. Any special condition attaching to the loan—
8. List of documents of which copies are attached—
9. Other information, if any—

Signature of Assignor Money-lender—

Address—

Date—

FORM XV.

[Rule 24(I).]

Notice.

[Section 34(1)(a)(ii) of the Bengal Money-Lenders Act, 1940.]

To

Defendant.

Re. Suit No. _____ of _____ in the Court _____

Please take notice under sub-clause (ii) of clause (a) of sub-section (1) of section 34 of the Bengal Money-Lenders Act, 1940, that as you have defaulted in payment of instalment (particulars to be stated including number of suit, etc.) an application will be made by me to the Court within _____ days for final decree in the aforesaid suit under (1) sub-clause (ii) of clause (c) of sub-rule (1) of rule 2
(2) sub-rule (1) of rule 4 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908.

Plaintiff.

FORM XVI.

[Rule 24(2).]

[Section 34(2) of the Bengal Money-Lenders Act, 1940.]

To

Judgment-Debtor.

Re. Suit No. _____ in the Court of _____

Please take notice under sub-section (2) of section 34 of the Bengal Money-Lenders Act, 1940, that you have defaulted in payment of instalment (particulars to be stated including number of suit, due date of payment, etc.) as ordered by the Court in the aforesaid suit and that I intend to apply on or after _____ for execution of the decree for recovery of the said instalment with interest thereon at 6 per cent. per annum from the date of such default.

Decree-holder.

FORM XVII.

(Rule 26.)

[Section 38(1) of the Bengal Money-Lenders Act, 1940.]

In the Court of _____

Mis. Case No. _____ of 19 _____

The undermentioned borrower applies for taking accounts of the loan described below and for declaring the amount due to the lender.

Particulars of Loan.

1. Document, if any, with particulars—
2. Amount—
3. Description of lender—
 - (a) Name—
 - (b) $\frac{\text{Father's}}{\text{Husband's}}$ name—
 - (c) Address—
4. Description of borrower—
 - (a) Name—
 - (b) $\frac{\text{Father's}}{\text{Husband's}}$ name—
 - (c) Address—
5. Whether any declaration has been made in the case of this debt under section 13(2) or any determination of the amount of debt under section 18 of the Bengal Agricultural Debtors Act, 1935.

Signature.

Date—

FORM XVIII.

[Rule 27(1).]

Section 39 (1).

In the Court of _____ Case No. _____ of 19_____.

The undermentioned borrower applies for deposit in the above Court to the account of the lender under section 39 of the Bengal Money-Lenders Act, 1940, of money due in respect of the loan stated below:—

Particulars of the loan—

Name of borrower, $\frac{\text{father's}}{\text{husband's}}$ name, description, etc.—

Name of lender—

Address of lender—

Amount of loan—

Amount found payable by Court under section 38—

Payable and due—(1) Principal—

(2) Interest—

Payable but not due—

Date of remittance by postal money order with postal receipts if any—

Date of refusal—

Signature.

FORM XIX.

[Rule 27(2).]

[Form of notice of deposit under section 39(2) of the Bengal Money-Lenders Act, 1940.]

In the Court of _____ Case No. _____ of 19 _____

Name of lender—

Address—

You are hereby informed that _____ of _____ has on _____ deposited in this Court under section 39 (1) of the Bengal Money-Lenders Act, 1940, a sum of Rs. _____ (Rupees _____ on account of principal and Rs. _____ on account of interest) to your account _____ in respect of the loan of Rs. _____ stated to have been advanced by you to him on _____. You are requested to withdraw this amount within _____ days. Government accept no responsibility for any loss which you may incur in connection with the aforesaid sum while it remains in deposit with the Court.



Dated the—

Signature.

FORM XX.

[Rule 27(3).]

[Form of withdrawal under section 39(2) of the Bengal Money-Lenders Act, 1940.]

Payment Order.

Part I—Application for Payment of Deposits (to be filled in by the applicant).

Name of applicant. 1	Date of deposit. 2	Amount to be paid. 3

Signature of applicant—

Date—

*Examined and found correct.

Signature of Chief Ministerial Officer—

Signature of Presiding Officer—

*The signature below the words "Examined and found correct" must of course be held to indicate that the officer signing the certificate has satisfied himself "that the applicant is the proper party to receive payment of the amount claimed", and that the particulars stated are correct; while the Judge in charge will be responsible that the amount claimed is in deposit, that there is no bar to payment, and that the name of the claimant corresponds with that of the payee entered in his Register.

Part II (to be filled in by the Court or under its orders).

Serial number and date of payment order.		Court's chalan number and chalan date of the original deposit from which the payment is sought.		Court's number and date of the original deposit.		Amount in deposit.*	At whose credit in deposit.*
1	2	3	4	5	6	7	8

To the Officer in charge of the treasury at
Cashier of the Court.

Please pay as above to

or order Rupees.†

Signature of Court's Accountant—

Signature of Judge in charge—

*As per Court's Register of deposits received.

†Words and figures.

Note 1.—This order is not payable more than ten days after date without a renewal enfacement by the Court, and it absolutely lapses and ceases to have effect on the 31st March next.

Note 2.—Payee is hereby to take notice that after tender and payment of this order, the Treasury Officer will admit no further responsibility. It is the duty of the payee to see to the proper custody of this document until it is cashed.

Part III [to be filled in at treasury (or at Court, if payable there).]

Received contents, Rupees

Stamp of one anna
if for more than
Rs. 20.

Signature of Disbursing Cashier—

Payee's signature—

Treasury No.

Pay Rupees

The

19 .

Examined and entered.

Accountant—

Officer in charge of treasury—

FORM XXI.

(Rule 32.)

Case Register of applications for licence and cancellation of licence.

Serial No. 1	Name of applicant. 2	Father's or husband's name. 3	Date of application. 4	Number of section of the Act under which made. 5	Date of receipt of application. 6	Date of final order. 7	Abstract of final order. 8	Remarks. 9

Applications for licence may be entered in red ink and marked with separate numbers in red under the serial number given in column 1.
The serial numbers to run for a year.

APPENDIX A.

Process Fees.

Rule 680 of High Courts Civil Rules and Orders, Volume I.

(2) Fees chargeable in Civil and Revenue Courts in Bengal and Assam.

Nature of Process.	Amount leviable in—		
	(1) In Courts of District Judges. (2) In Courts of Subordinate Judges. (3) In Courts of Munsifs and Revenue Courts, where the suit in which process is issued is valued at Rs. 1,000 and over.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued is valued at Rs. 50 and over but less than Rs. 1,000.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit is less than Rs. 50 in value.
	Rs. a. p.	Rs. a. p.	Rs. a. p.
<i>Article 1.</i>			
In every case in which personal or substituted service of any process on parties to the cause is required, where not more than four persons are to be served with the same document, one fee.	2 0 0	1 0 0	0 8 0
When such persons are more than four in number then the fee abovementioned and an additional fee as mentioned in the table for every such person in excess of four.	0 8 0	0 4 0	0 4 0
<i>Note 1.</i> —A single process-fee is payable where not more than four persons have to be served whether all of them live in the same village or not.			
<i>Note 3.</i> —A single process-fee is payable where a major defendant has to be served with a process in his personal capacity and also with a process as guardian of a minor defendant.			

APPENDIX A—concl.

Nature of Process.	Amount leviable in—		
	(1) In Courts of District Judges. (2) In Courts of Subordinate Judges. (3) In Courts of Munsifs and Revenue Courts, where the suit in which process is issued is valued at Rs. 1,000 and over.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued is valued at Rs. 50 and over but less than Rs. 1,000.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit is less than Rs. 50 in value.
1	2	3	4
	Rs. a. p.	Rs. a. p.	Rs. a. p.
<i>Article 2.</i>			
In every case falling within columns 2 and 3 in which personal or substituted service of any process on any persons who are not parties is required, when the number of such persons is not more than four, one fee.	2 0 0	1 0 0	....
When there are more than four such persons, then the fees abovementioned for the first four, and an additional fee as mentioned in the table for every one in excess of that number.	0 8 0	0 4 0	....
In every case falling within column 4 in which personal or substituted service of any process on any persons who are not parties is required, for each person to be served.	....	....	0 4 0
<i>Note.</i> —No process-fee is chargeable for summonses on witnesses made over for service to the party applying therefor under order 16, rule 7A (i), Civil Procedure Code (G. L. No. 7 of 1929).			

APPENDIX B.

The fees specified in the following schedule shall be paid in court-fee stamps by the persons indicated against each:—

Schedule.

Fees.	Amount.	By whom payable.
1. On an application for appeal under section 5	One rupee	Applicant.
2. For licence under section 10	Fifteen rupees	Ditto.
3. For duplicate licence under Rule 11	Two rupees	Ditto.
4. On an appeal under section 16(3) against an order of a Sub-Registrar refusing a licence.	Twelve annas	Appellant.
5. On an application under section 16(5) for revision of any decision of a Registrar.	Ditto	Applicant.
6. On appeals and revisions contemplated in section 17.	Ditto	Appellant.
7. On an application under section 11 or 19.	Ditto	Applicant.
8. On a suit for relief by a borrower under section 36(1).	One rupee	Plaintiff.
9. On an application for review of decree made under section 36(5)(a)(ii).	Ditto	Applicant.
10. On an application made by the borrower to a court for permission to deposit a sum under section 39(1).	Twelve annas	Ditto.
11. On a petition by a lender for withdrawal of a sum exceeding Rs. 25 deposited by a borrower in a court under section 39(1).	Two annas if the amount concerned is less than Rs. 50. Twelve annas, otherwise.	Petitioner.

By order of the Governor,

A. L. BLANK,

Secy. to the Govt. of Bengal.



Government of Bengal
Legislative Department

Act VIII of 1885

7

The Bengal Tenancy Act
1885

As modified up to the 1st April 1942

X960 : (2262)

Superintendent, Government Printing
Bengal Government Press, Alipore, Bengal
1942

H2

Price—Indian, annas 8; English, 10d.

STATEMENT OF REPEALS AND AMENDMENTS.

REPEALED IN PART AND AMENDED	..	..	..	{ Ben. Act I of 1907 ; E. B. & A. Act I of 1908 ; Act XXXVIII of 1920 ; Ben. Act IV of 1928 ; Ben. Act II of 1930 ; The Government of India (Adaptation of Indian Laws) Order, 1937 ; Ben. Act VI of 1938.
AMENDED	..	..	..	{ Act VIII of 1886 ; Ben. Act III of 1898 ; Ben. Act I of 1903 ; Ben. Act III of 1913 ; Ben. Act II of 1918 ; Ben. Act III of 1919 ; Ben. Act X of 1923 ; Ben. Act I of 1925 ; Ben. Act I of 1939 ; Ben. Act II of 1939 ; Ben. Act XIII of 1939 ; Ben. Act XVIII of 1940.
SUPPLEMENTED	..	..	..	.. Ben. Act III of 1895, ss. 20, 28 to 32, 36(c).

NOTE.—In reprinting this Act,—

- (1) matters repealed by later Acts have been omitted, explanatory notes being inserted;
- (2) the amendments made by later Acts have been inserted in their proper places with explanatory foot-notes ;
- (3) some further foot-notes have been added for convenience of reference ;
- (4) the marginal notes to sections have been revised, wherever this was necessary, in order to bring them into harmony with the amendments made in the sections ;
- (5) the number and year of Acts referred to in the text have been uniformly printed in the margin ; and
- (6) words belonging to the Oriental languages have, as a rule, been printed in italics.

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SCHEDULE I.—REPEAL OF ENACTMENTS.

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Act VIII of 1885.¹

THE BENGAL TENANCY ACT, 1885.

(As modified up to the 1st April 1942.)

(14th March 1885.)

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.²

WHEREAS it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Gazette of India*, 1883, Pt. V, page 129; for Report of Select Committee, see *ibid.*, 1884, Pt. V, page 25; and for Proceedings in Council, see *ibid.*, 1883, Supplement, pages 268, 831, 885, 996, 1519 and 2303; *ibid.*, 1884, Supplement, pages 633 and 1405, *ibid.*, 1885, Supplement, pages 269, 639, 743 and 776.

LOCAL EXTENT.—This Act [except section 31A] extends to the whole of the former Province of Bengal except the town of Calcutta, the Division of Orissa, and the Scheduled Districts—see s. 1(3).

The Act has never been extended to the town of Calcutta.

The Act has, with certain exceptions, restrictions and modifications, been extended, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), ss. 5 and 5A, to the Jalpaiguri district.

The application of the Act is barred in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (I of 1900), s. 4(2).

Section 31A(1) applies only to districts or parts of districts to which it is extended by the Provincial Government by notification in the *Calcutta Gazette*.

COMMENCEMENT.—Act VIII of 1885 was declared to come into force on the 1st November, 1885, by a notification, dated the 4th September, 1885—see *Calcutta Gazette*, 9th *idem*, Pt. I, page 874. That notification was, however, modified as to the commencement of ss. 61 to 64 and Chapter XII by Act XX of 1885, section I, which enacted that those portions of the Act should come into force on such date, not later than the 1st day of February, 1886, as the Provincial Government might appoint, or, if no such date was appointed, then on the 1st February, 1886. (No such date was appointed.) Act XX of 1885 was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

²This includes the present Province of Bengal, and other territory.

(Chapter I.—Preliminary.—Section 1.)

Tenant within the territories under the administration of the Lieutenant-Governor of Bengal¹, it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

- Short title. 1. (1) This Act may be called the Bengal Tenancy Act, 1885.
- Commencement. (2) It shall come into force on such date ²(hereinafter called the commencement of this Act) as the ³[Provincial Government], with the previous sanction of the ⁴[Central Government], may, by notification in the ⁵[*Official Gazette*], appoint in this behalf.
- Local extent. ⁶(3) It extends by its own operation to the whole of Bengal, except—
- (i) Calcutta, that is to say, the area described in Schedule I to the Calcutta Municipal Act, 1923, but excluding the area added to Calcutta as defined in clause (1) of section 3 of that Act; Ben. Act III of 1923.
- (ii) (a) the area added to Calcutta as defined in clause (1) of section 3 of the Calcutta Municipal Act, 1923, or any part thereof; and
- (b) any area or part of any area included in Calcutta by notification under sub-section (3) of section 543 of that Act,
- if such area or part is specified in a notification made in this behalf by the ⁷[Provincial Government];

¹See foot-note ² on p. 1, *ante*.

²See foot-note headed "Commencement" on p. 1, *ante*.

³These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "Governor General in Council", *ibid*.

⁵These words were substituted for the words "Local Official Gazette", *ibid*.

⁶This sub-section was substituted for the original sub-section (3) by s. 2 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter I.—Preliminary.—Section 2.)

Ben. Act
XV of
1932.

(iii) ¹* * * any area constituted a municipality under the provisions of the Bengal Municipal Act, 1932², or part thereof, if such area or part is specified in a notification made in this behalf by the ³[Provincial Government]:

⁴Provided that a notification under this clause shall be no bar to the operation of this Act in respect of agricultural lands situated within the area specified in such notification; and

XIV of
1874.

(iv) the Scheduled Districts⁵ specified in the Part III of the First Schedule to the Scheduled Districts Act, 1874:

Provided that no notification shall be issued under clause (ii) or clause (iii) of this sub-section, unless—

(a) it is previously published in the area concerned or part thereof in the prescribed manner; and

(b) ⁶[both Chambers of the Provincial Legislature] by a resolution ⁷[recommend] that the notification be issued.

2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation. Repeal.

⁸(2) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

⁹(3) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

¹The words "lands other than agricultural lands situated within" in s. 1(3) (iii) were repealed by s. 2(a) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930) and are omitted.

²The figure "1932" was substituted for the figure "1884" by section 2 of and the First Schedule to the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³See foot-note ³ on p. 2, *ante*.

⁴This proviso was inserted by s. 2(b) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

⁵This Act has, with certain exceptions, restrictions and modifications, been extended to the Jalpaiguri district.

⁶These words were substituted for the words "the Bengal Legislative Council" by Schedule I to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁷This word was substituted for the word "recommends" by paragraph 5(2), *ibid*.

⁸These sub-sections were re-numbered as sub-sections (2) and (3) by s. 3(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928). Old sub-section (2) was repealed by s. 3(1) of the same Act.

(Chapter I.—Preliminary.—Section 3.)

Definitions.

¹3. In this Act, unless there is something repugnant in the subject or context,—

²(1) “Agricultural year” means the Bengali year commencing on the first day of *Baisakh*³:

Provided that where, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, any other year has prevailed for agricultural purposes that year shall continue to prevail for those purposes until the first day of *Baisakh*³ next following the date of the commencement of that Act.

Ben. Act
IV of 1928.

⁴(2) “Collector” means the Collector of a district or any other officer appointed by the ⁵[Provincial Government] to discharge any of the functions of a Collector under this Act;

⁶(3) “complete usufructuary mortgage” means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage;

⁷(4) “estate” means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government *khas mahals* and revenue-free lands not entered in any register;

⁸(5) “holding” means a parcel or parcels of land or an undivided share thereof, held by a *raiyat* or an under-*raiyat* and forming the subject of a separate tenancy ⁹[whether the *raiyat* or under-*raiyat* has held the land before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928];

¹The definitions have been rearranged in alphabetical order and re-numbered consecutively by s. 129 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This definition was substituted for the former clause (11) by section 4(e) of the same Act.

³The month of *Baisakh* corresponds with the last part of April and the first part of May.

⁴This definition was numbered as clause (16) originally.

⁵See foot-note ³ on p. 2, *ante*.

⁶This definition was inserted by s. 4(h) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁷This definition was numbered as clause (1) originally.

⁸This definition was substituted for the former clause (9) by s. 4(c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁹These words were added by s. 2 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

of 1885.]

(Chapter I.—Preliminary.—Section 3.)

¹(6) "landlord" means a person immediately under whom a tenant holds, and includes the Government;

²(7) "pay", "payable" and "payment", used with reference to rent, include "deliver," "deliverable" and "delivery";

³(8) "Permanent Settlement" means the Permanent Settlement of Bengal, * ** made in the year 1793;

⁴(9) "permanent tenure" means a tenure which is heritable and which is not held for a limited time;

⁵(10) "prescribed" means prescribed by rules made by the [Provincial Government] under this Act;

⁶(11) "proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate;

⁷(12) "registered" means registered under any Act¹⁰ for the time being in force for the registration of documents;

¹¹(13) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant:

in sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, ^{12*} * Chapter XIV¹³ and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent;

¹This definition was numbered as clause (4) originally.

²This definition was numbered as clause (6) originally.

³This definition was numbered as clause (12) originally.

⁴In clause (8) the words "Bihar and Orissa" which were repealed by s. 4(f) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), are omitted.

⁵This definition was numbered as clause (8) originally.

⁶This definition was substituted for the former clause (15) by s. 4(g) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁷See foot-note * on p. 2, *ante*.

⁸This definition was numbered as clause (2) originally.

⁹This definition was numbered as clause (18) originally.

¹⁰See now the Indian Registration Act, 1908 (XVI of 1908).

¹¹This definition was numbered as clause (5) originally.

¹²In clause (13) the words and figures "Chapter XII" which were repealed by s. 4(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), are omitted.

¹³The words and figures "Chapter XIV" were inserted, for Western Bengal by s. 4(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by s. 4(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

(Chapter I.—Preliminary.—Section 3.)

¹(14) “Revenue-officer”, in any provision of this Act, includes any officer whom the ²[Provincial Government] may appoint, by name or by virtue of his office, to discharge any of the functions of a Revenue-officer under that provision;

³(15) “signed” includes “marked”, when the person making the mark is unable to write his name; it also includes “stamped” with the name of the person referred to;

⁴(16) “succession” includes both intestate and testamentary succession;

⁵(17) “tenant” means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person:

“provided that a person who, under the system generally known as “*adhi*”, “*barga*” or “*bhag*”, cultivates the land of another person on condition of delivering a share of the produce to that person, is not a tenant, unless—

- (i) such person has been expressly admitted to be a tenant by his landlord in any document executed by him or executed in his favour and accepted by him, or
- (ii) he has been or is held by a Civil Court to be a tenant;

⁶(18) “tenure” means the interest of a tenure-holder or an under-tenure-holder;

⁷(19) “village” means the area defined, surveyed and recorded as a distinct and separate village in—

- (a) the general land revenue survey which has been made of the Province of Bengal, or

¹This definition was numbered as clause (17) originally.

²See foot-note³ on p. 2, *ante*.

³This definition was numbered as clause (14) originally.

⁴This definition was numbered as clause (13) originally.

⁵This definition was numbered as clause (3) originally.

⁶This proviso was inserted by s. 4(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁷This definition was numbered as clause (7) originally.

⁸This definition was numbered as clause (10) originally. It now applies in its present form to both Eastern and Western Bengal—*vide* Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 4(d).

of 1885.]

(Chapter I.—Preliminary.—Chapter II.—Classes of tenants.—Section 4.)

(b) any survey made by the Government ¹[which has been adopted by notification in the *Calcutta* or *Eastern Bengal and Assam Gazette* or] which may be adopted by notification in the *Calcutta Gazette* as defining villages for the purposes of this clause in any specified area;

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order declare to constitute a village:

²Provided that, when an order has been made under section 101 directing that a survey be made and a record-of-rights prepared in respect of any local area, estate, tenure or part thereof, the Government may, by notification in the ³[*Official Gazette*], declare that in such local area, estate, tenure or part thereof, "village" shall mean the area which for the purposes of such survey and record-of-rights may be adopted by the Revenue-officer with the sanction of the Board of Revenue ⁴[accorded under the provisions of section 115A] as the unit of survey and record.⁵

CHAPTER II.

CLASSES OF TENANTS.

4. There shall be, for the purposes of this Act, the following classes of tenants (namely):— Classes of tenants.

- (1) tenure-holders, including under-tenure-holders,
- (2) *raiyats*, and

¹These words within square brackets were inserted by s. 4(d) (i) of the Bengal Tenancy (Amendment) Act 1928 (Ben. Act IV of 1928).

²This proviso which was in force in Eastern Bengal was added by s. 4(d) (ii) of the same Act with certain modifications.

³These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words in square brackets were inserted by s. 4(d) (ii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵Further definitions are given in the following sections, namely:—

- s. 5 ("tenure-holder" and "*raiyat*");
- s. 16A ("person succeeding", "transferee", "purchaser", "mortgagee" and "person becoming entitled to a permanent tenure by succession");
- s. 20 ("settled *raiyat*");
- s. 26-I ("transferee", "transfer", "purchaser", and "mortgagee");
- s. 41 ("non-occupancy-*raiyat*");
- s. 47 ("admitted to occupation");
- s. 76 ("improvement");
- s. 160 ("protected interests");
- s. 161 ("incumbrance", "registered and notified incumbrance", "arrears" and "arrear of rent").

(Chapter II.—Classes of tenants.—Section 5.)

(3) under-*raiyats*, that is to say, tenants holding whether immediately or mediately, under *raiyats*;

and the following classes of *raiyats* (namely):—

- (a) *raiyats* holding at fixed rates, which expression means *raiyats* holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,
- (b) occupancy-*raiyats*, that is to say, *raiyats* having a right of occupancy in the land held by them, and
- (c) non-occupancy-*raiyats*, that is to say, *raiyats* not having such a right of occupancy.

Meaning of
"tenure-holder"
and "*raiyat*."

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "*Raiyat*" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by ¹[servants or labourers] or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a *raiyat* unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a *raiyat*, the Court shall have regard to—

(a) local custom; and

(b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard *bighas*, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

¹The words "servants or labourers" were substituted for the words "hired servants" by s. 5 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter III.—Tenure-holders.—Sections 6, 7.)

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

Enhancement of rent.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

(a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(b) that the tenure-holder, by receiving reductions, of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded and that the lands are capable of affording it.

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

Limits of enhancement of rent of tenures.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than 10 *per centum* of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(Chapter III.—Tenure-holders.—Sections 8—12.)

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

Power to order progressive enhancement.

⁸ If it thinks that an immediate increase of rent would produce hardship, the Court may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf.

Rent once enhanced may not be altered for fifteen years.

⁹ When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced ²[and for the purposes of this section, if an order for gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 8, the full rent fixed by such order shall be deemed to have come into effect from the date of such order].

Other incidents of tenures.

Other incidents of tenures.

Permanent tenure-holder not liable to ejection.

¹⁰ A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected:

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

Transfer and transmission of permanent tenure.

¹¹ Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.

Voluntary transfer of permanent tenure.

¹² (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by a sale in execution of a decree or by summary sale under any law relating to *patni* or other tenures) can be made only by a registered instrument.

¹This section 8 was substituted for the original section by s. 6 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words in square brackets in section 9 were inserted by section 7 of the same Act.

³As to the validation of certain transfers made under sections 12, 13, 17 or 18, see the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act I of 1903), s. 1; and as to payment of fees under those sections, see *ibid.* s. 2.

of 1885.]

(Chapter III.—Tenure-holders.—Section 12.)

(2) A registering officer ¹[shall not accept for registration] any instrument purporting or operating to transfer by sale, gift or ²usufructuary mortgage a permanent tenure ³[in favour of any person other than the sole landlord of such tenure] unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:—

(a) when rent is payable in respect of the tenure, a fee of two *per centum* on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and

(b) when rent is not payable in respect of the tenure a fee of two rupees;

⁴together with ⁵[the prescribed cost of transmission] of the landlord's fee to the landlord.

(3) ⁶[When any such instrument is admitted to registration], the registering officer shall send to the Collector the landlord's fee ⁷the ⁸cost necessary for the

¹These words in square brackets in s. 12(2) were substituted for the words "shall not register" by s. 3(a) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²This word "usufructuary" in s. 12(2) was inserted by s. 1 of the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886).

³These words in square brackets in s. 12(2) were inserted by s. 8(1) (a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴The words "together with the costs necessary for the transmission of the landlord's fee to the landlord" were added to section 12(2), for Western Bengal, by s. 5(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 5(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁵These words in square brackets in s. 12(2) were substituted for the words "the costs necessary for the transmission" by s. 8(1)(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶These words in square brackets in s. 12(3) were substituted for the words "when the registration of any such instrument is complete" by s. 3(b) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

⁷The words "the costs necessary for the transmission of the same" in section 12(3) were inserted, for Western Bengal, by s. 5(2)(i) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 5(2)(i) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁸The word "cost" was substituted for the word "costs" by s. 8(1)(c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter III.—Tenure-holders.—Section 13.)

transmission of the same and ¹[the notice of the transfer] in the prescribed form, and the Collector shall cause the fee to be ²transmitted to, and the notice to be served on, the landlord ³named in the notice, ⁴[or his common agent, if any,] in the prescribed manner.

⁵(4) The landlord's fees or the prescribed cost of transmission payable under this section and under sections 13 and 15 shall be paid to the registering officer or the Court or the Collector, as the case may be, in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

⁶13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, ⁷or when a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed, the Court shall, before confirming the sale under ⁸[rule 92 of Order XXI in Schedule I to the Code of Civil Procedure, 1908] ⁹or making a decree or order absolute for the foreclosure, require the purchaser ¹⁰or mortgagee to pay into Court the landlord's ¹¹fee

¹These words in square brackets in s. 12(3) were substituted for the words "a notice of the transfer and registration," by s. 3(b) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²This word "transmitted" in sections 12(3), 13(2) and 15 was substituted for the word "paid," for Western Bengal, by s. 5(2)(ii) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 5(2)(ii) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

³The words "named in the notice" in sections 12(3), 13(2) and 15 were inserted, for Western Bengal, by s. 5(2)(iii) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 5(2)(iii) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁴These words in square brackets in ss. 12(3), 13(2) and 15 were inserted by s. 9 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵This sub-section was added by s. 8(2) of the same Act.

⁶See foot-note ² on p. 10, *ante*.

⁷The words "or when a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed," in s. 13(1) were inserted by s. 2(1) of the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886).

⁸These words in square brackets in s. 13(1) were substituted for the words and letters "section 312 of the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁹The words "or making a decree or order absolute for the foreclosure" in s. 13(1) were inserted by s. 2(2) of the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886).

¹⁰The words "or mortgagee" in s. 13(1) were inserted by s. 2(3), *ibid*.

¹¹The words "fee required" in ss. 13(1) and 15 were substituted for the words "fee prescribed" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[1885.]

(Chapter III.—Tenure-holders.—Sections 14, 15.)

required by section 12 together with the prescribed cost of transmission thereof to the landlord, and such further fee for service of notice of the sale or final foreclosure on the landlord as may be prescribed.

(2) When the sale has been confirmed, or the decree or order absolute for the foreclosure has been made, the Court shall send to the Collector the landlord's fee, the prescribed cost of transmission of the same, and a notice of the sale or final foreclosure in the prescribed form, and the collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice [or his common agent, if any,] in the prescribed manner.

14. (Transfer of permanent tenure by sale in execution of decree for rent.) Rep. in Western Bengal by s. 2 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and in Eastern Bengal by s. 2 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the

Succession to permanent tenure.

¹The word and figure "section 12" were substituted for the word "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "the prescribed cost of transmission thereof" were substituted for the words "the costs necessary for its transmission" by s. 10(1) of the same Act.

³The words "or final foreclosure" in ss. 13(1) and 13(2) were inserted by s. 2(4) of the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886).

⁴The words "or the decree, has been made" in s. 13(2) were inserted by s. 2(5), *ibid.*

⁵The words "the prescribed cost of transmission" were substituted for the words "the costs necessary for the transmission" by s. 10(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶See foot-note² on p. 12, *ante*.

⁷See foot-note³ on p. 12, *ante*.

⁸See foot-note⁴ on p. 12, *ante*.

⁹As to payment of fees under section 15 to the Registrar of Mutations under the Land Records Maintenance Act, 1895 (Ben. Act III of 1895), see s. 20 of that Act.

(Chapter III.—Tenure-holders.—Sections 16—17.)

service of the notice on the landlord and the landlord's fee required by section 12, together with the prescribed cost of transmission thereof to the landlord, and the Collector shall cause the landlord's fee to be transmitted to, and the notice to be served on the landlord named in the notice, [or his common agent, if any,] in the prescribed manner:

Provided that where, at the instance of the person succeeding, mutation is made in the rent-roll of the landlord within six months of the succession, the person succeeding shall not be required to give notice under this section.

Bar to recovery of rent, pending notice of succession.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit * * * or other proceeding any rent payable to him as the holder of the tenure, [until the duties imposed upon him by section 15 have been performed].

Interpretation.

16A. In sections 13, 15 and 16 the words "person succeeding", "transferee", "purchaser", "mortgagee", and "person becoming entitled to a permanent tenure by succession", include the successors in interest of such persons but do not include the landlord where he is the sole landlord.

Transfer of, and succession to, share in permanent tenure.

17. Subject to the provisions of section 88 sections 12 to 16A shall apply to the transfer of, or succession to, a share in a permanent tenure.

¹See foot-note¹¹ on p. 12, *ante*.

²The words "the prescribed cost of transmission thereof" were substituted for the words "the costs necessary for its transmission" by s. 11(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³See foot-note³ on p. 12, *ante*.

⁴See foot-note³ on p. 12, *ante*.

⁵See foot-note⁴ on p. 12, *ante*.

⁶This proviso was inserted by s. 11(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁷The word "distrain" was omitted by s. 12 of the same Act.

⁸These words within square brackets in s. 16 were substituted for the words "until the Collector has received the notice fees and costs referred to in the last foregoing section" by s. 12 of the same Act.

⁹Section 16A was inserted by s. 13 of the same Act.

¹⁰As to the validation of transfers made under s. 17 or s. 18 see foot-note³ on p. 10, *ante*.

As to the forfeiture of fees deposited under ss. 12, 13, 15, 17 and 18(1)(a), see s. 18C, *post*, and s. 189(4), *post*.

¹¹The words, figures and letter "sections 12 to 16A" were substituted for the words "the foregoing sections" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter IV.—*Raiyats holding at fixed rates.*—
Section 18.)

CHAPTER IV.

Raiyats HOLDING AT FIXED RATES.

²18. ³(1) A *raiayat* holding at a rent, or rate of rent, fixed in perpetuity— Incidents of holding at fixed rates.

- (a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, “* *”
- ⁵[(b) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;
- (c) shall be deemed to be a settled *raiayat* of the village if he complies with the conditions set forth in section 20; and
- ⁶(d) shall be entitled—
 - (i) to plant,
 - (ii) to enjoy the flowers, fruits and other products of,
 - (iii) to fell, and
 - (iv) to utilise or dispose of the timber of,

any tree on the land comprised in his holding.]

⁴(2) The provisions of sections 23A to 38 (both inclusive) shall not apply to *raiayats* holding at fixed rates, even though such *raiayats* have a right of occupancy in the lands of their holdings.

¹As to payment of fees under Chapter IV to the Registrar of Mutations under the Land Records Maintenance Act, 1895 (Ben. Act III of 1895), see section 20 of that Act.

²See foot-note¹⁰ on p. 14, *ante*.

³Original section 18 was re-numbered as sub-section (1) by s. 14(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928.)

⁴The word “and” was repealed by s. 14(2) of the same Act.

⁵The clauses within square brackets were substituted for the original clause (b) by s. 14(2) of the same Act.

⁶This sub-section was inserted by s. 14(3) of the same Act.

[Act VIII]

(Chapter IVA.—Provisions as to transfers of tenures and holdings and landlord's fees.—Sections 18A—18C.)

CHAPTER IVA.

PROVISIONS AS TO TRANSFERS OF TENURES AND HOLDINGS AND LANDLORD'S FEES.

Saving as to statements in instruments of transfer where landlord is not a party.

18A. Notwithstanding anything contained in section 13 of the Indian Evidence Act, ³[1872] nothing ¹of 1872. contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenure or holding referred to in such instrument.

Saving as to acceptance of landlord's fees.

18B. The acceptance by a landlord of ⁵the landlord's fee payable under Chapter III or Chapter IV in respect of any tenure or holding shall not operate—

- ⁶(a) as an admission of the permanence, the amount or fixity of rent, the area, the transferability or any incident of such tenure or holding, or
- ⁷(b) as an express consent under section 88 to the division of such tenure or holding, or to the distribution of the rent payable in respect thereof.

Forfeiture of unclaimed landlord's fees.

18C. All landlord's fees and landlord's transfer fees deposited with the Collector before or after the

¹This Chapter IVA was inserted for Western Bengal, by s. 8 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by s. 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²This section which was inserted by s. 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was substituted for s. 18A as inserted by s. 8 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 15 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This figure was inserted by section 2 of and the First Schedule to the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁴Section 18B was originally inserted, for Western Bengal, by s. 8 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by s. 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁵The words "the landlord's fee" were substituted for the words "any landlord's fee" by s. 16 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶This clause which originally formed part of section 18B as in force in Eastern Bengal was substituted for clause (a) as in force in Western Bengal by s. 17 of the same Act.

⁷This section was substituted for section 18C as inserted by the Bengal Tenancy (Amendment) Act, 1907, and by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, by s. 18 of the same Act.

of 1885.]

(Chapter IVA.—Provisions as to transfers of tenures and holdings and landlord's fees.—Chapter V.—Occupancy-raiyats.—Sections 19, 20.)

Ben. Act
IV of
1928.

commencement of the Bengal Tenancy (Amendment) Act, 1928, under Chapter III, IV or V and all fees deposited with the Collector under sub-section (1) of section 48H shall, unless accepted or claimed by the landlord within five years from the date of service of notice, be forfeited to the Government * * *

CHAPTER V.

OCCUPANCY-raiyats.

General.

General.

*19. (1) Every raiyat who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, has, by the operation of any enactment by custom or otherwise, a right of occupancy in any land, shall, when that Act comes into force, have a right of occupancy in that land.

Continuance of existing occupancy-rights.

(2) The exclusion from the operation of this Act, by a notification under clause (ii), or clause (iii) of sub-section (3) of section 1, of any area or part of any area referred to in those clauses shall not affect any right, obligation, or liability, previously acquired, incurred or accrued, in reference to such area or part thereof.

20. (1) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

Definition of "settled raiyat."

*(1A) A person shall be deemed, for the purposes of this section, to have continuously held land in a

*The words "to be credited to the District Boards within the respective jurisdictions of which such fees accumulate," were omitted by Schedule I to the Government of India (Adaptation of Indian Laws) Order, 1937.

*Chapter V does not confer a right of occupancy in certain lands—see s. 116, *post*.

*This section was substituted for s. 19 as modified by the Bengal Tenancy (Amendment) Act, 1907, and by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, by s. 19 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

*This sub-section (1A) was inserted by s. 2 of the Bengal Tenancy (Amendment) Act, 1925 (Ben. Act I of 1925).

(Chapter V.—Occupancy-raiyats.—Section 21.)

village, notwithstanding that such village was defined, surveyed and recorded as, or declared to constitute a village at a date subsequent to the commencement of the said period of twelve years.

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a *raiyat* any land held as a *raiyat* by a person whose heir he is.

(4) Land held by two or more co-sharers as a *raiyati* holding shall be deemed, for the purposes of this section, to have been held as a *raiyat* by each co-sharer.

(5) A person shall continue to be a settled *raiyat* of a village as long as he holds any land as a *raiyat* in that village and for one year thereafter.

(6) If a *raiyat* recovers possession of land under section 87, he shall be deemed to have continued to be a settled *raiyat* notwithstanding his having been out of possession more than a year.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a *raiyat*, it shall as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a *raiyat*.

Settled *raiyats*
to have
occupancy-
rights.

21. (1) Every person who is a settled *raiyat* of a village within the meaning of 'section 20, shall have a right of occupancy in all land for the time being held by him as a *raiyat* in that village.

(2) Every person who, being a settled *raiyat* of a village within the meaning of 'section 20, held land as a *raiyat* in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

¹The word and figure "section 20" were substituted for the word "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[of 1885.]

(Chapter V.—Occupancy-raiyats.—Sections 22, 23.)

22. (1) When the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder and the entire interests of the landlord and the *raiyat* in the holding become united in the same person by transfer, succession or in any other way whatsoever, such person shall have no right to hold the land as a *raiyat*, but shall hold it as a proprietor or a permanent tenure-holder, as the case may be, but nothing in this sub-section shall prejudicially affect the rights of any third person.

Effect of acquisition of occupancy-right by landlord.

(2) Nothing in this section shall prevent the acquisition by transfer, succession or in any other way whatsoever, of the holding of an occupancy-*raiyat* or share or portion thereof, together with the occupancy-rights therein by a person who is, or becomes, jointly interested in the lands as a proprietor or a permanent tenure-holder:

Provided that a co-sharer landlord who purchases a holding of a *raiyat* at a sale in execution of a rent decree or of a certificate under this Act shall not hold the land comprised in such holding as a *raiyat* but shall hold the land as a proprietor or tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same. The rent payable by the *raiyat* to the other co-sharer landlords at the time of the transfer shall be regarded as the fair and equitable sum until otherwise determined in accordance with the principles of this Act regulating the enhancement or reduction of the rents of occupancy-*raiyats*.

(3) A person holding land as a temporary tenure-holder or farmer of rents shall not, while so holding, acquire a right to hold as a *raiyat* any land comprised in his temporary tenure or farm.

Explanation.—A person having a right to hold the lands of an occupancy holding as a *raiyat* does not lose it by subsequently holding the land as a temporary tenure-holder or farmer of rents.

Incidents of occupancy-right.

23. When a *raiyat* has a right of occupancy in respect of any land, he may use the land in any manner

Incidents of occupancy-right.

Rights of *raiyat* in respect of use of land.

¹This section 22 was substituted for the original section 22 by section 20 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[Act VIII]

(Chapter V.—Occupancy-raiyats.—Sections 23A—26A.)

which does not materially impair the value of the land or render it unfit for the purposes of the tenancy
* * * *

Rights of
occupancy-
raiyat and
landlord in trees.

23A. Subject to the provisions of section 23, when a *raiyat* has a right of occupancy in respect of any land, he shall be entitled—

- (i) to plant,
- (ii) to enjoy the flowers, fruits and other products of,
- (iii) to fell, and
- (iv) to utilise or dispose of the timber of,

any tree on such land.

Obligation of
occupancy-
raiyat to pay
rent.

24. An occupancy-*raiyat* shall pay rent for his holding at fair and equitable rates.

Protection from
eviction except
on specified
grounds.

25. An occupancy-*raiyat* shall not be ejected by his landlord from his holding, except in execution of a decree for ejection passed on the ground—

- (a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or
- (b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Devolution of
occupancy-right
on death.

26. If a *raiyat* dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property: provided that in any case in which under the law of inheritance to which the *raiyat* is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

26A. (Application of sections 26B to 26J.) [Rep. by s. 3 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).]

¹The words "but shall not be entitled to cut down trees in contravention of any local custom" were omitted by s. 21 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Section 23A was inserted by s. 22 of the same Act.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Sections 26B, 26C.)

26B. The holding of an occupancy-raiyat or a share or a portion thereof, together with the right of occupancy therein, shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property.

Holdings of occupancy-raiyats with occupancy-rights transferable.

26C. (1) Every transfer shall be made by registered instrument, except in the cases of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913; and a registering officer shall not accept for registration any such instrument unless the sale price, or where there is no sale price, the value of the holding or portion or share thereof transferred is stated therein, and unless it is accompanied by—

Manner of transfer and notices to landlord and co-sharers.

Ben. Act III of 1913.

(i) a notice giving particulars of the transfer in the prescribed form, together with the process fee prescribed for the service thereof on the landlord or landlords or their common agent, if any, who is or are not party or parties to the transfer, and

(ii) such notices and process fees as may be required by sub-section (4).

(2) In the case of a bequest of such a holding or portion or share thereof, no Court shall grant probate or letters of administration until the applicant files a notice and deposits a process fee similar to those referred to in clause (i) of sub-section (1).

(3) A Court or Revenue-officer shall not confirm the sale of such a holding or portion or share thereof put to sale in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, and no Court shall make a decree or order absolute for foreclosure of a mortgage of such a holding or portion or share thereof, until the purchaser or the mortgagee, as the case may be, files a notice or notices and deposits a process fee or fees similar to those referred to in sub-section (1).

(4) If the transfer of a portion or share of such a holding be one to which the provisions of sub-section (1) of section 26F apply, there shall be filed notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all the co-sharer tenants of the said holding who are not parties to the transfer.

¹Section 26B was inserted by s. 23 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This section 26C, was substituted for the original section 26C by s. 4 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

[Act VIII]

(Chapter V.—Occupancy-riyats.—Sections 26D, 26E.)

(5) The Court, Revenue-officer or registering officer, as the case may be, ¹[shall, in the prescribed manner, serve the notices for which this section provides], and after receipt of such notice, the landlord or landlord's agent, as the case may be, shall not refuse to recognise the transferee as the tenant in respect of the holding or portion or share thereof transferred nor omit to enter the transferee's name in the landlord's rent-roll in place of that of the transferor or where only a share or a portion of the transferor's interest has been transferred, along with the name of the transferor :

Provided that such recognition shall not operate as an admission of the amount of rent or the area or any incident of such occupancy holding other than the existence of a right of occupancy therein or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof :

Provided further that if a transfer is subsequently set aside or modified by a competent authority, the party in whose favour such order has been made shall, unless such order has been passed in a suit, appeal or other proceedings to which the landlord was a party, deposit with the authority before whom the appropriate suit or proceeding was first initiated the prescribed fee for a notice on the landlord or his common agent, if any, describing the modifications made by such order, on receipt of which notice the landlord shall cause his rent-roll to be corrected accordingly.

(6) In this section—

- (a) "transferee", "purchaser" and "mortgagee" include their successors in interest,
- (b) "transfer" does not include partition or a lease, or, until a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale, and
- (c) "transferor" includes a person whose interest in a holding or portion or share thereof has terminated in the circumstances mentioned in sub-section (2) or sub-section (3).

26D, 26E. (*Landlord's transfer fee; Procedure on sale in execution of a decree, certificate or foreclosure of mortgage.*) [*Rep. by s. 5 of the Bengal Tenancy (Amendment) Act, 1933 (Ben. Act VI of 1933).*]

¹These words within square brackets were substituted for the words "shall serve the notices provided in this section by registered post" by section 2 of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 26F.)

'26F. (1) Except in the case of—

Power of
co-sharer of
transferor to
purchase.

- (a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or
- (b) a transfer by exchange, lease, or partition, or
- (c) a transfer by bequest, or gift (including *heba* but excluding *heba-bil-ewaz* for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or
- (d) a *wakf* in accordance with the provisions of the Muhammadan Law, or
- (e) a dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual—

one or more co-sharer tenants of the holding, a portion or share of which is transferred, may within four months of the service of the notice under section 26C, apply to the Court for the said portion or share to be transferred to himself or themselves.

Explanation.—A relation by consanguinity shall, for the purposes of this section, include a son adopted under the Hindu Law.

(2) The application shall be dismissed, unless the applicant or applicants at the time of making it, deposit in Court the amount of the consideration money or the value of the transferred portion or share of the holding, as stated in the said notice, together with compensation at the rate of ten per centum of such amount.

(3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as it may fix and to state what other sums he has paid in respect of rent or in annulling incumbrances on the property since the date of the transfer. The Court shall then direct the applicants [including any person whose application under sub-section. (4) has been granted] to deposit within such period as the Court thinks reasonable, such amount as the transferee has paid on such account, together with interest at the rate of

*This section 26F was substituted for the original section 26F by s. 6 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

[Act VIII]

(Chapter V.—Occupancy-raiyats.—Section 26F.)

six and a quarter *per centum per annum* with effect from the date on which the transferee made such payments.

(4) (a) When an application has been made under sub-section (1), any of the remaining co-sharer tenants, including the transferee, if one of them, may within the period referred to in that sub-section or within one month of the date of the application, whichever is later, apply to join in the said application; any co-sharer tenant who has not applied under either sub-section (1) or this sub-section shall not have any further power of purchase under this section.

(b) Such application to join as a co-applicant shall be dismissed unless within such period as the Court may fix, not extending beyond the period referred to in clause (a), the applicant deposits in Court for payment to the applicant or applicants under sub-section (1), such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section (2). If such deposit is made, the Court shall grant the application to join, and thereafter such applicant shall be deemed to be an applicant under sub-section (1).

(5) The Court shall thereafter make an order allowing the applications under sub-section (1) of such applicants [whether they applied under sub-section (1) or sub-section (4)] who have made the deposits required by this section and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such other persons as the Court thinks equitable.

(6) In making an order under sub-section (5) in favour of more than one co-sharer tenant, the Court may apportion the property comprised in the portion or share transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration; the Court shall so apportion the said property or portion thereof on the request of any applicant, and in this case may require the applicant who makes such request to make, within such period as the Court may fix, such further deposit as the Court considers necessary for equitable distribution among the remaining applicants:

Provided that no apportionment ordered under this sub-section shall operate as a division of the holding.

(7) From the date of the making of the order under sub-section (5)—

(a) the right, title, and interest in the portion or share of the holding, accruing to the transferee from the transfer shall, subject to the

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 26G.)

provisions of section 22 and to any orders passed under sub-section (6), be deemed to have vested, jointly and free from all incumbrances which have been annulled or created after the date of the transfer, in the co-sharer tenants, whose applications to purchase have been allowed under this section,

- (b) the liability of the transferee for the rent due from him on account of the transfer shall cease, and
- (c) the Court on further application of such applicant or applicants may place him or them, as the case may be, in possession of the property vested in them.

(8) When a transferee is divested of his right, title and interest under the provisions of sub-section (7), he shall for the purposes of clauses (a), (c) and (d) of section 156 be deemed to be a *raiyat* ejected from his holding by proceedings for his ejection commencing on the date on which the application under sub-section (1) was made.

(9) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhamadan Law.

(10) An appeal shall lie to the ordinary Civil Appellate Court from any order of a Court under this section.

(11) In this section "transfer" does not include simple or usufructuary mortgage or mortgage by conditional sale until a decree or order absolute for foreclosure is made.

26G. (1) An occupancy-*raiyat* may enter into a complete usufructuary mortgage in respect of his holding or of a portion or share thereof for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed fifteen years [and notwithstanding anything contained in this Act or in any other law or in any contract, no other form of usufructuary mortgage so entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928, shall have any force or effect].

Limitation on mortgage by occupancy-*raiyat*

Ben Act IV of 1928.

¹Section 26G was inserted by s. 23 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act-IV of 1928).

²These words and figure in square brackets were inserted by section 7(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

[Act VIII

(Chapter V.—Occupancy-raiyats.—Section 26G.)

¹(1a) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, every mortgage (including a mortgage by conditional sale) entered into by an occupancy-raiyat in respect of his holding or of a portion or share thereof in which possession of land is delivered to the mortgagee—

- (a) which was so entered into before the commencement of the Bengal Tenancy (Amendment) Act, 1928, and was subsisting on or after the first day of August, 1937, or
- (b) which, being other than a usufructuary mortgage having under sub-section (1) no force or effect, was so entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928, and before the commencement of the Bengal Tenancy (Amendment) Act, 1940, and was subsisting on or after the commencement of the Bengal Tenancy (Amendment) Act, 1940, shall be deemed to have taken effect as a complete usufructuary mortgage for the period mentioned in the instrument or for fifteen years, whichever is less.

Ben. Act
IV of
1928.

²(1b) Notwithstanding anything contained elsewhere in this Act or in any other law or in any contract, no mortgage (other than a complete usufructuary mortgage) entered into by an occupancy-raiyat in respect of his holding or of a portion or share thereof after the commencement of the Bengal Tenancy (Amendment) Act, 1940, in which possession of land is delivered to the mortgagee, shall have any force or effect.

(2) Notwithstanding any contract to the contrary, ³[entered into before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928, such a complete usufructuary mortgage, or a mortgage referred to in sub-section (1a)] may be redeemed at any time before the expiry of the ⁴[periods referred to in sub-section (1) of sub-section (1a)].

¹Sub-section (1a) of section 26G was substituted for the original sub-section (1a) as inserted by section 7(2) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938) by section 3(1) of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

²Sub-section (1b) of section 26G was inserted by section 3(2) of the same Act.

³These words, figures and letter were substituted for the words "such mortgage" by s. 7(3) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁴These words, figures and letter were substituted for the words "said period" by s. 7(3)(b) of the same Act.

of 1885.]

(Chapter V.—Occupancy-*raiyats*.—Section 26G.)

XVI of
1908.

(3) Every such ¹[complete usufructuary mortgage entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928,] shall be registered under the Indian Registration Act, 1908.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law,² * * * no document creating or purporting to create—

- (a) a complete usufructuary mortgage of the holding or of a portion or share of the holding of an occupancy-*raiyat* for a period exceeding or which can exceed fifteen years, or
- (b) an usufructuary mortgage of such holding, portion or share, other than a complete usufructuary mortgage³ or
- (c) a mortgage of such holding, portion or share [other than a complete usufructuary mortgage or a usufructuary mortgage referred to in clause (b)] in which possession of land is delivered to the mortgagee,

shall be admitted to registration, nor shall any such document be received in evidence or acted on in any Court or by any public servant:

⁴[Provided that—

Ben. Act
IV of
1928.

- (i) a document referred to in clause (a) or (b) which was executed before the commencement of the Bengal Tenancy (Amendment) Act, 1928, or
- (ii) a document referred to in clause (c) which was executed before the commencement of the Bengal Tenancy (Amendment) Act, 1940,

may be so received in evidence or so acted upon as a complete usufructuary mortgage for the period mentioned therein or for fifteen years, whichever is less.]

⁵(5) Notwithstanding anything contained in this Act or in any other law or in any contract, the consideration (with all interest thereon) for a complete usufructuary mortgage or for another form of usufructuary mortgage

¹These words and figures in square brackets were substituted for the word "mortgage" by s. 7(4) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²The words "no other form of usufructuary mortgage entered into by an occupancy-*raiyat* in respect of his holding or portion or share thereof shall have any force or effect, and" were omitted by s. 7(5)(a) of the same Act.

³This word "or" and clause (c) were inserted by s. 3(3) of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

⁴This proviso to sub-section (4) was substituted by section 3(3)(c) of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940) for the original proviso as inserted by s. 7(5)(b) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁵Sub-sections (5) and (6) of s. 26G were inserted by s. 7(6) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

[Act VIII]

(Chapter V.—Occupancy-raiyats.—Section 26G.)

deemed under sub-section (1a) to have taken effect as a complete usufructuary mortgage, entered into by an occupancy-raiyat in respect of his holding or a portion or share thereof, shall be deemed to have been extinguished on the expiry of the period (a) mentioned in the instrument of the mortgage, or (b) of fifteen years, whichever is less, from the date of the registration of the instrument, or where there is no registered instrument, from the date of the mortgagee's entry into possession, and the mortgagor shall thereupon become entitled ¹to possession of the mortgaged property, and he may, if he is not forthwith given possession, apply to the Court to be restored to possession thereof and to be awarded such compensation as may appear to the Court to be equitable in respect of the period during which the mortgagee retained possession after the date on which the mortgagor became entitled to be restored to possession]:

Provided that if in the case of such a mortgage subsisting on or after the first day of August 1937, the said period has, on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1938, already expired, the mortgagor shall, immediately on the commencement of the said Act, become entitled to possession of the mortgaged ²[property], but he shall not be entitled to, nor shall the mortgagee be liable for, any compensation in respect of the mortgagee's possession from the date of the expiry of the said period to the date of the commencement of the said Act.

Ben. Act
VI of 1938.

³(6) An application under sub-section (5) shall be accompanied by a process fee of the prescribed amount for service of notice on the mortgagee, and the Court [to which] such an application is made, may, after service of such notice, award to the mortgagor such compensation as appears equitable ⁴[and may pass an order restoring possession of the mortgaged property to the mortgagor].

¹These words in square brackets were substituted for the words "to possession of the mortgaged holding, and he may, if he is not forthwith given possession, apply to the Court or to a Revenue officer to be restored thereto" by section 3(4)(a) of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

²The word "property" was substituted for the word "holding" by section 3(4)(b) of the same Act.

³See foot-note⁴ on p. 27, *ante*.

⁴The words "to which" were substituted for the words "or Revenue officer to whom" by section 3(5)(a) of the same Act.

⁵These words in square brackets were substituted by section 3(5)(b) of the same Act for the following words:—

"in respect of the period during which the mortgagee retained possession after the date on which the mortgagor became entitled to be restored to possession and may pass an order restoring the possession of the land mortgaged to the mortgagor and such order shall have the effect of a decree of a Civil Court".

of 1885.]

(Chapter V.—Occupancy-*raiyats*.—Section 26G.)

Act V of
1908.

¹(7) Any order made by a Court under sub-section (6) shall have the effect of a decree of a Civil Court and shall be subject to the provisions of the Code of Civil Procedure, 1908, in respect of appeal, revision or review :

Provided that, notwithstanding anything contained in this or any other Act for the time being in force, a memorandum of appeal or application for review or revision under this sub-section shall be chargeable with a fee of twelve annas only.

¹(8) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract, in respect of a mortgage by conditional sale subsisting on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1940, in which possession of land has been delivered to the mortgagee—

(a) the mortgagor may at any time institute a suit for a declaration that the original principal, together with all interest due thereon, has been extinguished by the profits arising from the land in respect of which, and subsequent to the date on which, possession was so delivered, and for recovery of possession of the mortgaged property, and

(b) the mortgagee may, at any time after the expiry of fifteen years from the date of the instrument creating the mortgage, institute a suit for a declaration that the original principal, together with all interest due thereon, has not been extinguished by the profits arising from the land in respect of which, and subsequent to the date on which, possession was so delivered.

¹(9) In any suit instituted under sub-section (8) the Court may, if it thinks fit, re-open any transaction relating to the mortgage for the purpose of ascertaining whether the mortgagee in possession has derived from the mortgaged property profits sufficient to extinguish the original principal, together with simple interest thereon calculated at the rate of eight *per centum per annum*.

¹(10) In any suit instituted under sub-section (8), if the Court is satisfied that the original principal, together with all interest due thereon, has been extinguished by the profits arising from the mortgaged

¹Sub-sections (7) to (13) of s. 26G were inserted by section 3(6) of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

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(Chapter V.—Occupancy-raiyats.—Sections 26H—28.)

property or by any other means, it shall make a declaration to this effect and shall pass a decree restoring possession of the mortgaged property to the mortgagor.

¹(11) In any suit instituted under sub-section (8), if the Court is satisfied that the original principal, together with all interest due thereon, has not been extinguished by the profits arising from the mortgaged property or by any other means, it shall make a declaration to this effect, and may fix any sum, not exceeding the original principal, on payment of which the mortgagor shall be entitled to redeem the mortgaged property and may pass a decree accordingly, allowing the mortgagor a reasonable period within which to make such payment; and in any such decree the Court may further direct that, if such payment is not made within the period so fixed, the mortgagee shall retain possession of the mortgaged property for such period as may be specified in the decree and that, after the expiry of that period, the original principal, together with all interest due thereon, shall be deemed to be extinguished and possession of the mortgaged property shall be restored to the mortgagor.

¹(12) Subject to the provisions of sub-section (13), the decision of the Court under sub-section (10) or sub-section (11) shall be final.

¹(13) The provisions of the Code of Civil Procedure, 1908, relating to appeals shall apply to all decrees or orders made under sub-sections (10) and (11), but notwithstanding anything contained in the Indian Limitation Act, 1908, or in this Act, the period of limitation for an appeal to the Court of a District Judge against any such decree or order shall be ninety days from the date of the decree or order appealed from."

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1908.IX of
1908.

26H to 26J. (*Transfer of rent-free holdings; Interpretation and savings; Landlord's transfer fee with compensation in certain cases of transfers.*) [Rep. by s. 8 of the Bengal Tenancy (Amendment) Act, 1933 (Ben. Act. VI of 1933).]

Enhancement of rent.

Presumption as to fair and equitable rent.

Restriction on enhancement of money-rents.

Enhancement of rent.

27. The rent for the time being payable by an occupancy-*raiyat* shall be presumed to be fair and equitable until the contrary is proved.

28. Where an occupancy-*raiyat* pays his rent in money, his rent shall not be enhanced except as provided by this Act.

¹See foot-note¹ on p. 29, ante.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Sections 29, 30.)

29. The money-rent of an occupancy-raiyat may be enhanced by contract subject to the following conditions:— Enhancement of rent by contract.

- (a) the contract must be in writing and registered;
- (b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;
- (c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract:

Provided as follows—

- (i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.
- (ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the raiyat is chargeable with default in respect of the improvement only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.
- (iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions Enhancement of rent by suit.

(Chapter V.—Occupancy-*raiyats*.—Section 31.)

of this Act, institute a suit to enhance the rent on one or more of the following grounds (namely):—

- ¹(a) that the rate of rent paid by the *raiyat* is below the prevailing rate paid by occupancy-*raiyats* for land of a similar description and with similar advantages in the same village or in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate;
- (b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;
- (c) that the productive powers of the land held by the *raiyat* have been increased by an improvement effected by, or ²wholly or partly at the expense of, the landlord during the currency of the present rent; and
- (d) that the productive powers of the land held by the *raiyat* have been increased by fluvial action.

Explanation.—“Fluvial action” includes a change in the course a river rendering irrigation from the river practicable when it was not previously practicable.

Rules as to
enhancement on
ground of
prevailing rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

- (a) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the *raiyat* and the prevailing rate found by the Court;
- (b) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may

¹This clause (a) in s. 30 was substituted for the original clause (a) by s. 2 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

The original clause ran thus:—

“(a) that the rate of rent paid by the *raiyat* is below the prevailing rate paid by occupancy-*raiyats* for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate.”

²The words “wholly or partly” were inserted by s. 24 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 31A.)

Act V of
1908.

direct that a local inquiry be held under ¹[Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908], by such Revenue-officer as the ²[Provincial Government] may authorize in that behalf by rules made under ³[rule 9 in Order XXVI in Schedule I to the said Code];

- (c) in determining under this section the rate of rent payable by a *raiyat*, his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of *raiyats* hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;
- (d) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration;
- ⁴(e) if a favourable rate has been determined under clause (c) for any description of *raiyats*, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate;
- ⁴(f) if the holding is held at a lump rental the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding, and applying to the area of each class the prevailing rate paid on that class within the village or neighbouring villages.

31A. (1) In any district or part of a district to which this sub-section is extended by the ²[Provincial Government] by notification in the ⁶[*Official Gazette*], whenever the prevailing rate for any class of land is to

What may be taken in certain districts to be the "prevailing rate".

¹These words, letters and figures within square brackets were substituted for the words and letters "Chapter XXV of the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note^a on page 2, *ante*.

³These words, letters and figure within square brackets were substituted for the words and figures "section 392 of the said Code" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴Clauses (e) and (f) were inserted in s. 31 by s. 3 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

⁶Section 31A was inserted by s. 4 of the same Act.

^aSee foot-note^a on page 7, *ante*.

(Chapter V.—Occupancy-raiyats.—Section 31A.)

be ascertained under section 30, clause (a), by an examination of the rates at which lands of a similar description and with similar advantages are held within any village or villages, the highest of such rates at which, and at rates higher than which, the larger portion of those lands is held may be taken to be the prevailing rate.

Illustrations.

(a) The rates at which land of a similar description and with similar advantages is held in a village are as follow:—

<i>Bighas.</i>		Rs.	as.	p.
100	... at	1	0	0
200	... ..	1	8	0
150	... ..	1	12	0
100	... ..	2	0	0
150	... ..	2	4	0
<hr/>				
Total	700			

Then Rs. 2-4 is not the prevailing rate, because only 150 *bighas*, or less than half, are held at that rate. Rs. 2 is not the prevailing rate, because 250 *bighas*, or less than half, are held at that or a higher rate. Re. 1-12 is the prevailing rate, because 400 *bighas*, or more than half, are held either at this or a higher rate, and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(b) The rates at which land of a similar description and with similar advantages is held in a village are as follow:—

<i>Bighas.</i>		Rs.	as.	p.
100	... at	1	0	0
250	... ..	1	4	0
150	... ..	1	8	0
150	... ..	1	12	0
50	... ..	2	0	0
<hr/>				
Total	700			

Then for the reasons given in Illustration (a), neither Rs. 2 nor Re. 1-12 is the prevailing rate, nor is Re. 1-8

of 1885.]

(Chapter V.—Occupancy-raiyats.—Sections 31B—33.)

the prevailing rate, because only 350 *bighas* (exactly half) are held at Re. 1-8 or at rates higher than Re. 1-8. In this case Re. 1-4 is the prevailing rate, because more than half the lands are held at Re. 1-4 or higher rates and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(2) The [Provincial Government] may, by a like notification, withdraw sub-section (1) from any district or part of a district to which it has been extended as aforesaid.

31B. When the prevailing rate has once been determined by a Revenue-officer under Chapter X or by a Civil Court in any suit under this Act, it shall not be liable to enhancement save on the ground and to the extent specified in section 30, clause (b) and section 32. Limit to enhancement of prevailing rate.

32. Where an enhancement is claimed on the ground of a rise in prices— Rules as to enhancement on ground of rise in prices.

- (a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;
- (b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;
- (c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed, in clause (a) the Court may, in its discretion, substitute any shorter periods therefor.

33. (1) Where an enhancement is claimed on the ground of a landlord's improvement— Rules as to enhancement on ground of landlord's improvement.

- (a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

¹See foot-note³ on page 2, *ante*.

²Section 31B was inserted by s. 4 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

(Chapter V.—Occupancy-*rai*yats.—Sections 34—36.)

(b) in determining the amount of enhancement the Court shall have regard to—

- (i) the increase in the productive powers of the land caused or likely to be caused by the improvement,
- (ii) the cost of the improvement,
- (iii) the cost of the cultivation required for utilizing the improvement, and
- (iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

- (a) the Court shall not take into account any increase which is merely temporary or casual;
- (b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in [sections 30 to 34], the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Power to order progressive enhancement.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the *rai*yat, it may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf. For the purposes of section 37, however, the full rent shall be deemed to have come into force from the date of the decree.

¹The words and figures "sections 30 to 34" were substituted for the words "the foregoing sections" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This section 36 was substituted for the original section by s. 25 of the same Act.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Sections 37, 38.)

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if * * * a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

Limitation of right to bring successive enhancement suits.

(2) Nothing in this section shall affect the provisions of ²[rule 1 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908].

Act V of 1908.

Reduction of rent.

Reduction of rent.

38. (1) An occupancy-raiyat ^{3*} * * * may institute a suit for the reduction of his rent on 'one or more of the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise (namely):—

Reduction of rent.

- (a) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, ^{5*}
- (b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent, ⁶[or
- (c) on the ground that the landlord has refused or neglected to carry out the arrangements, in respect of the irrigation or the maintenance of embankments which were in force at the time when the rent was settled, and the soil of the holding has thereby deteriorated.

¹The words "within the said period of fifteen years the rent has been commuted under section 40; or" were omitted by s. 26 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words, letters and figures within square brackets were substituted for the words and figure "section 373 of the Code of Civil Procedure" by s. 128 of the same Act.

³The words "holding at a money rent" were omitted by s. 27 (i) of the same Act.

⁴The words "one or more of" were inserted by s. 27 (ii) of the same Act.

⁵The word "or" was omitted by s. 27 (ii) of the same Act.

⁶This portion within square brackets in section 38 was added by s. 27 (iii) of the same Act.

(Chapter V.—Occupancy-raiyats.—Section 39.)

Explanation.—A suit for reduction of rent properly framed for the purpose may be instituted or a plea for reduction of rent taken by any one among a number of co-sharer tenants of a holding].

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

*Price-lists.**Price-lists.*

Price-lists of staple food-crops.

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the ¹[Provincial Government] may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the ¹[Provincial Government], prepare for any local area like price-lists relating to such past times as the ¹[Provincial Government] thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the *Official Gazette*; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The ¹[Provincial Government] shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the *Official Gazette*.

(6) In any proceedings under this Chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that

¹See foot-note³ on page 2, *ante*.

of 1885.]

(Chapter V.—Occupancy raiyats.—Chapter VI.—Non-occupancy-raiyats.—Sections 40—43.)

the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct unless and until it is proved that they are incorrect.

(7) The ²[Provincial Government] ³* * * shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

⁴[* * *]

40. [Commutation of rent payable in kind.] Rep. by s. 23 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

40A. [Period for which commuted rents are to remain unaltered.] Rep. by s. 29 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

41. This Chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats. Application of Chapter.

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission. Initial rent of non-occupancy-raiyat.

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46: Conditions of enhancement of rent.

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

¹The words "and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct" in s. 39(6) were inserted by s. 5 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

²See foot-note ³ on page 2, ante.

³The words "subject to the control of the Governor General in Council" in s. 39(7) were repealed by s. 2 of the Devolution Act, 1920 (XXXVIII of 1920), and are omitted.

⁴The heading "Commutation" was repealed by s. 28 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵Chapter VI does not apply to certain lands—see s. 116.

(Chapter VI.—Non-occupancy-*raiyats*.—
Sections 44—46.)

Grounds on which non-occupancy-*raiyat* may be ejected.

44. A non-occupancy-*raiyat* shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely):—

- (a) on the ground that he has failed to pay an arrear of rent;
- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;
- (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;
- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

45. (Conditions of ejectment on ground of expiration of lease.) *Rep. in Western Bengal by s. 2 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and in Eastern Bengal by s. 2 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).*

Conditions of ejectment on ground of refusal to agree to enhancement.

46. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-*raiyat* unless the landlord has tendered to the *raiyat* a draft of an agreement to pay the enhanced rent, and the *raiyat* has within three months before the institution of the suit refused to execute the agreement.

(2) A landlord desiring to tender a draft of an agreement to a *raiyat* under this section may file it in the office of such Court or officer as the ¹[Provincial Government] appoints in this behalf for service on the *raiyat*. The Court or officer shall forthwith cause it to be served on the *raiyat* in the prescribed manner, and when it has been so served, it shall for the purposes of this section be deemed to have been tendered.

¹The words "a draft of an agreement" were substituted for the words "an agreement" by s. 30(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note² on page 2, *ante*.

of 1885.]

(Chapter VI.—Non-occupancy-raiyats.—Section 46.)

(3) If a *raiyat* on whom ¹a draft of an agreement has been served under sub-section (2) ²executes the agreement and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a *raiyat* under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner,

(5) If the *raiyat* does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a *raiyat* refuses to execute an agreement ³of which a draft has been tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the *raiyat* agrees to pay the rent so determined he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejection ⁴subject to the provisions of this Act unless he has acquired a right of occupancy.

(8) If the *raiyat* does not agree to pay the rent so determined, the Court shall pass a decree for ejection.

¹See foot-note¹ on page 40, *ante*.

²The words "executes the agreement" were substituted for the words "executes it" by s. 30(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words "of which a draft has been" were inserted by s. 30(c) of the same Act.

⁴The words "subject to the provisions of this Act" were substituted for the words "under the conditions mentioned in the last foregoing section" by s. 30(d) of the same Act.

[Act VIII

(Chapter VI.—Non-occupancy-raiyats.—Chapter VII.—
Under-raiyats.—Sections 47—48.)

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by *raiyats* for land of a similar description and with like advantages in the same village.

(10) A decree for ejection passed under this section shall take effect from the end of the agricultural year in which it is passed.

Explanation of
"admitted to
occupation."

47. Where a *raiyat* has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this Chapter, notwithstanding that the lease may purport to admit him to occupation.

CHAPTER VII.

UNDER-*raiyats*.

Application of
Chapter VII to
all under *raiyats*.

47A. The provisions of this Chapter shall apply to all under-*raiyats* whether their tenancies were created before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928.

Ben. A.
IV of 1928.

Liability of
under *raiyat* to
pay rent.

48. When an under-*raiyat* is admitted to the occupation of land, he shall, subject to the provisions of this Act, become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission:

Provided that the rent or rate of rent agreed upon shall not be less than the rent or rate of rent payable by the *raiyat* to his landlord.

¹This section 47A was inserted by s. 9 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²Sections 48, 48A, 48B, 48C, 48D, 48E, 48F, 48G, 48H (now repealed) and 49 were substituted for original sections 48 and 49 by s. 31 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter VII.—Under-raiyats.—Sections 48A, 48B.)

48A. The rent of an under-raiyat shall not be enhanced except under the provisions of ¹[sections 48B or 48D or section 48G, as the case may be]. Enhancement of rent of under-raiyat.

48B. (1) The money rent of an under-raiyat may be enhanced by a written registered contract: Enhancement by contract.

Provided that the rent shall not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the under-raiyat, except in the following cases, namely:—

- (i) When an under-raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding wholly or partly at the cost of ²[his landlord] and to the benefit of which the under-raiyat is not otherwise entitled, but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the under-raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.
- (ii) When an under-raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of his landlord and the under-raiyat agrees, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

(2) The rent fixed by a contract under the provisions of sub-section (1), shall not be liable to enhancement during a period of fifteen years from the date of such contract.

¹See foot-note² on page 42, *ante*.

²These words, figures and letters in square brackets were substituted for the words, figures and letters "section 48B or section 48D" by s. 10 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³These words in square brackets were substituted for the words "the raiyat" by s. 11 of the same Act.

(Chapter VII.—Under-raiyats.—Section 48C.)

Ejection of
under-raiyat.

48C. An under-raiyat shall, subject to the provisions of this Act, be liable to ejection on one or more of the following grounds, and not otherwise, namely:—

(a) on the ground that he has failed to pay an arrear of rent:

Provided that, if the under-raiyat is one whose rent is payable in terms of cash and not of produce and he pays through the Court all arrears up to date together with such interest and damages as the Court may award, he shall not be liable to ejection on account of such arrears;

(b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on the breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected;

(c) on the ground that the term of his lease has expired, when he holds the land under a written lease;

(d) on the ground that the tenancy has been terminated by his landlord by one year's notice expiring at the end of the agricultural year when he holds the land otherwise than under a written lease; or

(e) on the ground that he does not agree to pay the rent determined by the Court under subsection (4) of section 48D:

Provided that an under-raiyat shall not be liable to ejection on the grounds specified in clause (c) or clause (d)—

(i) if the under-raiyat has—

(1) been admitted in a document by the landlord to have a permanent and heritable right to his land, or

(2) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1923, or has a homestead thereon,

Ben. Act.
IV of 1923.

¹See foot-note² on p. 42, ante.

of 1885.]

(Chapter VII.—Under-raiyats.—Sections 48D, 48E.)

(ii) in the case of under-raiyats other than those described in clause (i) of this proviso unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with the aid of partners.

¹48D. (1) The landlord of an under-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent of the under-raiyat, and to eject the under-raiyat if he refuses to pay the rent determined by the Court. Enhancement by suit.

(2) The Court shall determine what rent is fair and equitable for the holding; provided that the rate of rent so determined shall not in the case of a money rent exceed one-third of the value of the average estimated produce of the land for the decennial period preceding the institution of the suit and in the case of a produce rent one-half of such produce.

(3) The Court shall thereupon inquire from the under-raiyat if he agrees to pay the rent so determined. If the under-raiyat agrees, he shall be entitled to remain in occupation of his holding at that rent for a term of fifteen years from the date of the agreement.

(4) If the under-raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(5) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

¹48E. When a ²[landlord] has ejected an under-raiyat on the grounds specified in clause (c) or clause (d) of section 48C, the under-raiyat may apply to the Court by which the decree for ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within four years of the ejectment, the landlord sublets the holding or any portion thereof; and thereupon the Court may, if satisfied after inquiry that the landlord did not use the land for his homestead, or for cultivation by himself or by hired servants or by members of his family or with the

Application for restitution by under-raiyat.

¹See foot-note³ on p. 42, ante.

²The word "landlord" was substituted for the word "raiyat" by s. 12 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

(Chapter VII.—Under-raiyats.—Sections 48F—48H.)

aid of partners, order a recovery of possession on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just.

Incidents of holding of under-raiyat.

48F. The holding of an under-raiyat shall descend in the same manner as other immovable property, but ²[subject to the provisions of sub-section (2) of section 48G,] shall not be transferable except with the consent of the landlord.

Occupancy-rights of under-raiyat.

48G. (1) Every under-raiyat who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, had by custom a right of occupancy in any land, shall have a right of occupancy in that land. Ben. Act IV of 1928.

(2) Every under-raiyat who has a right of occupancy in his holding shall have, as regards his immediate landlord, all the rights and liabilities of a raiyat with a right of occupancy, as set forth in—

- (i) Chapter V other than those conferred or imposed by sections 20, 21 ³[and 22,]
- (ii) sections 65, ⁴ 116 and 178, so far as possible, and
- (iii) Chapter XIV,

and his holding, as against such landlord, shall be deemed to be the holding of an occupancy-raiyat for the purposes of the said sections or Chapters.

(3) The interest of an under-raiyat who has a right of occupancy in his holding shall not be deemed to be a protected interest under clause (d) of section 160.

(4) The provisions of sections 48A to 48E shall not apply to an under-raiyat who has a right of occupancy in his holding, in so far as such provisions are inconsistent with this section.

48H. (Provisions as to salami.) [Rep. by s. 15 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).]

¹See foot-note² on p. 42, ante.

²These words, figures and letters were inserted by s. 13 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³This word and figure were substituted for the word, figures and letters "22, 26A to 26J" by s. 14(1) of the same Act.

⁴The figure "86" was omitted by s. 14(2) of the same Act.

of 1885.]

(Chapter VII.—Under-raiyats.—Chapter VIIA.—Restrictions on alienation of land by aboriginals.—Sections 49, 49A.)

¹49. (1) Notwithstanding anything contained in section 48F, an under-raiyat may enter into a complete usufructuary mortgage in the same manner and on the same conditions as are provided in section 26G for occupancy-raiyats and the provisions of that section shall apply so far as may be to under-raiyats as if they were occupancy-raiyats. Mortgage by under-raiyat.

(2) Such mortgage shall not be binding upon the landlord of the under-raiyat.

CHAPTER VIIA.

RESTRICTIONS ON ALIENATION OF LAND BY ABORIGINALS.

²49A. (1) This Chapter shall apply in the first instance only to the Sonthals of the districts of Birbhum, Bankura and Midnapore, who shall be deemed to be aboriginals for the purposes of this Chapter. Application of Chapter.

(2) The ³[Provincial Government] may, from time to time, by notification published in the ⁴[Official Gazette], declare that the provisions of this Chapter shall, in any district or local area, apply to such of the following aboriginal castes or tribes as may be specified in the notification, and that such castes or tribes shall be deemed to be aboriginals for the purposes of this Chapter, namely:—

Sonthals of other districts, Bhuiyas, Bhumijes, ⁵[Dalus], Garos, Gonds, Hadis, Hajangs, Hos, Kharias, Kharwars, Kochs (Dacca Division), Koras, Maghs (Bakarganj District); Mal and Sauria Paharias, Meches, Mundas, ⁶[Mundais], Oraons and Turis.

(3) The publication of a notification under subsection (2) shall be conclusive evidence that the provisions of this Chapter have been duly applied to such castes or tribes.

¹See foot-note³ on p. 42, ante.

²Chapter VIIA (sections 49A to 49-O) was inserted by s. 2 of the Bengal Tenancy (Amendment) Act, 1918 (Ben. Act II of 1918).

³See foot-note³ on page 2, ante.

⁴See foot-note³ on page 7, ante.

⁵The word "Dalus" was inserted by s. 16(a) of the Bengal Tenancy (Amendment) Act 1938 (Ben. Act VI of 1938).

⁶The word "Mundais" was inserted by s. 16(b) of the same Act.

(Chapter VIIA.—Restrictions on alienation of land by
aboriginals.—Sections 49B—49E.)

(4) The ¹[Provincial Government] may, by a like notification, declare that this Chapter shall, in any district or local area, cease to apply to the Sonthals mentioned in sub-section (1) or to any caste or tribe to which it may have been applied under sub-section (2).

²(5) Notwithstanding anything elsewhere contained in this Act, the ¹[Provincial Government] may, in the manner provided for in sub-sections (2) and (4), declare that the provisions of this Chapter applicable to aboriginal *raiyats* shall apply so far as may be, or cease to apply to *raiyats* within such colonisation areas in the Sundarbans as may be specified in the notification.

Restrictions on
transfer of
tenant rights.

³49B. No transfer by an aboriginal tenure-holder, *raiyat* or under-*raiyat* of his right in his tenure or holding, or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement, shall be valid to any extent except as provided in this Chapter.

Lease by
tenure-holder.

⁴49C. An aboriginal tenure-holder may grant a lease to another aboriginal, to hold the land as a tenure-holder, or to cultivate it as a *raiyat*, in accordance with the provisions of this Act.

Sub-letting by
raiyat.

⁵49D. * * * An aboriginal *raiyat* may sub-let his holding to another aboriginal to cultivate it as an under-*raiyat*.

Usufructuary
mortgage by
tenure-holder,
raiyat or under-
raiyat.

⁶49E. (1) An aboriginal tenure-holder, *raiyat* or under-*raiyat* may enter with another aboriginal into a complete usufructuary mortgage in respect of any land under his own cultivation, for any period which does not and cannot, in any possible event, by an agreement, express or implied, exceed seven years, or the period of his own right, whichever is less:

Provided that every mortgage so entered into shall be registered under the Indian Registration Act, 1908.

(2) An aboriginal tenant's power to mortgage his land shall be restricted to only one form of mortgage, namely, a complete usufructuary mortgage.

* * * * *

¹See foot-note³ on page 2, *ante*.

²This sub-section was inserted by s. 32 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³See foot-note³ on page 47, *ante*.

⁴The words, figure and letter "Subject to the provisions of section 48H" were omitted by s. 17 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁵The explanation was omitted by s. 33 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter VIIA.—Restrictions on alienation of land by
aboriginals.—Sections 49F—49H.)

49F. (1) If in any case—

Application to
Collector for
transfer in
certain cases.

(a) an aboriginal tenure-holder is unable to lease his land as provided in section 49C, or an aboriginal *raiyat* is unable to sub-let his holding as provided in section 49D, or an aboriginal tenure-holder, *raiyat* or under-*raiyat* is unable to mortgage his land to another aboriginal as provided in section 49E, sub-section (1), or

(b) an aboriginal tenure-holder, *raiyat* or under-*raiyat* desires to transfer his land, or any portion thereof, by private sale, gift or will to any person,

he may apply to the Collector for permission, in case (a), to transfer the same to a person who is not an aboriginal, or in case (b), to transfer the same by private sale, gift or will to any person; and the Collector may pass such order on the application as he thinks fit.

(2) Every such transfer shall be made by registered deed, and before the deed is registered and the land transferred, the written consent of the Collector shall be obtained to the terms of the deed and to the transfer.

(3) Nothing in this section shall validate a transfer of any land or portion thereof which, by the terms upon which it is held, or by any law or local custom, would not be transferable except for the provisions of this section.

49G. No transfer by an aboriginal tenure-holder, *raiyat* or under-*raiyat* in contravention of the provisions of this Chapter shall be registered or in any way recognized as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.

Courts not to register, or recognize as valid, transfers in contravention of this Chapter.

49H. (1) If a transfer of a tenure or holding, or any portion thereof, is made by an aboriginal tenure-holder, *raiyat* or under-*raiyat* in contravention of the provisions of section 49B, or if the transferee has continued or is in possession in contravention of the provisions of section 49E, sub-section (1), or section 49F, as the case may be, the Collector may, on his own initiative or on application made in that behalf, by an order in writing, eject the transferee from such tenure, holding or portion:

Power to Collector to set aside improper transfers by tenure-holder, *raiyat* or under-*raiyat*.

¹See foot-note³ on page 47, ante.

(Chapter VIIA.—Restrictions on alienation of land by
aboriginals.—Section 49J.)

Provided that—

- (a) the transferee whom it is proposed to eject has not been in continuous possession in contravention of this Act for twelve years, and
- (b) he is given an opportunity of showing cause against the order of ejectment.

(2) When the Collector has passed any order under sub-section (1), he shall either—

- (a) restore the transferred land to the aboriginal tenure-holder, *raiyat* or under-*raiyat*, or his heir or legal representative, or
- (b) failing the transferor or his heir or legal representative, declare that the right of settlement is vested in the landlord subject to the provisions of section 49J; provided that if the right is not exercised within one year, the Collector may, within six months, settle the land on behalf of the landlord on such terms as he deems fit with an aboriginal; and, if the Collector is unable to make such settlement within the said period, an unrestricted right of settlement will vest in the landlord.

Resettlement of
certain
tenancies.

49J. (1) Whenever—

- (a) the right of settlement of any tenancy, or any portion thereof, is declared to be vested in the landlord under clause (b) of sub-section (2) of section 49H, or
- (b) an aboriginal tenant surrenders his tenancy or a portion thereof, or abandons his residence and ceases to hold his tenancy,

the landlord may, subject to the provisions of ²[sections 86, 86A and 87],—

- (i) settle the tenancy, or a portion thereof, with an aboriginal, or
- (ii) with the approval of the Collector in writing, settle the same with a person who is not an aboriginal or retain it in his own possession: provided that such approval shall not be

¹See foot-note³ on page 47, *ante*.

²These words, figures and letter in square brackets in s. 49J(1) were substituted for the words and figures "sections 86 and 87" by s. 7 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

of 1885.]

(Chapter VIIA.—Restrictions on alienation of land by
aboriginals.—Section 49K.)

withheld if the Collector is satisfied that the surrender or abandonment referred to in this sub-section is not made with the object of evading the provisions of section 49B, 49E or 49F.

(2) If any landlord resettles or otherwise deals with any tenancy as aforesaid in contravention of the provisions of sub-section (1), the Collector may take action, so far as may be, in accordance with the provisions of section 49H.

49K. Notwithstanding anything in this Act, no decree or order shall be passed by any Court for the sale of the right of an aboriginal tenure-holder, *raiyat* or under-*raiyat* in his tenure or holding, or in any portion thereof, nor shall any such right be sold in execution of any decree or order:

Restrictions on sale of tenant rights under order of Court.

Provided as follows:—

- (a) any tenure or holding belonging to an aboriginal may be sold, in execution of a decree of a competent Court, to recover an arrear of rent which has accrued in respect of the tenure or holding;
- (b) nothing in this section shall affect any right to execute a decree for the sale of any such tenure or holding, or the terms or conditions of any *bona fide* contract relating thereto, if such decree was passed, or such contract registered,—
 - (i) in the case of the Sonthals of the districts of Birbhum, Bankura and Midnapore, before the 1st November, 1916, and
 - (ii) in the case of other castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under section 49A, sub-section (2), in respect to such castes or tribes;
- (c) nothing in this section shall affect any right for the sale of any such tenure or holding for the recovery of any dues which are recoverable as public demands.

¹See foot-note¹ on page 47, ante.

(Chapter VIIA.—Restrictions on alienation of land by
aboriginals.—Sections 49L—49-O.)

Stay of execution
of decrees.

49L. If the sale of a tenure or holding, or any portion thereof, is ordered in execution of a decree against an aboriginal tenure-holder, *raiyat* or under-*raiyat* in respect of such tenancy or portion thereof, the Court executing the decree shall allow the tenant reasonable time in which to pay the amount due.

Appeal and
revision.

49M. (1) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Collector of the district from any order made under section 49F, 49H, or 49J by any officer in the district exercising the powers of a Collector, and the order of the Collector on appeal shall be final:

Provided that every order passed by the Collector on appeal shall be subject to revision and modification by the Commissioner.

(2) Notwithstanding anything in sub-section (1), an appeal from any order made under any of the sections mentioned in that sub-section by an officer acting under Chapter X of this Act shall be to such officer as the ²[Provincial Government] may appoint in this behalf, and the orders of such officer on appeal shall be final:

Provided that, in every such case, every order passed by the said officer on appeal shall be subject to revision and modification by such officer as the ²[Provincial Government] may appoint to deal therewith.

(3) An appeal, as provided in sub-section (1), shall lie to the Commissioner from any original order made by the Collector of the district under any of the sections mentioned in that sub-section.

Bar to suits.

49N. Notwithstanding anything in this Act, no suit shall lie in any Civil Court to vary or set aside any order passed by the Collector in any proceeding under this Chapter except on the ground of fraud or want of jurisdiction.

Saving of certain
transfers.

49-O. Nothing in this Chapter shall affect the validity of any transfer (not otherwise invalid) by a tenure-holder, *raiyat* or under-*raiyat* of his tenure or holding, or any portion thereof, made *bona fide*,—

(a) in the case of the Sonthals of the districts of Birbhum, Bankura and Midnapore, before the 1st November, 1926, and

¹See foot-note¹ on page 47, *ante*.

²See foot-note² on page 2, *ante*.

of 1885.]

(Chapter VIIA.—Restrictions on alienation of land by aboriginals.—Chapter VIII.—General provisions as to rent.—Section 50.)

- (b) in the case of other castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under section 49A, sub-section (2), in respect to such castes or tribes.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and presumptions as to amount of rent.

50. (1) Where a tenure-holder or *raiyat* and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

Rules and presumptions as to fixity of rent.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or *raiyat* and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a *raiyat*, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

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(Chapter VIII.—General provisions as to rent.—
Sections 51, 52.)

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

Presumption as to amount of rent and conditions of holding.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Alteration of rent on alteration of area.
Alteration of rent in respect of alteration of area.

Alteration of rent on alteration of area.

52. (1) Every tenant shall—

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made:

¹[Provided that no Court shall decree any addition of rent under this clause unless it is satisfied that there has in fact been an increase in the actual area of the tenure or holding since the rent previously paid was settled]; and

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise; and that an addition has not been made to the rent in respect of the addition to the area.

²(1A) In determining in a suit under clause (a) of sub-section (1) whether there has been an increase in the actual area of the tenure or holding, the Court shall inquire as to whether the present areas of other tenures

¹As to the application of section 52 with retrospective effect to suits, see section 3 of the Bengal Tenancy (Second Amendment) Act, 1939 (Ben. Act XIII of 1939) as amended by s. 6 of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

²This proviso was inserted by section 2 (1) of the Bengal Tenancy (Second Amendment) Act, 1939 (Ben. Act XIII of 1939).

³Sub-sections (1A) and (1B) were inserted by s. 2(2) of the same Act.

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Section 52.)

or holdings in the vicinity which were settled at or about the same time or on the same standard of measurement as the tenure or holding in suit, show increases in area compared with the area originally settled similar to that alleged in respect of the tenure or holding in suit; if such increases are found to exist, it shall be presumed (notwithstanding anything contained in any contract) that there has in fact been no increase in the actual area of the tenure or holding in suit since the rent previously paid was settled.

¹(1B) When in a suit an increase in the actual area of the tenure or holding is sought to be proved under clause (a) of sub-section (1), the Court shall inquire as to whether the present area of the tenure or holding in suit is within the same defined boundaries as set forth in the *kabuliyat* or *patta* at the inception of the tenancy; and if the Court finds that the present area of the tenure or holding in suit is within such boundaries no increase of rent shall be granted on account of increase of area ²[unless an equivalent reduction of rent on account of reduction of area has been granted in respect of one or more of the contiguous tenures or holdings]:

Provided that the provisions of this sub-section shall not apply to any suit in respect of any tenure or holding of which any portion of the boundaries set forth in the *kabuliyat* or the *patta* comprises a river or sea or land held *khas* by the landlord or the Crown.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

- (a) the origin and conditions of the tenancy, for instance whether the rent was a consolidated rent for the entire tenure or holding;
- (b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;
- (c) the length of time during which the tenancy has lasted without dispute as to rent or area; and
- (d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

¹See foot-note² on page 54, *ante*.

²These words in square brackets were added by s. 4 of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

(Chapter VIII.—General provisions as to rent.—
Section 52.)

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

¹(5) When in a suit under this section the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.

²(6) When in a suit under this section the landlord or tenant proves that—

- (i) at or about the time when the area was recorded in any *patta* or *kabuliyat* there existed in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situated a practice of settlement being made after measurement of the land assessed with rent, or,
- (ii) the area entered in the counterfoil receipts corresponds with the area in the rent-roll on which the claim is based and that a practice of settlement on measurement prevailed at the time when the rent-roll was prepared.

it shall be presumed that the area of the tenure or holding was settled by measurement.

¹Sub-section (5) was added to s. 52 by s. 6 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

²This sub-section was substituted for the former sub-section (6) by s. 34 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Sections 53—55.)

Payment of rent.¹

Payment of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Instalments of rent.

54. (1) Every tenant shall pay or tender each instalment of rent before sunset of the day on which it falls due:

Time and place for payment of rent.

Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made—

(i) at the landlord's village office or at such other convenient place as may be appointed in that behalf by the landlord; or

(ii) by postal money-order in the manner prescribed by rules made by the ³[Provincial Government.]

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 61.

(3) Where rent is sent by postal money-order in the manner prescribed, the Court may presume until the contrary is proved that a tender has been made.

(4) When a landlord accepts rent sent by postal money-order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money-order form ⁴* * *.

(5) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the years and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

Appropriation of payments.

¹The word "rent" in ss. 53 to 55 includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3(13), *ante*.

²This section 54 was substituted for the former section by s. 35 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³See foot-note² on page 2, *ante*.

⁴The words, figures and letters "or that he has waived his rights under sections 26D, 26E, 26F or 26J" were omitted by s. 18 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

(Chapter VIII.—General Provisions as to rent.—
Sections 56, 57.)

(2) If he does not make any such declaration, the payment may be credited to the account of such year and the instalment as the landlord thinks fit.

Receipts and
accounts.

¹Receipts and accounts.

Tenant making
payment to his
landlord entitled
to a receipt.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoils shall specify such of the several particulars shown in * * * Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the ²[Provincial Government] may, from time to time, prescribe or sanction a modified form, ⁴either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Tenant entitled
to full discharge
or statement of
account at close
of year.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account, specifying the several particulars shown in * * * Schedule II to this Act, or in such other form as may from time to time be prescribed by the ³[Provincial Government] either generally or for any particular local area or class of cases.

¹The word "rent" in ss. 56 to 60 includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3(13), *ante*.

²The words "the form of receipt given in" were omitted by s. 36 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³See foot-note* on page 2, *ante*.

⁴For orders made under section 56(3), see the Bengal Statutory Rules and Orders, 1941, Vol. I.

⁵The words "the form of account given in" were omitted by s. 37 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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(Chapter VIII.—General provisions as to rent.—
Section 58.)

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars [required] by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment institute a suit to recover from him such penalty, not exceeding double the amount of value of that rent, as the Court thinks fit.

Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year [required] in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt or statement or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(4) The Collector may hold a summary inquiry under sub-section (3), either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and

¹The word "required" was substituted for the word "prescribed" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Sub-sections (3) to (5) were substituted for the original sub-section (3), for Western Bengal, by s. 14 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 14 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908). The original sub-section ran thus—

"(3) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees."

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Section 58.)

is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order, of discharge, direct the tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

¹(6) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (3) or awarding compensation under sub-section (5); and the order² passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue,³ be final.

¹(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law⁴ for the time being in force for the recovery of a public demand.

¹(8) For the purpose of an inquiry under this section the Collector shall have power to summon, and enforce the attendance of witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under ⁵the Code of Civil Procedure, 1908.

Act V of
1908.

⁶(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

(a) a receipt for any amount actually paid on account of rent, or

(b) the statement of account required by section 57,

and the refusal of the tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt as required by section 56.

¹See foot-note³ on page 59, *ante*.

²In Bengal Act I of 1907, s. 14, this word is printed as "orders".

³Now the Board of Revenue for Bengal—see the Bengal, Bihar and Orissa and Assam Laws Act, 1912, (VII of 1912) s. 3, and Sch. D, item 3.

⁴See the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), s. 3, and Sch. I.

⁵The words and figure "the Code of Civil Procedure, 1908," were substituted for the words "the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶This sub-section was added by s. 38 of the same Act.

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Sections 59—61.)

59. (1) The [Provincial Government] shall cause to be prepared and kept for sale to landlords at all subdivisional offices forms of receipts with counterfoils and of statements of account suitable for use under [sections 56 to 58].

Provincial Government to prepare forms of receipt and account.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the [Provincial Government] thinks fit.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

Effect of receipt by registered proprietor, manager or mortgagee.

Ben. Act VII of 1876.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

*Deposit of rent.*³

Deposit of rent.

61. (1) In any of the following cases, namely:—

Application to deposit rent in Court.

- (a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;
- (b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;
- (c) when the rent is payable to co-sharers jointly and the tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf; or

¹See foot-note³ on page 2, *ante*.

²The words and figures "sections 56 to 58" were substituted for the words "the foregoing sections" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV, of 1928).

³The word "rent" in ss. 61 to 64 includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3(13), *ante*.

*(Chapter VIII.—General provisions as to rent.—**Section 61.)*

(d) when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court ¹[a sum not less than the amount of the money then due].

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered ²[and the name of his common agent, if any,]

in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner ³[provided in] ⁴[sub-rules (2) and (3) of rule 15 of Order VI in Schedule I to the Code of Civil Procedure, 1908,] by the tenant, or, where he is not personally cognizant of the facts of the case by some person so cognizant; ⁵[and shall in cases (a) and (b) be accompanied by the prescribed cost of transmission of the money deposited to the landlord and in cases (c) and (d) by a fee of the prescribed amount].

Act V of
1908.

¹These words within square brackets were substituted for the words "the full amount of the money then due" by s. 39(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "and the name of this common agent, if any," were inserted by s. 39(b)(i) of the same Act.

³The words "provided in" were substituted for the words "prescribed in" by s. 127 of the same Act.

⁴These words and figures within square brackets were substituted for the words and figure "section 52 of the Code of Civil Procedure" by s. 128 of the same Act.

⁵These words and letters within square brackets were substituted for the words "and shall be accompanied by a fee of such amount as the Local Government from time to time by rule directs" by s. 39(b)(ii) of the same Act.

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Sections 62, 63.)

62. (1) If it appears to the Court to which an application is made under [section 61] that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

Receipt granted by Court for rent deposited to be a valid acquittance.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of [section 61] by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, by the co-sharers to whom the rent is due; and

in case (d) of that section, by the person entitled to the rent.

63. The Court receiving a deposit—

(i) in case (a) or (b) of section 61 shall forthwith forward the same by postal money-order to the address of the landlord, or of the common agent, if any, of the landlord empowered to receive rent;

Procedure for payment to the landlord of rent deposited.

(ii) in case (c) or (d) of that section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under section 64 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in case (c) cause a notice of the receipt of the deposit to be posted free of charge at the landlord's village-office, if any, and in some conspicuous place in the village in which the tenure or holding or any portion thereof is situated, and in case (d) cause a like notice to be served free of charge on every person who it has reason to believe claims, or is entitled to, the deposit.

¹The word and figure "section 61" were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This section 63 was substituted for the former section by s. 40 of the same Act.

(Chapter VIII.—General provisions as to rent.—
Sections 64, 64A.)

Payment
of refund
of deposit.

64. (1) The Court may pay the amount of the deposit notified under section 63 to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

[* * * * *]

³(2) If no payment is made [under clause (i) of section 63 or under sub-section (1) of section 64] before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

³(3) No suit or other proceeding shall be instituted against [the Crown] or against any officer of [the Crown], in respect of anything done by a Court receiving a deposit under [section 62] but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

⁸Penalty for refusing to receive rent.

⁸64A. If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering by suit interest, costs or damages in respect of the same, and the Court

Penalty for
refusing to
receive rent.
Penalty for
refusing to
receive
rent
tendered
by postal
money-
order or
deposited.

¹The words and figure "notified under section 63" were inserted by s. 41(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Original sub-section (2) was omitted by s. 41(b) of the same Act.

³Sub-sections (3) and (4) were re-numbered as sub-sections (2) and (3) by s. 41(c) of the same Act.

⁴These words and figures within square brackets were substituted for the words "under this section" by s. 41(d) of the same Act.

⁵These words were substituted for the words "the Secretary of State for India in Council" by Schedule I of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶These words were substituted for the words "the Government", *ibid*.

⁷The word and figure "section 62" were substituted for the words "the foregoing sections" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁸This heading and section 64A were inserted by s. 42 of the same Act.

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Sections 65, 66.)

may in addition award to the tenant damages not exceeding twenty-five *per cent.* on the whole amount claimed by the plaintiff.

The plea of the existence of any dispute as to the amount of rent or area of land of the tenure or holding shall not be deemed to be a reasonable cause under this section:

Provided that, when a landlord accepts rent, which has been deposited, or remitted by postal money-order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form.

*Arrears of rent.*¹

Arrears of rent.

65. Where a tenant is a permanent tenure-holder, a *raiyat* holding at fixed rates or an occupancy-*raiyat*, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Liability to sale for arrears in case of permanent tenure, holding at fixed rates or occupancy-holding.

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a *raiyat* holding at fixed rates or an occupancy-*raiyat*, at the end of the agricultural year

Ejectment for arrears in other cases.

* * * * * the landlord may whether he has obtained a decree for the recovery of the arrear or not and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court

¹The word "rent" in ss. 65 to 68 includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3(13), *ante*.

²The words "agricultural year" were substituted for the words "Bengali year" by s. 43(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words "where that year prevails, or at the end of the month of Jeth where the Fasli or Amlî year prevails" were omitted by s. 43(a) of the same Act.

(Chapter VIII.—General provisions as to rent.—
Sections 67, 68.)

within ¹[thirty days] from the date of the decree, or when the Court is closed on the ¹[thirtieth] day on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of ¹[thirty days] mentioned in this section.

Interest on
arrears.

67. An arrear of rent shall bear simple interest at the rate of ²[six and a quarter] *per centum per annum* from the expiration of that quarter of the agricultural year in which the instalment falls due ³to the date of payment or of the institution of the suit, whichever date is earlier.

Power to
award
damages
on rent
withheld
without
reasonable
cause, or to
defendant
improperly
sued for
rent.

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding ⁴[twelve and a half] *per centum* on the amount of rent decreed, as it thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section:

⁵Provided also that where damages are awarded—

(i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and

(ii) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable

¹The words "thirty days" and "thirtieth" were substituted for the words "fifteen days" and "fifteenth", respectively, by s. 43(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were substituted for the words "twelve and a half" by s. 19 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³The words "to the date of payment or of the institution of the suit whichever date is earlier" in section 67, were substituted for the words "to the institution of the suit", for Western Bengal, by s. 15(b) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for the Eastern Bengal, by s. 15(b) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁴The words "twelve and a half" were substituted for the word "twenty-five" by section 2 of the Bengal Tenancy (Amendment) Act, 1939 (Ben. Act II of 1939).

⁵This proviso was inserted by s. 44 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Sections 69—73.)

cause, the Court may award to the defendant, by way of damages, such sum, not exceeding [twelve and a half] *per centum* on the whole amount claimed by the plaintiff, as it thinks fit.

[* . . . *]

69. (*Order for appraising or dividing produce.*)
Repealed by s. 45 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

70. (*Procedure where officers appointed.*) Repealed by s. 45 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

71. (*Rights and liabilities as to possession of crop.*)
Repealed by s. 45 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

Liability for rent on change of landlord or after transfer of tenure or holding.

Liability for rent on change of landlord or after transfer of tenure or holding.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

73. When an occupancy-*raiyat* transfers his holding in whole or in part the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer:

Liability for rent before transfer of occupancy-holding.

Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer.

¹See foot-note⁴ on p. 66, *ante*.

²The heading over s. 69 was repealed by s. 45 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The word "rent" in ss. 72 to 75 includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3(13), *ante*.

⁴This section was substituted for the former section by s. 46 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

*(Chapter VIII.—General provisions as to rent.—**Section 74.)**Illegal cesses,
etc.**Illegal cesses, etc.**Abwab, etc.,
illegal.*

74. ¹(1) All impositions upon tenants under the denomination of *abwab*, *mathat* or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

¹(2) All impositions upon tenants of road cess or public works cess, or of both,—

(a) in excess of the net amount ²fixed by clause (2) of section 41 of the Cess Act, 1880, or

(b) on any scale in excess of that ³required by clause (3) of that section,

Ben. Act
IX of 1880.

levied in addition to the actual rent, shall be illegal, and all stipulations and reservations for payment of any such excess contained in any contract made between a landlord and a tenant on or after the 13th day of October, 1880, shall be void:

Provided that nothing in this sub-section shall affect the terms of a written contract registered before the commencement of the Bengal Tenancy (Amendment) Act, 1919:

Ben. Act
III of
1919.

Provided also that, subject to the provisions of section 72 of the Indian Contract Act, 1872, no suit shall lie for the recovery of anything paid before the commencement of the Bengal Tenancy (Amendment) Act, 1919, on account of the impositions referred to in sub-section (2).

IX of
1872.

¹(3) Nothing in this section shall be deemed to affect the terms of a permanent *mukarrari* lease granted by a proprietor or holder of a permanent tenure in a permanently settled area [and registered before the commencement of the Bengal Tenancy (Amendment) Act, 1928.]

Ben. Act
IV of 1928.

¹Section 74 was re-numbered as sub-section (1) of section 74 and sub-sections (2) and (3) were added by s. 2 of the Bengal Tenancy (Amendment) Act 1919 (Ben. Act III of 1919).

²The word "fixed" was substituted for the word "prescribed" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The word "required" was substituted for the word "prescribed" by s. 127 of the same Act.

⁴These words and figure within square brackets in s. 74(3) were added by s. 47 of the same Act.

of, 1885.]

(Chapter VIII.—General provisions as to rent.—
Sections 74A—75A.)

74A. (1) If a landlord or his agent realises from a tenant any imposition declared under sub-section (1) of section 74 to be illegal, such landlord or agent, as the case may be, shall be liable to the same fine, to be imposed in the same manner, as in sub-section (3) of section 58, and the provisions of sub-sections (4), (7) and (8) of the said section relating to inquiry, fine and procedure shall, *mutatis mutandis* and so far as may be, apply to proceedings under this section.

Fine for realisation of *abwab*, etc.

(2) An appeal shall lie to the District Judge against an order imposing a fine under this section, and the order passed by the District Judge on such appeal shall be final.

(3) The imposition of a fine on a landlord or landlord's agent under this section shall not operate as a bar to the institution of a suit under section 75.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent [or road cess or public works cess] [or interest] lawfully payable, may, [subject to the second proviso to sub-section (2) of section 74] within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

Suspension of provisions relating to enhancement of rent.

75A. (1) All the provisions of this Act relating to enhancement of rent are hereby suspended for a period of ten years with effect from the twenty-seventh day of August, 1937.

Suspension of provisions relating to enhancement of rent.

¹This section 74A was inserted by s. 20 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²The words "or road cess or public works cess" in s. 75 were inserted by s. 3(1) of the Bengal Tenancy (Amendment) Act, 1919 (Ben. Act III of 1919).

³The words "or interest" in s. 75 were inserted, for Western Bengal, by s. 17 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) and, for Eastern Bengal, by s. 17 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴These words and figures within square brackets in s. 75 were inserted by s. 3(2) of the Bengal Tenancy (Amendment) Act, 1919 (Ben. Act III of 1919).

⁵This section 75A and its heading were inserted by s. 21 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

[Act VIII]

(Chapter VIII.—General provisions as to rent.—Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 76.)

(2) (a) All decrees and orders enhancing rent passed under any of the provisions of this Act on or after the twenty-seventh day of August, 1937 and before the date of the commencement of the Bengal Tenancy (Amendment) Act, 1938, are hereby declared to be inoperative from the date of such decree or order until the expiry of the ten years referred to in sub-section (1).

Ben Act
VI of
1938.

(b) Any provision providing for enhancement of rent contained in any contract entered into between a landlord and a tenant during the period of ten years referred to in sub-section (1) is hereby declared to be inoperative during the said period.

(3) Notwithstanding anything contained in this Act or any other law, the period during which a decree, order or contract is rendered inoperative under this section shall not be taken into account in computing any period under the law of limitation nor in construing the terms of a contract.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

Improvements.

Definition of "improvement."

76. (1) For the purposes of this Act, the term "improvement", used with reference to a * * * * holding, shall mean any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:—

(a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for drinking or for the use of men and cattle employed in agriculture;

*The word "raiya's" was omitted by s. 48 (a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

*The words "or for drinking" were inserted by s. 48 (b) of the same Act.

of 1885, 1.

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 77.)

¹Explanation.—Such construction on agricultural land shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy;

(b) the preparation of land for irrigation;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(e) the renewal or reconstruction of any of the foregoing works; or alterations therein or additions thereto; and

²(f) the erection of a dwelling-house, whether of masonry bricks, stone or any other material whatsoever, for the tenant and his family, together with all necessary out-offices.

(3) But no work executed by the ³tenant of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

77. (1) * * * * Neither the ⁴tenant nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

Right to make improvements in case of holding at fixed rates and occupancy-holding.

(2) If both the ⁵tenant and his landlord wish to make the same improvement the ⁶tenant shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

⁷(3) Any fee realised from a tenant for permission to make any improvement in respect of his holding shall

¹This explanation was added by s. 48 (c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This clause (f) was substituted for the former clause by s. 49 (d) of the same Act.

³The word "tenant" was substituted for the word "raiyat" by s. 49 (e) of the same Act.

⁴The words "where a raiyat holds at fixed rates or has an occupancy right in his holding" were omitted by s. 49 (a) of the same Act.

⁵The word "tenant" was substituted for the word "raiyat" by s. 49 (b) of the same Act.

⁶This sub-section was inserted by s. 49 (c) of the same Act.

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 78—81.)

be deemed to be an *abwab* and the provisions of sub-section (1) of section 74 shall apply thereto.

Collector to decide question as to right to make improvement, etc.

78. If a question arises between the *raiyat* or under-*raiyat* and his landlord—

- (a) as to the right to make an improvement, or
- (b) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

79. (*Right to make improvements in case of non-occupancy holding.*) Repealed by s. 51 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

Registration of landlord's improvements.

80. (1) A landlord may, by application to such Revenue-officer as the [Provincial Government] may appoint, register any improvement which he has lawfully made or which has been lawfully made [wholly or partly] at his expense or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the [Provincial Government] from time to time [prescribes].

(3) The officer receiving the application may reject it if it has not been made within twelve months—

- (a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;
- (b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

Application to record evidence as to improvement.

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and

¹In ss. 78, 82, 83 and 87 the words "*raiyat* or under-*raiyat*" were substituted for the word "*raiyat*" by s. 50 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note³ on page 2, *ante*.

³The words "wholly or partly" were inserted by s. 52 (a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴The word "prescribes" was substituted for the words "by rule directs" by s. 52(b) of the same Act.

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 82.)

place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and tenant or any persons claiming under them.

82. (1) Every *raiyat* or *under-raiyat* who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

Compensation for *raiyats'* improvements.

(2) Whenever a Court makes a decree or order for the ejection of a *raiyat* or *under-raiyat*, it shall determine the amount of compensation (if any) due under this section to the *raiyat* or *under-raiyat* for improvements, and shall make the decree or order of ejection conditional on the payment of that amount to the *raiyat* or *under-raiyat*.

(3) No compensation under this section for an improvement shall be claimable where the *raiyat* or *under-raiyat* has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a *raiyat* or *under-raiyat* between the second day of March, 1883, and the commencement of this Act, shall be deemed to have been made in accordance with this Act.

(5) The [Provincial Government] may, from time to time, by notification in the *Official Gazette*, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the [Provincial Government] thinks fit, and determining the qualifications of those assessors, and the mode of selecting them.

¹See foot-note¹ on p. 72, ante.

²See foot-note² on p. 2, ante.

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 83, 84.)

Principle on which compensation is to be estimated.

83. (1) In estimating the compensation to be awarded under ¹[section 82] for an improvement, regard shall be had—

- (a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;
- (b) to the condition of the improvement, and the probable duration of its effects;
- (c) to the labour and capital required for the making of such an improvement;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the ²raiyyat or under-raiyyat in consideration of the improvement; and
- (e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the ²raiyyat or under-raiyyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and ²raiyyat or under-raiyyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose.

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorize the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or

¹The word and figure "section 82" in s. 83 (1) were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note¹ on p. 72, ante.

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 85, 86.)

such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

[* * *]

85. (Restrictions on sub-letting.) Repealed by s. 53 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

Surrender and abandonment.

Surrender and abandonment.

85A. (1) A tenure-holder may apply to the Court for permission to surrender a tenure. Surrender by tenure-holders.

(2) An application under sub-section (1) shall be in the prescribed form, shall give particulars, *inter alia*, of under-tenure-holders and *raiyats*, if any, holding directly under the tenure sought to be surrendered, and of any incumbrances upon the said tenure, and shall be accompanied by the process fee prescribed for service of notices upon the landlord or his common agent, if any, under-tenure-holders and *raiyats*, if any, referred to above and incumbrancers, if any.

(3) If the Court, after hearing the parties, grants permission for the surrender of the tenure, it shall impose such equitable conditions as it may think proper.

(4) An appeal shall lie to the ordinary Civil Appellate Court from any order of a court under this section.

86. (1) A *raiyat* ³[or under-*raiyat*] not bound by lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding. Surrender.

(2) But, notwithstanding the surrender, the *raiyat* ³[or under-*raiyat*] shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

¹The heading to s. 85 was repealed by s. 53 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928.)

²This section 85A was inserted by s. 22 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act, VI of 1938).

³The words "or under-*raiyat*" in s. 86 were inserted by s. 23 of the same Act.

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 86A.)

(3) When a *raiyat*¹ [or under-*raiyat*] has surrendered his holding, the Court shall, in the following cases for the purposes of sub-section (2), presume, until the contrary is shown, that such notice was so given, namely:—

- (a) if the *raiyat*¹ [or under-*raiyat*] takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;
- (b) if the *raiyat*¹ [or under-*raiyat*] ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The *raiyat*¹ [or under-*raiyat*] may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a *raiyat*¹ [or under-*raiyat*] has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument,² [or when there is an under-*raiyat* on the holding or part thereof] the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer² [or the under-*raiyat*, as the case may be].

(7) Save as provided in³ [sub-section (6)] nothing in this section shall affect any arrangement by which a *raiyat*¹ [or under-*raiyat*] and his landlord may arrange for a surrender of the whole or a part of the holding.

Abatement of rent on account of diluvion and re-entry into lands which reappear.

86A. (1) If the lands of a tenure or holding or a portion of such lands are lost by diluvion, the rent of the tenure or holding shall be abated by an amount which bears the same proportion to the rent of the whole tenancy, as the area lost bears to that of the whole tenancy.

¹See foot-note^a on p. 75, ante.

²These words within square brackets were inserted by s. 54 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The word, brackets and figure "sub-section (6)" were substituted for the words "the last foregoing sub-section" by s. 126 of the same Act.

⁴This section 86A was substituted for the original section 86A by s. 24 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 87.)

(2) (a) Notwithstanding anything contained in this Act or any other law or any contract to the contrary, the right, title and interest of the tenant or his successors-in-interest shall subsist in such lands or portion thereof during the period of loss by diluvion not exceeding twenty years and the tenant or his successors-in-interest shall have right to immediate possession on the reappearance of such lands or portion thereof within twenty years of the loss by the diluvion, and the landlord shall have right to the arrears of rent without interest or damage in respect of the land which has reappeared for the period during which it was lost or for four years whichever is less.

(b) The rent of the lands which have reappeared, shall for the purposes of the payment both of the arrears of rent under this sub-section and of the rent due thereafter (until such rent is modified in accordance with the provisions of this Act) be calculated on the rent of the remainder of the tenancy existing when possession of the lost lands is resumed, and shall bear the proportion to that rent which the area of the lands which have reappeared bears to that of the remainder of the tenancy:

Provided that in cases where the entire tenure or holding has been lost by diluvion, the rent of the portion thereof which reappears shall be calculated in like manner on the rent existing when the entire tenancy was lost.

(3) Nothing shall prevent the accrual of rights under the operation of any other enactment in any portion of the lands of a tenure or holding which have been lost by diluvion, if such lands thereafter reappear as an accretion thereto.

87. (1) If a *raiyat* or under-*raiyat* voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the *raiyat* or under-*raiyat* so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself. Abandonment.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's

¹See foot-note¹ on p. 72, ante.

[Act VII]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 87.)

office, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause a notice to be published in the prescribed manner.

(3) When a landlord enters under this section, the ²*raiyat* or under-*raiyat* shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-*raiyat*, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the ²*raiyat* or under-*raiyat* did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sublet by a registered instrument, the landlord shall, before entering under this section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the ²*raiyat* or under-*raiyat* who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that ²*raiyat* or under-*raiyat*. If the sub-lessee refuses or neglects within ³two months to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

(5) If an under-*raiyat* has—

- (a) a right of occupancy in a holding or portion thereof, or
- (b) been admitted in a document by the landlord to have a permanent and heritable right in his land, or
- (c) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon,

Ben. Act
IV of 1928.

¹The words "the prescribed manner" were substituted for the words "such manner as the Local Government, by rule, directs" by s. 56(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note¹ on p. 72, *ante*.

³The words "two months" were substituted for the words "a reasonable time" by s. 56 (b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴This sub-section was added by s. 56 (c) of the same Act.

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 88.)

the landlord shall, before entering on the holding, under this section, offer the whole holding, or part thereof, to the under-*raiyat* at the rent paid by him to the *raiyat* and on condition of the under-*raiyat* paying up all arrears due from that *raiyat* and a *salami* of five times the aforesaid rent. If the under-*raiyat* refuses or neglects within two months to accept the offer, the landlord may avoid the sub-tenancy and may enter on the holding and let it to another tenant, or cultivate it himself, as provided in sub-sections (1) and (2).

Subdivision of tenancy.

Subdivision of tenancy.

88. (1) Save as provided elsewhere in this section, a division of a tenure or holding or a distribution of the rent payable in respect thereof shall not be valid unless such division or distribution has been expressly consented to in writing by both—

Division of tenancy not valid unless consented to by all parties or ordered by Civil Court.

(a) the landlord or the entire body of landlords or their agents duly authorised in that behalf, and

(b) all the co-sharer tenants:

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

(2) The Civil Court, on application made to it by one or more co-sharer tenants for a division of a tenure or holding or for a distribution of the rent payable in respect thereof, or for the annulment or modification of a previous division or distribution other than one made under this sub-section or under an agreement made between all the landlords and co-sharer tenants in conformance with the provisions of sub-section (1), may, by order in writing, direct such division of the tenure or holding or such distribution of rent as the Court considers fair and equitable, or annul or modify a division

¹This section was substituted for the former section by s. 25 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

Section 88 is not affected by s. 1 of the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act I of 1903)—see s. 3 of that Act.

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 88.)

or distribution previously made other than one of the nature referred to above if the Court considers it unfair and inequitable:

Provided that—

- (a) no such order shall be passed without notice to the landlord or the entire body of landlords or their common agent, if any, and to the remaining co-sharer tenants; the prescribed process-fee for which shall accompany the application;
- (b) no order for division or distribution shall be made which would result in bringing the rent for any portion below two rupees in the case of tenures or one rupee in the case of holdings; and
- (c) nothing contained in this sub-section shall be deemed to authorise a Court on an application for division or distribution to direct a division or distribution in respect of the share of any tenant other than an applicant under this sub-section or a co-sharer tenant who has been joined as a co-applicant under sub-section (3).

(3) On receipt of notice of an application for division or distribution under sub-section (2) a co-sharer tenant may apply to be joined as a co-applicant, and upon such application the Court shall join the said co-sharer tenant as a co-applicant without further notice to the landlord or landlords and the remaining co-sharer tenants.

(4) Every order of a Court under sub-section (2) directing division of a tenure or holding or a distribution of the rent thereof shall also direct payment to the landlord of one rupee as mutation fee by each applicant or each body of applicants including co-applicants, if any, joined under sub-section (3).

(5) Every order referred to in sub-section (4) shall state the date from which the division or distribution shall have effect and the joint and several liability of each co-sharer tenant for arrear of rent, if any, up to that date, shall subsist in all the lands of the entire tenure or holding.

(6) An appeal shall lie to the ordinary Civil Appellate Court from an order of a Court under this section, provided that it is presented within thirty days from the date of such order and is accompanied by the prescribed fee.

of 1885.

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 89—91.)

Ejection.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree.

Ejection.

No ejection except in execution of decree.

Measurements.

90. (1) Subject to the provisions of this section and any contract, a landlord may, by himself or by any person authorised by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

Measurements.

Landlord's right to measure land.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely):—

- (a) where the area of the tenure or holding is liable by reason of alluvion or diluvion to vary from year to year, and the rent payable depends on the area;
- (b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;
- (c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

91. (1) Where a landlord desires to measure any land which he is entitled to measure under [section 90], the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

Power for Court to order tenant to attend and point out boundaries.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

¹The word and figure "section 90" in s. 91 (1) were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Beng. Act IV of 1928).

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 92, 93.)

Standard of measurement.

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The ¹[Provincial Government] may, after local inquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area; and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers.

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager.

93. (i) When any dispute exists between co-owners of an estate or tenure or of lands held jointly between two or more estates or tenures as to the management thereof; or

(ii) when, owing to the existence of a large number of small co-sharers in an estate or tenure the tenants or landlords are put to inconvenience and harassment in the payment or receipt of the rent due,

the District Judge may, if it appears to him to be just and convenient, on the application of—

in case (i),—

(a) the Collector, or

(b) any one having an interest in the estate or tenure or in any of the estates or tenures; and

in case (ii),—

(a) more than half the tenants, or

(b) co-sharers holding more than half the aggregate interests in the estate or tenure,

direct notice to be served on all the co-owners or co-sharers calling on them to show cause why they should not appoint a common manager—

in case (i), either for the whole of the estate or tenure or estates or tenures, as the case may be, or for those portions of the estate or tenure or estates or tenures, as the case may be, which are affected by the dispute, and

¹See foot-note² on p. 2, *ante*.

²This section was substituted for the former section by s. 58 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 94—96.)

in case (ii), for the estate or tenure in which the tenants or landlords are put to inconvenience or harassment:

Provided that a co-owner or co-sharer of an estate or tenure or a co-owner of lands held jointly between two or more estates or tenures shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner or co-sharer of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

Ben. Act
VII of
1876.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under ¹[section 93], the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to order them to appoint a manager, if cause is not shown.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under ²[section 94], as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

Power to appoint manager, if order is not obeyed.

- (a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or
- (b) in any case appoint a manager.

96. The ³[Provincial Government] may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of ⁴[section 95] and, when any person has been so nominated, no

Power to nominate person to act in all cases under clause (b) of section 95.

¹The word and figure "section 93" in s. 94 were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The word and figure "section 94" in s. 95 were substituted for the words "the last foregoing section" by s. 126 of the same Act.

³See foot-note³ on page 2, *ante*.

⁴The word and figure "section 95" in s. 96 were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 97—99.)

other person shall be appointed manager under that clause by the District Judge unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immovable property shall apply to the management.

Ben. Act IX of 1879.

Provisions applicable to manager.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103^{1*} *.

(8) He shall be removable by the order of the District Judge and not otherwise.

Power to restore management to co-owners.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

¹The words, figure and letter "or section 158A" in s. 98 (7) were omitted by s. 26 of the Bengal Tenancy (Amendment) Act, 1938 (Ben-Act VI of 1938).

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(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 99A, 100.)

99A. (1) Where two or more persons are joint or co-sharer landlords they may by an instrument in writing appoint a common agent for the whole of their joint property or for any portion thereof to receive on behalf of all of them—

Appointment of common agent.

- (a) notices of transfer under sections 12, 13, 15, 17, 18 ²[and 26C] of tenures or holdings or portions or shares thereof held under them within that property,
- (b) the landlord's fee ³[payable under sections 12, 13, 15, 17 and 18],
- (c) the rent deposited in Court under section 61 ⁴[and]
- ⁵(d) the notices referred to in sub-section (2) of section 85A and in sub-section (2) of section 88.

(2) (a) The Collector shall, on application by the common agent and on production by him of the instrument of appointment, register the names of the common agent and the landlords appointing him and their addresses and other particulars in the prescribed manner.

(b) The name and address of such common agent shall be entered upon the receipt required under section 56 to be given on the payment of rent for the tenure or holding situated within the area for which he has been appointed under sub-section (1).

100. (1) The High Court may, from time to time, make rules defining the powers and duties of managers under sections 95 to 99.

Power to make rules.

(2) The Board of Revenue may, from time to time, make rules defining the powers and duties of common agents under section 99A.

¹Section 99A was inserted by s. 60 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This word, figure and letter within square brackets in s. 99A (1) (a) were substituted for the word, figures and letters "26C, 26F and 48H" by s. 27(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³These words and figures within square brackets in s. 99A (1)(b) were substituted for the words "or the landlord's transfer fee payable under those sections, and" by s. 27(2) of the same Act.

⁴The word "and" at the end of s. 99A (1)(c) was inserted by s. 27(3) of the same Act.

⁵Clause (d) of s. 99A(1) was inserted by s. 27(4) of the same Act.

⁶This section was substituted for the former section by s. 61 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter X.—Record-of-rights and settlement of rents.
—Part I.—Record-of-rights.—Section 101.)

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Part I.—Record-of-rights.

Power to order
survey and
preparation of
record-of-rights.

101. (1) The ²[Provincial Government] may, in any case ^{**} if it thinks fit, ^{**} * * * * * make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer, in respect of ³[all lands] in any local area, estate or tenure or part thereof:

⁴Provided that the provisions of sections 104 to 105A, inclusive, 109C, 109D, 110, 112 and 113 shall not apply in respect of any lands which are held by a non-agriculturist and are not used for purposes connected with agriculture or horticulture.

(2) ⁷[In particular and without prejudice to the generality of the foregoing power, the ²Provincial

¹This Chapter was substituted for the original Chapter X by s. 7 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

As regards proceedings under ss. 104, 105 and 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), as originally passed, see the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898), ss. 8 and 9.

Every Deputy Collector making a partition under the Estates Partition Act, 1897 (Ben. Act V of 1897), has, as regards the estate under partition, all the powers exercisable by a Revenue-officer employed in preparing a record-of-rights under Chapter X of the present Act, see s. 44 of the former Act.

²See foot-note³ on page 2, *ante*.

³The words "with the previous sanction of the Governor General in Council, and may" in section 101 were repealed by s. 2 of the Devolution Act, 1920 (Act XXXVIII of 1920) and are omitted.

⁴The words "without such sanction in any of the cases next hereinafter mentioned" in section 101 were repealed by s. 2 of the Devolution Act, 1920 (Act XXXVIII of 1920) and are omitted.

⁵The words "all lands" were substituted for the words "the lands" by s. 62(i) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶This proviso was inserted by s. 62(ii) of the same Act.

⁷These words within square brackets in s. 101 (2), were substituted for the words "The cases in which an order may be made under this section without the previous sanction of the Governor-General in Council are the following," by s. 2 of the Devolution Act, 1920 (XXXVIII of 1920).

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(Chapter X.—Record-of-rights and settlement of rents.
—Part I.—Record-of-rights.—Section 101.)

Government may make such an order in the following cases,] namely:—

- ¹(a) where—
- (i) the landlord or tenants, or
 - (ii) a proportion of not less than one-half of the total number of landlords, or
 - (iii) a landlord, or a proportion of the landlords, whose interest, or the aggregate of whose interests, respectively, in the lands of the local area, estate or tenure or part thereof is not less than one-half of the total shares of all the landlords therein, or
 - (iv) a proportion of not less than one-fourth of the total number of tenants,

applies, or apply, for such an order, depositing or giving security for, such amount for the payment of expenses as the ²[Provincial Government] directs;

(b) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;

(c) where the local area, estate or tenure or the part thereof belongs to, or is managed ³[by, or on behalf of, the Crown, or is managed by] the Court of Wards ⁴[or a manager appointed by the District Judge under section 95];

¹This clause (a) was substituted for the original clause (a) for Western Bengal, by s. 19(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 18(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908). The original clause ran thus:—

“Where the landlord or the tenants, or a large proportion of the landlords or of the tenants, apply for such an order, and deposit, or give security for, such amount for the payment of expenses as the Local Government directs.”

²See foot-note³ on page 2, *ante*.

³These words within square brackets in s. 101 (2)(c) were substituted for the words “by, the Government or” by Schedule I to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words “or a manager appointed by the District Judge under section 95” in s. 101 (2)(c), were added for Western Bengal, by s. 19 (2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by s. 18 (2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

[Act VIII]

(Chapter X.—Record-of-rights and settlement of rents.

—Part I.—Record-of-rights.—Section 102.)

- (d) where a settlement of land-revenue is being or is about to be made in respect of the local area, estate or tenure or of the part thereof.

Explanation 1.—The term “settlement of land-revenue”, as used in clause (d), includes a settlement of rents in an estate or tenure which belongs to the Government.

Explanation 2.—A superior landlord may apply for an order under this section, notwithstanding that his estate or part thereof is temporarily leased to a tenure-holder.

(3) A notification in the *Official Gazette* of an order under this section shall be conclusive evidence that the order has been duly made.

(4) The survey shall be made and the record-of-rights prepared in accordance with rules made in this behalf by the ¹[Provincial Government].

Particulars to be recorded.

102. Where an order is made under section 101, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:—

- (a) the name of each tenant or occupant;
- (b) the class ²[or classes] to which each tenant belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, settled *raiyat*, occupancy-*raiyat*, non-occupancy-*raiyat* or under-*raiyat*, ³[with or without a right of occupancy] and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;
- (d) the name of each tenant's landlord;

¹See foot-note³ on page 2, *ante*.

²The words “or classes” in s. 102(b) were inserted by s. 63(i) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words “with or without a right of occupancy” were inserted by s. 63(i) of the same Act.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.
—Part I.—Record-of-rights.—Section 102.)

- ¹(*dd*) the name of each proprietor in the local area or estate;
- (*e*) the rent payable at the time the record-of-rights is being prepared;
- ²(*ee*) the amount payable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like at the time the record-of-rights is being prepared, the conditions and incidents appertaining to such rights, and if the amount is gradually increasing amount, the time at which, and the increments by which, it increases;
- (*f*) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;
- (*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;
- ³(*gg*) the rights and obligations of each tenant and landlord in respect of—
- (*i*) the use by tenants of water for agricultural purposes, whether obtained from a river; *jhil*, tank or well, or any other source of supply, and
- (*ii*) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaires of such land;
- (*h*) the special conditions and incidents, if any, of the tenancy;
- ⁴(*i*) any right of way or other easement attaching to the land for which a record-of-rights is being prepared;

¹Clause (*dd*) was inserted, for Western Bengal, by s. 20(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 19(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²Clause (*ee*) was inserted by s. 63(*ii*) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Clause (*gg*) was inserted, for Western Bengal, by s. 20(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 19(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), and is to be deemed to have been so inserted from the commencement of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

⁴Clause (*i*) was inserted, for Western Bengal, by s. 20(3) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 19(3) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

(Chapter X.—Records-of-rights and settlement of rents.—Part I.—Record-of-rights.—Section 102A.)

¹(j) if the land is claimed to be held rent free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled, under what authority :

²Provided that, if lands are not used for purposes connected with agriculture or horticulture, it shall be sufficient to record that fact together with the prescribed particulars relating to the occupant, the landlord and the tenancy.

Power to order survey and preparation of record-of-rights as to water.

102A. The “[Provincial Government] may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water,

make an order directing that a survey be made and a record-of-rights be prepared, by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

- (a) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well, or any other source of supply; and
- (b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.

¹This clause was formerly lettered (i) and was re-lettered (j), for Western Bengal, by s. 20(3) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 19(3) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²This proviso was inserted by s. 63(iii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Section 102A was inserted, for Western Bengal, by s. 21 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 20 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴See foot-note³ on page 2, *ante*.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.
—Part I.—Record-of-rights.—Sections 103—103B.)

103. On the application of one or more of the proprietors or tenure-holders, or of a large proportion of the *raiyats* of an estate or tenure, and on the applicant or applicants depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with, rules made in this behalf by the ¹[Provincial Government], ascertain and record all or any of the particulars specified in section 102 with respect to the estate or tenure or any part thereof.

Power for Revenue-officer to record particulars on application of proprietor, tenure-holder or large proportion of *raiyats*.

103A. (1) When a draft record-of-rights has been prepared, the Revenue-officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom, during the period of publication.

Preliminary publication, amendment and final publication of record-of-rights.

(2) When such objections have been considered and disposed of according to such rules as the ¹[Provincial Government] may ²[make], and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent-roll has been incorporated with the record under section 104F, sub-section (3), the Revenue-officer shall finally frame the record and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

103B. (1) When a record-of-rights has been finally published under section 103A, the Revenue-officer shall, within such time as the Board of Revenue may, by general or special order ⁴[require], make a certificate stating the fact of such final publication and the date thereof, and shall date and subscribe the same with his name and official title.

Certificate of, and presumption as to, final publication, and presumption as to correctness, of record-of-rights.

(2) The certificate of final publication, or, in the absence of such certificate, a certificate signed by the Collector of any district in which the local area, estate,

¹See foot-note³ on page 2, *ante*.

²The word "make" in s. 103A (2) was substituted for the word "prescribed" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This section which was inserted by s. 21 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, was substituted for section 103B as inserted by s. 22 of the Bengal Tenancy (Amendment) Act, 1907, by s. 64 of the same Act.

⁴The word "require" was substituted for the word "prescribe" by s. 127 of the same Act.

(Chapter X.—Record-of-rights and settlement of rents.
—Part II.—Settlement of rents, preparation of
Settlement Rent-roll, and disposal of objections, in
cases where a settlement of land-revenue is being or
is about to be made.—Section 104.)

tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof.

(3) The ¹[Provincial Government] may, by notification, declare with regard to any specified area, that a record-of-rights has been finally published for every village included in such area; and such notification shall be conclusive proof of such publication.

(4) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied.

(5) Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

Part II.—Settlement of rents, preparation of Settlement Rent-roll, and ²[disposal of objections], in cases where a settlement of land-revenue is being or is about to be made.

Settlement of rents and preparation of Settlement Rent-roll when to be undertaken by Revenue officer.

104. In every case in which a settlement of land-revenue is being, or about to be made, the Revenue-officer shall, after publication of the draft of the record-of-rights under section 103A, sub-section (1),—

- (a) settle fair and equitable rents for tenants³ of every class,
- (b) notwithstanding anything contained in ³[section 191], settle a fair and equitable rent for any

¹See foot-note³ on page 2, *ante*.

²The words "*disposal of objections*," in this heading, were substituted for the words "*decision of disputes*," for Western Bengal, by s. 23 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 22 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³The word and figure "section 191" in s. 104(b) were substituted for the word and figure "section 192" by s. 9 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

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(Chapter X.—Record-of-rights and settlement of rents.
—Part II.—Settlement of rents, preparation of
Settlement Rent-roll, and disposal of objections, in
cases where a settlement of land-revenue is being or
is about to be made.—Section 104A.)

land in respect of which he has recorded,
in pursuance of 'clause (j) of section 102,
that the occupant is not entitled to hold it
without payment of rent, and

(c) prepare a Settlement Rent-roll:

²Provided that the Revenue-officer shall not settle
the rents of tenants of every class in an estate or tenure
belonging to the Government if it does not appear to
the ³[Provincial Government] to be expedient that he
should do so.⁴

104A. (1) For the purposes of settling rents under
this Part and preparing a Settlement Rent-roll, the
Revenue-officer may proceed in any one or more of the
following ways or partly in one of those ways and partly
in another, that is to say,—

Procedure for
settlement of
rents and
preparation of
Settlement
Rent-roll under
this Part.

(a) if in any case the landlord and tenant agree
between themselves as to the amount of the
rent fairly and equitably payable, the
Revenue-officer shall satisfy himself that the
rent so agreed upon is fair and equitable,
and if he is so satisfied, but not otherwise,
it may be settled and recorded as the fair and
equitable rent;

(b) the Revenue-officer may himself propose what
he deems to be the fair and equitable rent,
and if the amount so proposed is accepted,
either orally or in writing, by the tenant,
and if the landlord, after notice to attend,
raises no objection, the rent so proposed
may be settled and recorded as the fair and
equitable rent;

²This reference "clause (j)" was substituted for the reference
"clause (i)" for Western Bengal, by s. 24(1) of the Bengal Tenancy
(Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal,
by s. 23(1) of the Eastern Bengal and Assam Tenancy (Amendment)
Act, 1908 (E. B. & A. Act I of 1908).

³This proviso was added to section 104, for Western Bengal, by
s. 24(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of
1907), and, for Eastern Bengal, by s. 23(2) of the Eastern Bengal
and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴See foot-note³ on page 2, *ante*.

⁴For an order made under the proviso to s. 104, see the Bengal
Statutory Rules and Orders, 1941, Vol. I, p. 449.

[Act VIII

(Chapter X.—Record-of-rights and settlement of rents.
—Part II.—Settlement of rents, preparation of
Settlement Rent-roll, and disposal of objections, in
cases where a settlement of land-revenue is being or
is about to be made.—Section 104B.)

- (c) if the circumstances are, in the opinion of the Revenue-officer, such as to make it practicable to prepare a Table of Rates showing for any local area, estate, tenure or village or part thereof, or for each class of land in any local area, estate, tenure or village or part thereof, the rate or rates of rent fairly and equitably payable by tenure-holders and *rai-yats* and under-*rai-yats* of each class, he may frame a Table of Rates and settle and record all or any of the rents on the basis of such rates in the manner hereinafter described;
- (d) the Revenue-officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of-rights as published under section 103A, sub-section (1), or by enhancing or reducing such rentals:

Provided that, in making any such settlement, regard shall be had to the principles laid down in sections 6 to 9 (both inclusive), 27 to 36 (both inclusive), 38, 39, 43, 50 to 52 (both inclusive), 180 and 191.

(2) The Settlement Rent-roll shall show the name of each landlord and of each tenant whose rent has been settled, and the amount of each such tenant's rent payable for the area shown against his name.

Contents of
Table of Rates.

104B. (1) If a Table of Rates is prepared, it shall specify—

- (a) the class or several classes of land for which, having regard to the nature of the soil, situation, means of irrigation, and other like considerations, it is in the opinion of the Revenue-officer necessary or practicable to fix a rate or different rates of rent; and
- (b) the rate or rates of rent fairly and equitably payable by tenants holding land of each such class whose rent is liable to alteration.

Local publication
of Tables.

(2) When the Revenue-officer has prepared the Table of Rates, he shall publish it in the local area, estate, tenure or village to which it relates, in the vernacular language prevailing in the district, and in the prescribed manner.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.
—Part II.—Settlement of rents, preparation of
Settlement Rent-roll, and disposal of objections, in
cases where a settlement of land-revenue is being or
is about to be made.—Section 104C.)

(3) Any person objecting to any entry in the Table of Rates may present a petition to the Revenue-officer within a period of one month after such publication, and the Revenue-officer shall consider any such objection and may alter or amend the Table.

Revenue-officer to deal with objections.

(4) If no objection is made within the said period of one month, or, where objections are made, after they have been disposed of, the Revenue-officer shall submit his proceedings to the Revenue authority empowered by rule made by the ¹[Provincial Government] to confirm the Tables and Rent-rolls prepared under this Part (hereinafter called the "confirming authority"), with a full statement of the grounds of his proposals, and shall forward any petitions of objection which he may have received.

Table to be submitted to superior Revenue authority.

(5) The confirming authority may confirm a Table submitted under sub-section (4), or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made or may return the case for further inquiry.

Proceedings of confirming authority.

(6) When a Table of Rates has been confirmed by the confirming authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act; and it may be presumed that the rates shown in the Table for tenants of each class, for each class of land, are the fair and equitable rates payable for land of that class within the area to which the Table applies.

Effect of Table.

104C. When a Table of Rates has been confirmed under section 104B, sub-section (5), the Revenue-officer may settle all or any of the rents and prepare the Settlement Rent-roll on the basis of the rates shown in the Table by calculating the rental of each tenure or each holding of a *raiyat* or under-*raiyat* on the area of such tenure or holding at the said rates:

Application of Table of Rates.

Provided that the Revenue-officer shall not be bound to apply the said rates in any particular case in which he may consider it unfair or inequitable to do so.

¹See foot-note³ on page 2, *ante*.

(Chapter X.—Record-of-rights and settlement of rents.
—Part II.—Settlement of rents, preparation of
Settlement Rent-roll, and disposal of objections, in
cases where a settlement of land-revenue is being or
is about to be made.—Sections 104D—104F.)

Rules and
principles to be
allowed in
framing Table of
Rates and
settlement rents
in accordance
therewith.

104D. In framing a Table of Rates under section 104B, and in settling rents under section 104C, the Revenue-officer shall be guided by such rules as the ¹[Provincial Government] may make in this behalf, and shall, so far as may be, and subject to the proviso to the said section 104C, have regard to the general principles of this Act regulating the enhancement of reduction of rents.

Preliminary
publication and
amendment of
Settlement
Rent-roll.

104E. (1) When a Settlement Rent-roll for a local area, estate, tenure or village or part thereof has been prepared, the Revenue-officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period, and shall receive and consider any objections made to any entry therein, or omission therefrom, during the period of publication and shall dispose of such objections according to such rules as the ¹[Provincial Government] may ²[make].

(2) The Revenue-officer may, of his own motion or on the application of any party aggrieved, at any time before a Settlement Rent-roll is submitted to the confirming authority under section 104F, revise any rent entered therein:

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Final revision of
Settlement
Rent-roll
and incorporation
of the same in the
record-of-rights.

104F. (1) When all objections have been disposed of under section 104E, the Revenue-officer shall submit the Settlement Rent-roll to the confirming authority with a full statement of the grounds of his proposals and a summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the Settlement Rent-roll, with or without amendment, or may return it for revision:

Provided that no entry shall be amended or omission supplied, until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

¹See foot-note^s on page 2, *ante*.

²The word "make" in s. 104E (1) was substituted for the word "prescribe" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.

—Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Sections 104G, 104H.)

(3) After sanction by the confirming authority, the Revenue-officer shall finally frame the Settlement Rent-roll and shall incorporate it with the record-of-rights published in draft under section 103A.

104G. (1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue-officer prior to the final publication of the record-of-rights on any objection made under section 104B, sub-section (3), or section 104E; and such appeal shall lie to ¹[the prescribed superior Revenue authority].

Appeal to, and revision by, superior Revenue authorities.

(2) The Board of Revenue may, in any case under this Part, on application or of its own motion, direct the revision of any record-of-rights, or any portion of a record-of-rights, at any time within two years from the date of the certificate of final publication, but not so as to affect any order passed by a Civil Court under section 104H:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

104H. (1) Any person aggrieved by an entry of a rent settled in a Settlement Rent-roll prepared under sections 104A to 104F and incorporated in a record-of-rights finally published under section 103A, or by an omission to settle a rent for entry in such Settlement Rent-roll, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

Jurisdiction of Civil Courts in matters relating to rent.

(2) Such suit must be instituted within six months from the date of the certificate of final publication of the record-of-rights, or, if an appeal has been presented to a Revenue authority, under section 104G, then within six months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds, and on no others, namely:—

(a) that the land is not liable to the payment of rent;

¹The words "the prescribed superior Revenue authority" were substituted for the words "such superior Revenue authority as the Local Government may by rule prescribe" by s. 65 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter X.—Record-of-rights and settlement of rents.
—Part II.—Settlement of rents, preparation of
Settlement Rent-roll, and disposal of objections, in
cases where a settlement of land-revenue is being or
is about to be made.—Section 104H.)

- (b) that the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
- (c) that the relation of landlord and tenant does not exist;
- (d) that land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
- (e) that the tenancy belongs to a class different from that to which he is shown in the record-of-rights as belonging;
- (f) that the Revenue-officer has not postponed the operation of the settled rent under the provisions of section 110, clause (a), or has wrongly fixed the date from which it is to take effect under that clause;
- ¹(g) that the special conditions and incidents of the tenancy have not been recorded, or have been wrongly recorded;
- ¹(h) that any right of way or other easement attaching to the land has not been recorded, or has been wrongly recorded.

²[No such suit shall be brought against the Crown unless the Crown] is landlord or tenant of the land to which the aforesaid entry relates or in respect of which the aforesaid omission was made.

(4) If it appears to the Court that the entry of rent settled is incorrect, it shall in case (a) or case (c) mentioned in sub-section (3), declare that no rent is payable, and shall in any other case settle a fair rent;

¹Clause (g) as originally enacted by the Bengal Tenancy Act, 1885 (VIII of 1885) and clause (h) as inserted by section 24 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, were substituted for clause (g), as modified by section 25 of the Bengal Tenancy (Amendment) Act, 1907, by s. 66 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act. IV of 1928).

²These words in square brackets were substituted for the words "The Secretary of State for India in Council shall not be made a defendant in any such suit unless the Government" by Schedule I to the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.
—Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.—Sections 104J, 105.)

and, in any case referred to in clause (f) or clause (g) of the said sub-section (3), the Court may declare the date from which the rent settled is to take effect, or pass such order relating to the entry as it may think fit.

(5) When the Court has declared under sub-section (4) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled.

(6) In settling a fair rent under sub-section (4) the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the same Settlement Rent-roll, as settled under sections 104A to 104F.

(7) Any rent settled by the Court under sub-section (4) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent-roll.

(8) Save as provided in this section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under sections 104A to 104F.

(9) When a Civil Court has passed final orders or a decree under this section, it shall notify the same to the Collector of the district.

104J. Subject to the provisions of section 104H, all rents settled under sections 104A to 104F and entered in a record-of-rights finally published under section 103A, or settled under section 104G, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Presumptions as to rents settled under sections 104A to 104G.

Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.

105. (1) When, in any case in which a settlement of land-revenue is not being made or is not about to be

Settlement of rents by Revenue-officer in cases where a settlement of land-revenue is not being or is not about to be made.

*This section as modified by sections 23 (1) and 25 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and by the Devolution Act, 1920, was substituted for section 105 as modified by section 24 (1) of the Bengal Tenancy (Amendment) Act, 1907, and by the Devolution Act, 1920, by s. 67(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter X.—Record-of-rights and settlement of rents.
—Part III.—Settlement of rents and decision of
disputes, in cases where a settlement of land-revenue
is not being or is not about to be made.—Section
105.)

made, either the landlord or the tenant applies, within¹[four months] from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent in respect of the land held by the tenant.

Explanation.—A superior landlord may apply for a settlement of rent notwithstanding that his estate or tenure or part thereof has been temporarily leased.

(2) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, the Revenue-officer has recorded, in pursuance of²clause (j) of section 102 that the occupant of any land claimed to be held rent-free is not entitled to hold it without payment of rent, and either the landlord or the occupant applies, within¹[four months] from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent for the land.

(3) Every application under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in the Court-fees Act, 1870, bear such stamp as the³[Provincial Government] may “* * * prescribe” * * *. VII of
1870.

(4) In settling rents under this section, the Revenue-officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

¹The words “four months” were substituted for the words “two months” by s. 67(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The reference “clause (j)” was substituted for the reference “clause (i)” for Western Bengal, by s. 24(1) of the Bengal Tenancy (Amendment) Act, 1907, and, for Eastern Bengal, by s. 23(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908.

³These words were substituted for the words “Local Government” which were formerly substituted for the words “Government of India” by s. 2 of the Devolution Act, 1920 (XXXVIII of 1920), by Sch. I to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words “from time to time” were omitted by s. 67(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵The words “by notification in the local official gazette” were omitted by s. 67(1) of the same Act.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.
—Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.—Section 105A.)

(5) The Revenue-officer may in any case under this section propose to the parties such rents as he considers fair and equitable; and the rents so proposed, if accepted in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

(6) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue-officer shall satisfy himself that the amount agreed upon is fair and equitable, and, if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (4) and (5).

¹(7) Where the lands of the tenancy are included in different local areas for which separate records are framed, the period of limitation specified in sub-section (1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to the tenancy.

²105A. Where, in any proceedings for the settlement of rents under this Part, any of the following issues arise:—

Decision of questions arising during the course of settlement of rents under this Part.

- (a) whether the land is, or is not, liable to the payment of rent;
- (b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
- (c) whether the relation of landlord and tenants exists;
- (d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;

¹Sub-section (7) was added by s. 25 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²Section 105A was inserted, for Western Bengal, by s. 26 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 26 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

[Act VIII

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(f) whether the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land, have not, or has not, been recorded, or have, or has, been wrongly recorded;

¹(g) whether the rent payable at the time of final publication of the record-of-rights was correctly entered, and if not, what was the rent payable at that time;

the Revenue-officer shall try and decide such issue and settle the rent under section 105 accordingly:

Provided that the Revenue-officer shall not try any issue under this section, which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue-officer in a suit instituted before him under section 106.

Court-fees for raising an issue under section 105A.

²**105B.** When any issue is raised under section 105A, the party raising it shall pay, in addition to any other court-fees which he may be liable to pay, such court-fees as he would have been liable to pay if he had claimed relief under section 106.

Costs not to be awarded ordinarily in proceedings under section 105 by Revenue-officer. Institution of suit before a Revenue-officer.

³**105C.** Except for reasons to be recorded in writing, no Revenue-officer shall award to any party any portion of his costs in a proceeding under section 105.

⁴**106.** (1) In proceedings under this Part, a suit may be instituted before a Revenue-officer at any time

¹This clause was inserted by s. 68 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Sections 105B and 105C were inserted by s. 69 of the same Act.

³This section 106(1) was substituted for the original section 106 by s. 4 of the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act I of 1903). It was renumbered as s. 106(1) for Eastern Bengal, by s. 27(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908). It was also renumbered as s. 106 (1) by s. 70(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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within ¹[four months] from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A of this Act, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from, the record,

whether such dispute be between landlord and tenant, or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter;

and the Revenue-officer shall hear and decide the dispute:

Provided that the Revenue-officer may, subject to such rules as the ²[Provincial Government] may ³[make] in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial:

⁴Provided also that in any suit under this section the Revenue officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A.

⁵(2) Where the lands to which the dispute relates are situated in local areas for which separate records are framed, the period of limitation specified in sub-section

¹The words "four months" were substituted for the words "three months" by s. 70(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note³ on page 2, *ante*.

³The word "make" was substituted for the word "prescribe" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴This proviso was added to section 106, for Western Bengal, by s. 27 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 27(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁵This sub-section as inserted by s. 27(3) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) was inserted by s. 70(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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revenue is not being or is not about to be made.—
Sections 107, 108.)

(1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to such lands.

Procedure to be
adopted by
Revenue-officer.

107. * * *¹In all proceedings under section 105, section 105A and section 106, the Revenue-officer shall, subject to rules made by the ²[Provincial Government] under this Act, adopt the procedure laid down in ³[the Code of Civil Procedure, 1908], for the trial of suits; and his decision in every such proceeding shall have the force and effect of a decree of a Civil Court in a suit between the parties, and, subject to the provisions of sections 108 and ⁴115C shall be final.

* * * * *

Revision by
Revenue-officer.

108. Any Revenue-officer especially¹ empowered by the ²[Provincial Government] in this behalf, may, on application or of his own motion, within twelve months from the making of any order or decision under section 105, ³[section 105A], section 106 or section 107, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed or decree made under section ⁴[115C]:

¹The number and brackets "(1)" in section 107 were omitted by s. 72 (c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "In all proceedings under section 105, section 105A and section 106," in section 107 (1) were substituted for the words and figures "In all proceedings for the settlement of rents under this Part, and in all proceedings under section 106," for Western Bengal, by s. 28(a) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 28(a) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³See foot-note³ on page 2, *ante*.

⁴The words and figure "the Code of Civil Procedure, 1908" were substituted for the words "the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵In sections 107, 108, 119 and 180A, the figure and letter "115C" were substituted for the figure and letter "109A" by s. 71 of the same Act.

⁶Sub-section (2) was omitted by s. 72(a) of the same Act.

⁷*Sic. Read specially.*

⁸The word, figure and letter "section 105A" in section 108 were inserted, for Western Bengal, by s. 29 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 29 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, (E.B. & A. Act I of 1908).

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—Sections 108A—109A.)

Provided that no such order or decision shall be so revised if an appeal from it ¹[has been filed] under section ²[115C] or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

108A. (Correction by Revenue-officer of mistakes in record-of-rights.) Transferred as section 115B, by s. 74 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

109. Subject to the provisions of section ³[115C], a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made, ⁴suit instituted or proceedings taken under sections 105 to 108 (both inclusive):

Bar to jurisdiction of Civil Courts.

⁵Provided that nothing contained in this section shall debar a Civil Court from entertaining a suit concerning any matter which—

- (a) was the subject-matter of an application under section 105, or section 105A, or of a suit under section 106, if such application or suit has been dismissed for default or withdrawn, or
- (b) has not been finally adjudicated upon in any such proceeding or suit.

109A. (Appeals from decisions of Revenue-officers.) Transferred as section 115C, by s. 76 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹The words "has been filed" were substituted for the words "is pending" by s. 73 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note^b on p. 104, ante.

³The figure and letter "115C" were substituted for the figure and letter "109A" by section 75 (i) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴The words and figures "suit instituted or proceedings taken under sections 105 to 108 (both inclusive)" in section 109 were substituted for the words and figures "or suit instituted under section 105, section 106, section 107 or section 108", for Western Bengal, by s. 31 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by s. 31 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁵This proviso was added by s. 75 (ii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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—Part IV.—Supplemental provisions.—Sections
109B, 109C.)

Part IV.—Supplemental provisions.

Power of
Revenue-officer
to presume that
agreements or
compromises are
lawful.

109B. In all proceedings under this Chapter, the Revenue-officer may presume that an agreement or compromise made or entered into by any landlord and his tenant is lawful;

but, when the terms of the agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, he shall not give effect to such agreement or compromise until he has given reasonable notice to such third parties to appear and be heard in the matter and unless and until he is satisfied that the statements made by the parties to the agreement or compromise are correct.

Power to
Revenue-officer
to settle rents
on agreement.

109C. (1) Notwithstanding anything contained in section 109B, if in any case while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding,

a Revenue-officer * * * * * may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such, that, if they were embodied in a contract, they could not be enforced under this Act;

and the provisions of section 113 shall apply to a rent so settled.

(2) A landlord or tenant may appeal to the Special Judge appointed under section 115C, on the ground that the rent settled by the Revenue-officer, under sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground..

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within

¹Section 109B as inserted by s. 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) was substituted for s. 109B as inserted by s. 33 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 77 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Section 109C as inserted by s. 33 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), was inserted after s. 109B by s. 78 (2) of the same Act.

³The words "specially empowered in this behalf by the Local Government" were omitted by s. 78 (1) of the same Act.

⁴The figure and letter "115C" were substituted for the figure and letter "109A" by s. 78 (1) of the same Act.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.
—Part IV.—Supplemental provisions.—Sections
109D, 110.)

one year from the date of the order, under sub-section (1), settling a rent as a fair and equitable rent, direct the revision of the rent so settled:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

¹109D. A note of all rents settled under section 105, of all decisions of issues under section 105A or section 106 and of all orders regarding the same on appeal or revision under section 108 or section 115C shall be made in, or appended to, the record-of-rights finally published under sub-section (2) of section 103A, and such notes shall be considered as part of the record. Note of decision on record.

110. When a rent is settled by a Revenue-officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land-revenue is being or is about to be made) the date of final publication of the ²[record-of-rights]: Date from which settled rent takes effect.

Provided as follows:—

- (a) if the land is comprised in an area, estate or tenure in respect of which a settlement of land-revenue is being or is about to be made, the rent settled shall, subject to the provisions of ³[section 191], take effect from the expiration of the period of the current settlement, or from such other date after the expiration of that period as may be fixed by the Revenue-officer;
- (b) if the land is not comprised in an area, estate or tenure as aforesaid, and if the existing rent has been fixed by a contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term, or from such other date after the expiration of that term as may be fixed by the Revenue-officer.

¹This section was substituted for s. 109D as inserted by s. 33 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for section 109C as inserted by s. 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), by s. 79 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "record-of-rights" were substituted for the words "Settlement Rent-roll" by s. 80 of the same Act.

³This word and figure were substituted for the words and figures "sections 191 and 192" by s. 28 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

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(Chapter X.—Record-of-rights and settlement of rents.
—Part IV.—Supplemental provisions.—Sections
111—111B.)

Stay of proceedings in Civil Court during preparation of record-of-rights.

111. When an order has been made under section 101, directing the preparation of a record-of-rights, then, subject to the provisions of section 104H, a Civil Court shall not,—

- (a) where a settlement of land-revenue is being or is about to be made—until after the final publication of the record-of-rights, and
- (b) where a settlement of land-revenue is not being made or is not about to be made—until ¹[four months] after the final publication of the record-of-rights,

entertain ²[any application made under section 158, or] any suit or application for the alteration of the rent or the determination of the status of any tenant, in the area to which the record-of-rights applies.

Limitation of jurisdiction of Civil Courts in matters, other than rent, relating to record-of-rights.

111A. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this Chapter or in respect of the framing, publication, signing or attestation of such a record or of any part of it, or save as provided in section 104H, for the alteration of any entry in such a record of a rent settled under sections 104A to 104F:

Provided that any person who is dissatisfied with any entry in, or omission from, a record-of-rights framed in pursuance of an order made under section 101, sub-section (2), clause (d), which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, I of 1877. 1877.

Stay of suits in which certain issues arise.

³111B. (1) Where a record-of-rights has been prepared and finally published in respect of the land in any area in which a settlement of land-revenue is not being

¹The words "four months" in s. 111 (b) were substituted for the words "three months" by s. 81 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "any application made under section 158, or" in section 111 were inserted, for Western Bengal, by s. 34 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 34 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

³This section as inserted by s. 35 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was substituted for s. 111B, as inserted by s. 35 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by, s. 82 (2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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111B.)

made, or is not about to be made, no application or suit affecting such land or any tenant thereof shall, within ¹[four months] from the date of the certificate of final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely:—

- (a) whether the land is or is not liable to the payment of rent;
- (b) whether the relation of landlord and tenant exists;
- (c) whether the land is part of a particular estate of tenancy; or
- (d) whether there is any special condition or incident of the tenancy or whether any right of way or other easement attaches to the land.

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not, in a suit under section 106 or in proceedings under section 105A, try such issue unless in such civil suit such issue is not in fact tried or decided.

(3) Where, in the course of settling fair rents under section 105, the Revenue-officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court before the final publication of the record-of-rights, or before a Revenue-officer under section 106, is unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings, for the settlement of a fair rent, pending a final decision on the issue;

and, after the issue has been finally decided, he shall settle a fair rent, as if the record-of-rights had been framed in accordance with such decision.

(4) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (1), the period of ¹[four months] therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.

¹The words "four months" in sub-sections (1) and (4) of s. 111B were substituted for the words "three months" by s. 82(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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—Part IV.—Supplemental provisions.—Section
112.)

Power to authorize special settlement in special cases.

112. (1) The ¹[Provincial Government] ²* * * may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare,

³[or that any landlord is demanding or exacting rents in excess of the rents entered as payable in a record-of-rights prepared under this Chapter, or of the rents payable by reason of enhancements lawfully made after the final publication of such record, invest a Revenue-officer]

with the following powers or either of them, namely:—

- (a) power to settle all rents;
- (b) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area, either generally or with reference to specified cases or classes of cases.

⁴(2a) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive).

⁵(2b) If any rent other than rent for which a decree has already been obtained is in arrear in respect of a tenancy at the time when a settlement of rents is made

¹See foot-note³ on page 2, *ante*.

²The words "with the previous sanction of the Governor General in Council" in section 112(1) were repealed by s. 2 of the Devolution Act, 1920 (XXXVIII of 1920), and are omitted.

³These words within square brackets as inserted by s. 36(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), were substituted for the portion commencing with the words "or that any landlord in demanding" and ending with the words "a revenue-officer" inserted by s. 36 (1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 83 (1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴Sub-section (2a) was inserted, for Western Bengal, by s. 36 (2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 36 (2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁵Sub-section (2b) was inserted by s. 83 (2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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(Chapter X.—Record-of-rights and settlement of rents.
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113, 114.)

under this section, such arrear shall not be recoverable in any Court in so far as it exceeds the amount which would have been due as rent of the tenancy had the settlement of rent taken place at the commencement of the period for which such rent is claimed.

1* * * *

113. (1) When the rent of a tenure or holding is settled under this Chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding or the holding of an under-*raiyat* having occupancy rights, for fifteen years, and, in the case of a non-occupancy-holding or the holding of an under-*raiyat* not having occupancy rights, for five years; and no such rent shall be reduced within the periods aforesaid save on the ground of alteration in the area of the holding or on the ground specified in section 38, clause (a).

Periods for which rents as settled are to remain unaltered.

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

114. (1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter, in any case except where a settlement of land-revenue is being or is about to be made, the expenses incurred * * * in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred³ [at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration] of boundary marks and other survey marks erected for the purpose of carrying out the provisions of this

Expenses of proceedings under this Chapter.

²Sub-section (3) of section 112 was repealed by s. 2 of the Devolution Act, 1920 (XXXVIII of 1920), and is omitted.

³The words "by the Government," in section 114 (1) were repealed in Western Bengal, by s. 37(a) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, in Eastern Bengal, by s. 37 (a) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), and are omitted.

⁴The words "at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration" in section 114(1) were substituted for the words "from time to time in the maintenance", for Western Bengal, by s. 37 (b) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 37 (b) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

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114.)

Chapter), or such part of those expenses as the ¹[Provincial Government] may direct, shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part in such proportions ²[and in such instalments (if any)] as the ¹[Provincial Government], having regard to all the circumstances, may determine.

³(2) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary marks for a period not exceeding fifteen years, or such part of such amount as the ¹[Provincial Government] may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

⁴(3) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.⁵

⁶(4) The cost of preparing copies of survey maps and records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.

Explanation.—The word “tenure” in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

¹See foot-note³ on page 2, *ante*.

²The words “and in such instalments (if any)” in section 114 (1) were inserted, for Western Bengal, by s. 37 (c) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 37 (c) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

³This sub-section (2) was inserted, for Western Bengal, by s. 37(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 37 (2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴The original sub-section (2) was re-numbered (3), for Western Bengal, by s. 37 (3) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 37 (3) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁵For an alternative method of recovering expenses, see the Land Records Maintenance Act, 1895 (Ben. Act III of 1895), ss. 28 to 32 and 36 (c).

⁶This sub-section (4) was inserted, for Western Bengal, by s. 37 (4) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 37 (4) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

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—Part IV.—Supplemental provisions.—Sections
115—115B.)

115. When the particulars mentioned in section 102, clause (b), have been recorded under this Chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

Presumption as to fixity of rent not to apply where record-of-rights has been prepared.

115A. In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue-officer shall so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875, preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey, or other survey, if any, adopted under clause (19) (b) of section 3 as defining villages;

Demarcation of village boundaries.

Ben. Act
V of 1875.

and, where village maps prepared at such revenue or other survey exist, he shall not, without the sanction of the Board of Revenue,² adopt any other area as such unit.

115B. Any Revenue-officer specially empowered by the [Provincial Government] in this behalf may, on application or of his own motion, within [two years] from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bona fide* mistake:

Correction by Revenue-officer of mistakes in record-of-rights.

Provided that no such correction shall be made if an appeal affecting such entry [has been filed] under section [115C] or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

¹Section 115A as inserted by section 38 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was substituted for section 115A as inserted by s. 38 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 84 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Now the Board of Revenue for Bengal—see the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912), s. 3, and Sch. D, item 3.

³This was formerly s. 108A. It was transferred as s. 115B by s. 74 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴See foot-note³ on page 2, *ante*.

⁵The words "two years" were substituted for the words "twelve months" by s. 74 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶The words "has been filed" were substituted for the words "is pending" by s. 74 of the same Act.

⁷The figure and letter "115C" were substituted for the figure and letter "190A" by s. 74 of the same Act.

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(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Section 115C.)

Appeals from
decisions of
Revenue-officers.

115C. (1) The ²[Provincial Government] shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under sections 105 to 108 (both inclusive) ³[and section 115B].

(2) An appeal shall lie to the Special Judge from the decisions of a Revenue-officer under sections ⁴[105 to 108, both inclusive, and section 115B], and the provisions of ⁵the Code of Civil Procedure, 1908, relating to appeals shall, as nearly as may be, apply to all such appeals.

Act V of,
1908.

(3) Subject to the provisions of ⁶[sections 100 to 103, section 107, section 108 and section 144 of, and Order XLII in Schedule I to the Code of Civil Procedure, 1908] an appeal shall lie to the High Court from the decision of a Special Judge in any case under this section (not being a decision settling a rent) as if he were a Court subordinate to the High Court within the meaning of ⁷[section 100 of that Code]:

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 102 or settled under section 105 or section 108.

¹This was formerly s. 190A. It was transferred as s. 115C by s. 76 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note³ on page 2, *ante*.

³The words, figure and letter "and section 115B" were inserted by s. 76(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴The words, figures and letter "105 to 108 (both inclusive), and section 115B" were substituted for the words, figures and letter "105 to 108A (both inclusive)" by s. 76(2) of the same Act.

⁵The words and figure "the Code of Civil Procedure, 1908," were substituted for the words "the Code of Civil Procedure" by s. 128 of the same Act.

⁶These words, letters and figures within square brackets were substituted for the words and letters "Chapter XLII of the Code of Civil Procedure" by s. 128 of the same Act.

⁷The words and figure "section 100 of that Code" were substituted for the words "the first section of that Chapter" by section 128 of the same Act.

of 1885.]

(Chapter XI.—Non-accrual of occupancy and non-occupancy rights and record of proprietors' private lands.—Sections 116, 117.)

CHAPTER XI.

NON-ACCURAL OF OCCUPANCY AND NON-OCCUPANCY RIGHTS AND RECORD OF PROPRIETORS' PRIVATE LANDS.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, lands acquired under the Land Acquisition Act, 1894, for the Government or for any local authority or for a Railway Company, or lands belonging to [the Crown] within a Cantonment, while such lands remained the property of [the Crown], or of any local authority or Railway Company, [or lands owned by the Crown or by any local authority which are used for any public work, such as a road, canal or embankment, or are required for the repair or maintenance of the same,] or to a proprietor's private lands [known as *khamar*, *nij*, *nij-jot*, *zirāat*, *sir* or *khamat*] where any such land is held under a lease for a term of years or under a lease from year to year.

Saving as to certain lands.

of 1894.

117. The [Provincial Government] may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of [section 116].

Power for Provincial Government to order survey and record of proprietor's private lands.

¹The words "non-accrual of occupancy and non-occupancy rights and" were prefixed to this heading, for Western Bengal, by s. 39 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 39 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²The words "lands acquired under the Land Acquisition Act, 1894, for the Government or for any local authority or for a Railway Company, or lands belonging to the Government within a cantonment, while such lands remained the property of the Government, or of any local authority or Railway Company, or to" in section 116 were inserted, for Western Bengal, by s. 40 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 40 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

³The words "the Crown" were substituted for the words "the Government" by Schedule I to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words within square brackets were inserted by s. 85(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵These words within square brackets were substituted for the words "known in Bengal as *khamar*, *nij* or *nij-jot*, and in Bihar as *zirāat*, *sir*, or *khamat*" by s. 85(b) of the same Act.

⁶See foot-note³ on page 2, *ante*.

⁷The word and figure "section 116" were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XI.—Non-accrual of occupancy and non-occupancy rights and record of proprietors' private lands.—Sections 118—120.)

Power for Revenue-officer to record private land on application of proprietor or tenant.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the ¹[Provincial Government], ascertain and record whether the land is or is not a proprietor's private land.

Procedure for recording private land.

119. When a Revenue-officer proceeds under ²[section 117 or 118] the provisions of ³sections 103A, 103B, 106, 107, 108, 109 and ⁴[115C] shall apply.

Rules for determination of proprietor's private land.

120. (1) The Revenue-officer shall record as a proprietor's private land—

- (a) land which is proved to have been cultivated as *khamar, ziráat, sir, nij, nij-jot* or ⁵[*khamat*] by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and
- (b) cultivated land which is recognized by village usage as proprietor's *khamar, ziráat, sir, nij, nij-jot* or ⁵[*khamat*].

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was, before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

¹See foot-note³ on page 2, *ante*.

²The words and figures "section 117 or 118" were substituted for the words "either of the two last foregoing sections" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words, figures and letters "sections 103A, 103B, 106, 107, 108, 109 and 109A" in section 119 were substituted for the words and figures "sections 105 to 109, both inclusive," by s. 10 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

⁴See foot-note⁶ on p. 104, *ante*.

⁵The word "*khamat*" was substituted for the word "*kamat*" by s. 86 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.] :

(Chapter XI.—Non-accrual of occupancy and non-occupancy rights and record of proprietors' private lands.—Chapter XII.—Distraint.—Chapter XIII.—Judicial procedure.—Sections 121—143.)

¹(2a) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land as a proprietor's private land, unless it is proved to be such by satisfactory evidence of the nature described in sub-section (1) or sub-section (2).

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XII.

Distraint.

121 to 142. Repealed by s. 87 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

CHAPTER XIII.

JUDICIAL PROCEDURE.

143. (1) The High Court may, from time to time, with the approval of the ²[Provincial Government], make rules, consistent with this Act, declaring that any portions of ³[the Code of Civil Procedure, 1908], shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, ³[the Code of Civil Procedure, 1908], shall apply to all such suits.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

let. V of 908.

¹Sub-section (2a) was inserted, for Western Bengal, by s. 41 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 41 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²The words "Provincial Government" were substituted for the words "Governor General in Council" by Schedule I to the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words and figure "the Code of Civil Procedure, 1908," were substituted for the words "the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter. XIII.—Judicial procedure.—Sections
144, 145.)

Jurisdiction in
proceedings
under Act.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of ¹[the Code of Civil Procedure, 1908], be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought ²[and no suit between landlord and tenant as such shall be instituted in any Court other than a Court within the local jurisdiction of which the lands of the tenure or holding, as the case may be, are wholly or partly situated.]

³(2) A landlord may institute one suit in respect of the rent of more than one tenancy, if the tenancies, in respect of the rent of which the suit is brought, are held in similar right and equal status by the same tenant under him:

Provided that—

- (i) the claim in respect of each tenancy shall be stated separately in the plaint;
- (ii) separate decrees shall be made in respect of each tenancy;
- (iii) the costs of the suit shall be apportioned by the Court in respect of each tenancy; and
- (iv) separate court-fees shall be levied on the plaint in respect of the claim on account of each tenancy.

⁴(3) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

*Naibs or
gumastas to be
recognized
agents.*

145. Every *naib* or *gumashtha* of a landlord empowered in this behalf by a written authority under the hand of the landlord, shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of ¹[the Code of Civil Procedure, 1908], notwithstanding that the

Act V^o
1908.

¹The words and figure "the Code of Civil Procedure, 1908" were substituted for the words "the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words within square brackets were inserted by s. 88 (a) of the same Act.

³This sub-section was inserted by s. 88(b) of the same Act.

⁴Sub-section (2) was re-numbered as sub-section (3) by s. 88(c) of the same Act.

of 1885.] :

(Chapter XIII.—Judicial procedure.—Sections 146, 146A.)

landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made :

Act V of 1908.

¹Provided that notwithstanding anything contained in the Code of Civil Procedure, 1908, every such *naib* or *gumashta* may verify the pleadings on behalf of the landlord and shall not be required to obtain the permission of the Court for the purpose of such verification.

146. The particulars ²[mentioned in rule 1 of Order VII in Schedule I to the Code of Civil Procedure, 1908], shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by ³[rule 2 of Order IV in Schedule I to the said Code], be entered in a special register to be kept by each Civil Court, in such form ⁴ as the ⁵[Provincial Government] may, from time to time prescribe in this behalf. Special register of suits.

IX of 1872.

⁶146A. (1) Notwithstanding anything contained in the Indian Contract Act, 1872, all co-sharer tenants in a tenure or holding and their successors in interest shall be liable to the landlord jointly and severally for the rent payable to such landlord on account of the tenure or holding, whether such rent has accrued during the time of their own occupation or during the time of the occupation of their predecessors in interest. Joint and several liability for rent of co-sharer tenants in a tenure or holding.

(2) Notwithstanding anything contained elsewhere in this Act or in any other law a decree for arrears of rent of a tenure or holding and a sale in execution of such decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not and against the holding in the manner provided in Chapter XIV, if the defendants to the suit represented the entire body of co-sharer tenants in the tenure or holding for the rent of which the suit was brought.

(3) The entire body of co-sharer tenants in a tenure or holding shall for the purposes of sub-section (2) be

¹This proviso was added by s. 89 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figures within square brackets were substituted for the words and figure "referred to in section 58 of the Code of Civil Procedure" by s. 128 of the same Act.

³These words and figures within square brackets were substituted for the words "that section" by s. 128 of the same Act.

⁴For an order made under section 146, see the Bengal Statutory Rules and Orders, 1941, Vol. I, P. 450.

⁵See foot-note³ on page 2, ante.

⁶Sections 146A and 146B were inserted by s. 90 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[Act VIII]

(Chapter XIII.—Judicial procedure.—Section 146B.)

deemed to be represented by the defendants to the suit if such defendants include—

- (i) all the co-sharer tenants in the tenure or holding whose homestead are situated in the village in which the tenure or holding is situated;
- (ii) such of the co-sharer tenants in the tenure or holding as have, at any time during the three years previous to that for the rent of which the suit is brought, made any payment of rent for the tenure or holding;
- (iii) such co-sharer tenants who having purchased an interest in the tenure or holding, have given notice of the purchase under sub-section (3) of section 12, or ¹[section 26C ** * *] as the case may be, or who having succeeded to an interest by inheritance have given notice of their succession under section 15; and
- (iv) all other co-sharer tenants in the tenure or holding whose names are entered in the landlord's rent-roll.

Procedure in rent suit against co-sharer tenants in a tenure or holding.

146B. (1) Notwithstanding anything contained in the Indian Limitation Act, 1908, any person who claims that he should have been joined as a co-sharer tenant defendant in a suit for the recovery of arrears of rent due in respect of a tenure or holding may at any time before the hearing of the suit has been commenced apply to be made a party defendant to the suit, and the Court shall consider his claim, and if it finds that he should have been so joined shall join him as a party defendant :

IX of 1908

Provided that if any such person at any time in the course of such suit pays into Court the full amount of the claim together with such costs as the Court may direct, the suit shall be dismissed and in any such case the provisions of section 171 shall apply.

(2) The provisions of sub-sections (2) and (3) of section 146A shall, so far as may be, apply in the case of a co-sharer tenant joined as a defendant under sub-section (1) of this section.

¹This word, figure and letter within square brackets in s. 146A (3) (iii), were substituted for the words, figures and letters "section 26E or section 26F" by s. 10 of the Bengal Tenancy (Amendment) Act, 1936 (Ben. Act II of 1936).

²The words, figure and letter "or section 26E" in s. 146A (3) (iii) were omitted by s. 29 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³See foot-note³ on page 119, ante.

of 1885.]

(Chapter XIII.—Judicial procedure.—Section 147.)

Act V of
1908.

147. ¹(1) Subject to the provisions of ²[rule 1 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908,] where a landlord has instituted a suit against a *rayyat* for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after ³[nine] months from the date of the institution of the previous suit: Successive rents suits.

* * * * *

⁴(2) Nothing in sub-section (1) nor in rule 2 of Order II in Schedule I to the Code of Civil Procedure, 1908, shall be deemed to prevent a landlord instituting a suit for a portion of the arrears of rent in respect of a holding, provided that—

- (a) the claim in such suit shall be for the rent or the balance of the rent due for a complete agricultural year or years; and
- (b) the plaint shall contain in addition to the particulars specified in clause (b) of section 148, the total claim which might have been made on the date of the institution of the suit, and the period to which the said total claim relates.

⁵(3) Where a subsequent suit for rent is instituted by a co-sharer landlord and has been consolidated with a previous suit for rent under the provisions of sub-section (4) of section 148A, the date of the institution of the subsequent suit shall, for the purposes of this section, be deemed to be the date of the suit which was first instituted and with which it was consolidated.

¹Section 147 was renumbered as sub-section (1) of that section by s. 30(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²These words and figures within square brackets were substituted for the words and figure "section 373 of the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The word "nine" was substituted for the word "three" by s. 30(1) (a) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁴The proviso to s. 147 [*i.e.*, the present s. 147(1)] which was inserted by s. 91 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928) was omitted by s. 30(1) (b) of the same Act.

⁵Sub-sections (2) and (3) of s. 147 were added by s. 30(2) of the same Act.

[Act VIII

(Chapter XIII.—Judicial procedure.—Section 147A.)

Compromise of suits between landlord and tenant.

¹147A. ²(1) Notwithstanding anything contained in ³[rule 3 in Order XXIII in Schedule I to the Code of Civil Procedure, 1908,] if any suit between landlord and tenant as such is wholly or partly adjusted by agreement or compromise, the Court ⁴[shall not order an agreement or compromise to be recorded and] shall not pass a decree in accordance with such agreement or compromise unless it is satisfied, for reasons to be recorded in writing, that the terms of such agreement or compromise are such that, if embodied in a contract, they could be enforced under this Act:

Act V of 1908.

Provided that, in the case of a suit instituted by the landlord to enhance the rent, the enhancement, if any, agreed upon may be decreed if the Court be satisfied, for reasons to be recorded in writing, that such enhancement is fair and equitable and in accordance with the rules laid down in this Act for the guidance of Courts in increasing rents.

⁵(2) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise, unless and until it is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-*raiyat*; this affects the rights of the tenants of B. The Court must, under ⁶[this sub-section] inquire whether B is a tenure-holder or a *raiyat* as defined in section 5. If the Court finds on the evidence that B is a *raiyat*, it may pass a decree in accordance with the agreement, but shall not do so if it finds that B is a tenure-holder.

¹Section 147A as inserted by section 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was substituted for s. 147A as inserted by s. 42 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 92(4) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This sub-section which was s. 147A as inserted by s. 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was re-numbered as sub-section (1), by s. 92 (2) of the same Act.

³These words and figures within square brackets were substituted for the words and figure "section 373 of the Code of Civil Procedure" by s. 92(1) of the same Act.

⁴The words "shall not order an agreement or compromise to be recorded and" were inserted by s. 92(1) of the same Act.

⁵This sub-section with the illustration which was formerly sub-section (4) of s. 147A as inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), was inserted and numbered as sub-section (2) by s. 92(3) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶The words "this sub-section" were substituted for the words and figure "sub-section (4)" by s. 92(3) of the same Act.

of 1885.]

(Chapter XIII.—Judicial procedure.—Sections 147B, 148.)

147B. In all areas for which a record-of-rights has been prepared and finally published under sub-section (2) of section 103A, a Civil Court shall, in all suits between landlord and tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

Regard to be had by Civil Courts to entries in record-of-rights.

148. The following rules shall apply to suits for the recovery of rent:—

Procedure in rent suits.

Act V of 1908.

³(a) sections 68 to 72 of the Code of Civil Procedure, 1908, and rules 1 to 13 of Order XI, rule 83 of Order XXI and rule 2 of Order XLVIII in Schedule I to the said Code, and Schedule III to the said Code shall not apply to any such suit;

(b) the plaint shall contain, in addition to the particulars specified in [rules 1, 2, 4, 5 and 6 and sub-rule (2) of rule 9 of Order VII in Schedule I to the Code of Criminal Procedure, 1908], a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries in lieu thereof a description sufficient for [identification. The plaint] [shall further contain a statement as to whether a record-of-rights has been prepared and finally published in respect of such land;]

¹Section 147B was inserted for Western Bengal, by s. 42 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by s. 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²The clauses of this section were re-numbered by s. 129 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This clause was substituted for the former clause by s. 93(1) of the same Act.

⁴These words and figures within square brackets were substituted for the words and figure "section 50 of the Code of Civil Procedure" by s. 93(2) (i) of the same Act.

⁵These words were substituted for the words "identification and the plaint" by s. 31 (1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁶The words "and the plaints" (*vide* foot-note 5 above) and these words within square brackets were inserted by s. 93 (2) (ii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XIII.—Judicial procedure.—Section 148.)

¹(c) where the suit is for the rent of land situated within an area for which a record-of-rights has been finally published, the plaint shall contain a statement of the serial number or numbers borne by the tenancy in the record-of-rights, and of the area and rental of the tenancy according to such record, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement:

Provided that, in all cases in which the Court admits a plaint which does not contain such statement, the Court shall, and in any other case in which it sees fit the Court may require the Collector to supply, without payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy:

²Provided also that when the plaint contains such a statement, no statement of the situation, designation, extent and boundaries of the land held by the tenant as referred to in clause (b) shall be required except in so far as may be necessary for the purposes of clause (d);

³(d) where any changes have occurred in the area, survey plots, or rent of the tenancy since the record-of-rights was finally published, the plaint shall further contain a statement showing the particulars of such changes;

⁴(e) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;

⁵(f) the service of the summons may, if the High Court by rule, either generally, or specially

¹This clause was formerly numbered (b1). This clause as inserted by s. 43 (1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, (E. B. and A. Act I of 1908), was substituted for clause (b1) as inserted by s. 43 (1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 93 (4) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This proviso was substituted for the second proviso to clause (b1), as formerly numbered, by s. 93(3) of the same Act.

³This clause was formerly numbered (b2). It was substituted for former clause (b2) by s. 93 (5) of the same Act.

⁴This clause was formerly numbered (c).

⁵This clause was formerly numbered (d).

of 1885.]

(Chapter XIII.—Judicial procedure.—Section 148.)

for any local area, so directs, be effected either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under ¹[Chapter VI of the Indian Post Office Act, 1898];

VI of 1898.

When a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered the Court may presume that the summons has been duly served;

Act V of 1908.

²(g) notwithstanding anything contained in the Code of Civil Procedure, 1908, or any rules made thereunder the plaintiff in a suit for recovery of arrear of rent shall not be required to supply any identifier for the purpose of serving the summons on the defendant or on any witness, and the serving officer shall serve the summons after due inquiry as to the identity of the person on whom, or the house or property where, the summons is served. The serving officer shall serve the summons in the presence of at least two persons and he shall, whenever possible, require the signature of those persons to be endorsed on the original summons and, where he is unable to serve the summons, he shall, whenever possible, require the signatures of two persons of the locality to be so endorsed;

³(h) notwithstanding anything, contained in rule 4 (3) of Order XXXII in Schedule I to the Code of Civil Procedure, 1908, the Court may serve on the natural guardian of a minor defendant in a suit for arrears of rent a notice informing him that he will be treated as the guardian of such defendant in respect of such suit, unless he appears and objects within such time, not being less than fourteen clear days after the service of the notice, as may be specified in the said notice, and, in default of compliance with such notice, such natural guardian shall,

¹These words and figures within square brackets were substituted for the words and figures "Part III of the Indian Post Office Act, 1866" by s. 2 of and the First Schedule to the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²This clause was formerly numbered (d1). It was inserted by s. 93 (6) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This clause was formerly numbered (d2). It was inserted by s. 93(6) of the same Act.

[Act VIII

(Chapter XIII.—Judicial procedure.—Section 148.)

unless the Court otherwise directs, be deemed to be the duly appointed guardian of the said minor defendant for all the purposes of such suit;

¹(i) a written statement shall not be filed without the leave of the Court, ²[but the Court shall record its reasons for granting or refusing such leave];

³(j) the rules for recording the evidence of witnesses [contained in rule 13 of Order XVIII in Schedule I to the Code of Civil Procedure, 1908,] shall apply, whether an appeal is ^{Act V of 1908.} allowed or not;

⁴(k) (i) notwithstanding anything contained in the Code of Civil Procedure, 1908, where a suit is instituted for rent entered in a record-of-rights finally published under Chapter X or where the rent is payable under a registered lease between the landlord and the tenant or where the annual rent payable has been decreed in a previous suit between the landlord and the tenant, the Court may, if the plaintiff desires to proceed under this section, issue a special summons in the prescribed form;

⁵(ia) service of the special summons referred to in sub-clause (i) shall ordinarily be effected by forwarding the summons by post in a letter with acknowledgment due addressed to the defendant and registered under Chapter VI of the Indian Post Office Act, 1898; and when a summons is so forwarded, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served; VI of 1908.

¹This clause was formerly numbered (e).

²The words within square brackets were inserted by s. 93(7) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This clause was formerly numbered (f).

⁴These words and figures within square brackets were substituted for the words and figure "prescribed by section 189 of the Code of Civil Procedure" by s. 93(8) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵This clause was formerly numbered (fI). This clause was inserted by s. 93(9) of the same Act.

⁶Sub-clause (ia) of clause (k) was inserted by s. 31(2) (a) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

of 1885.]

(Chapter XIII.—Judicial procedure.—Section 148.)

(i) when a special summons ¹[referred to in sub-clause (i) has been served], if the defendant fails to appear and defend the suit, the allegations in the plaint as regards the rent due shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons together with interest at the rate of six per cent. *per annum* from the date of the suit up to the date of payment and for costs with interest thereon:

Provided that the Court may at its discretion in any case in which it thinks fit, direct the plaintiff to adduce evidence in support of his claim:

I of 1872.

Provided also that notwithstanding anything contained in section 13 of the Indian Evidence Act, 1872, where a decree has been passed under this clause, no statement in the plaint regarding the nature, area and incidents of the tenancy or regarding any liability other than the rent claimed as due shall be evidence against the tenant in any subsequent suit or proceeding;

(ii) within seven days after the passing of a decree under sub-clause (i) the Court shall send at the cost of the plaintiff to the defendant or defendants against whom the decree has been passed a registered postcard in the prescribed form stating the particulars contained in the decree ²[and no action in execution of a decree shall be taken until a period of sixty days has elapsed since the date of the decree];

Act V of 1908.

³(iia) notwithstanding anything contained in section 34 of the Code of Civil Procedure, 1908, no interest shall be payable from the date of the decree on the aggregate sum decreed, if such aggregate sum is paid in full by the judgment-debtor within sixty days from date of the decree;

¹These words within square brackets were substituted for the words figure and brackets "has been issued under sub-clause (i)," by s. 31(2)-(b) of the Bengal Tenancy (Amendment) Act, 1938 (Bengal Act VI of 1938).

²These words within square brackets in sub-clause (ii) were inserted by s. 31(2)(c) of the same Act.

³This sub-clause (iia) was inserted by s. 31(2)(d) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

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(Chapter XIII.—Judicial procedure.—Section 148.)

(iv) notwithstanding anything contained in rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908, or in section 153A of this Act, where a decree is passed *ex parte* against a defendant under sub-clause (ii), he may apply to the Court by which the decree was passed for an order to set aside the decree and the Court, if it is satisfied that summons was not duly served and that there is *prima facie* evidence of a *bona fide* defence, may * * * make an order setting aside the decree as against him or if necessary against all or any of the other defendants also;

Act V of 1908.

²(l) when any account-books, rent-rolls, collection-papers, measurement-papers, maps or extracts from records-of-rights have been produced by ³[a party] before any Court, and have been admitted in evidence in a suit pending therein,

copies of, or extracts from, such documents, ⁴[may be] certified by a duly authorized officer of such Court to be true copies or extracts ⁵[without the payment of any court-fee, and such copies or extracts], may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to ⁶[the party,]

and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals;

¹The words "upon his depositing one-half of the amount recoverable under the decree," in sub-clause (iv) were omitted by s. 31(2) (e) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²This clause was formerly numbered (f). This clause as inserted by s. 43(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was substituted for clause (f) as inserted by s. 43(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 93(10) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words "a party" were substituted for the words "the landlord" by s. 93(10) of the same Act.

⁴The words "may be" were inserted by s. 93(10) of the same Act.

⁵These words within square brackets were inserted by s. 93(10) of the same Act.

⁶The words "the party" were substituted for the words "the landlord" by s. 93(10) of the same Act.

of 1885.]

(Chapter XIII.—Judicial Procedure.—Section 148A.)

Act V of
1908.

- ¹(m) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejection for arrears;
- ²(n) notwithstanding anything contained in sub-rule (3) of rule 11 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the Court shall not, unless for special reasons to be recorded in writing, direct the decree-holder to file a copy of the decree or any fresh *vakalatnama* for the purpose of executing the decree;
- ³(o) notwithstanding anything contained in [rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908,] an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

148A. (1) A co-sharer landlord may institute a suit to recover the rent due to him in respect of his share in a tenure or holding, by making all the remaining co-sharer landlords parties defendant to the suit, and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding.

Power to co-sharer landlord to sue for rent in respect of his share in a tenure or holding against the tenure or holding on making remaining co-sharers parties.

(2) On the plaint being admitted, the Court shall by summons in the prescribed form call upon the remaining co-sharer landlords aforesaid to join in the suit as plaintiffs for their shares of the rent due to them in respect of the tenure or holding up to the date of the institution of the suit.

(3) On the date named in the summons for his appearance or on any subsequent date fixed by the Court in this behalf, any co-sharer landlord, who has been

¹This clause was formerly numbered (g).

²This clause was formerly numbered (gg). It was inserted by s. 93 (11) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This clause was formerly numbered (h).

⁴These words and figures within square brackets were substituted for the words and figure "section 232 of the Code of Civil Procedure" by s. 93 (12) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵This section was substituted for the former section 148A as inserted by s. 44 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and section 148A as inserted by s. 44 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), by s. 94 of the same Act.

[Act VIII

(Chapter XIII.—Judicial Procedure.—Section 148A.)

summoned as defendant, may apply to be joined in the suit as a co-plaintiff, and on his paying the court-fee on the amount of his claim, he shall be joined as a co-plaintiff in respect of the rent claimed to be due to him up to the date of the institution of the suit.

(4) If it comes to the notice of the Court that any co-sharer landlord has before the service upon him of a summons under sub-section (2) instituted a separate suit to recover his share of the rent of the tenure or holding, the separate suit shall be consolidated with that brought under sub-section (1) and such co-sharer landlord shall be deemed to be a co-plaintiff and shall amend his plaint so as to claim the rent due to him up to the date of the institution of the suit under sub-section (1):

Provided that, if the Court is not competent to consolidate and try the suit, such suit shall be transferred to a Court of competent jurisdiction for consolidation and trial.

(5) The summons on all the defendants to the suit other than co-sharer landlords shall thereafter be served and the Court shall thereupon proceed to the trial of the suit.

(6) A decree passed by the Court for the rent claimed in a suit brought in accordance with the foregoing provisions of this section shall, so far as may be, specify separately the amounts payable to each co-sharer and shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

(7) When one or more co-sharer landlords, having obtained a decree in a suit framed under this section, applies or apply for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application of the execution to the other co-sharers.

(8) (i) In disposing of the proceeds of the sale in execution of the decree referred to in sub-section (6) the following rules, instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed,—

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1908.

- (a) there shall first be paid to the decree-holders the costs incurred by them in bringing the tenure or holding to sale;
- (b) there shall in the next place be paid to the decree-holders the amount due to them under the decree in execution of which the sale was made;

of 1885.]

(Chapter XIII.—Judicial Procedure.—Section 148A.)

(c) if there remains a balance after these sums have been paid, there shall be paid therefrom to the decree-holders and to any defendant landlords, who have not joined as plaintiffs, but have made application in this behalf within one month from the date of the confirmation of the sale, any rent which may have fallen due to them in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale, in proportion to their respective shares in the tenure or holding:

Provided that the Court shall issue a notice to the judgment-debtor or his pleader, if any, before ordering any such payment;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor on his application unless the Court for reasons to be recorded in writing otherwise directs.

(ii) If the judgment-debtor disputes the right of the decree-holder or of the co-sharer landlord who has been made a party defendant to receive any sum on account of rent under clause (c), the Court shall determine the dispute and the determination shall have the force of a decree.

(9) When a suit has been instituted under the provisions of sub-section (1), no co-sharer landlord, who has been made a party defendant thereto, and duly served with summons issued under sub-section (2), shall be entitled to recover, save as co-plaintiff in that suit, any rent in respect of the tenure or holding for the period in suit or for any period previous thereto.

(10) Where a suit instituted under the provisions of sub-section (1) has been withdrawn with leave to bring a fresh suit, the procedure, remedies and disabilities hereinbefore provided by this section shall apply to such fresh suit when instituted and to the parties thereto.

(11) In the event of the holding or tenure not being sold as a result of a suit instituted under sub-section (1), nothing contained in rule 2 of Order II in Schedule I to the Code of Civil Procedure, 1908, shall preclude a co-sharer landlord who has been joined as plaintiff under sub-section (3) or is deemed to be a plaintiff under sub-section (4) from recovering by suit, rent and interest due to him and damages, if awarded,

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1908.

(Chapter XIII.—Judicial procedure.—Sections
149—151.)

in respect of the tenure or holding for the period subsequent to the date of the institution of the suit under this section.

(12) If the rent claimed in a plaint as amended under sub-section (4) is less than the rent claimed in the original plaint in the separate suit referred to in that sub-section, the balance of rent may be recovered under the provisions of clause (c) of sub-section (8) or of sub-section (11).

Payment into Court of money admitted to be due to third person.

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff, but to a third person, the Court shall ^{1*} * * * refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

Payment into Court of money admitted to be due to landlord.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall ^{1*} * * * * * refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Provisions as to payment of portion of money.

151. When a defendant is liable to pay money into Court under ²[section 149 or 150] if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

¹The words "except for special reasons to be recorded in writing," were repealed, in Western Bengal, by s. 45 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, in Eastern Bengal, by s. 45 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), and are omitted.

²The words and figures "section 149 or 150" were substituted for the words "either of the two last foregoing sections" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter XIII.—Judicial procedure.—Sections
152, 153.)

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be. Court to grant receipt.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where— Appeals in rent suits.

- (a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or
- (b) the decree or order is passed by any other judicial officer specially empowered by the ¹[High Court] to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims there to or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit.

²*Explanation.*—A question as to the regularity of the proceedings in publishing or conducting a sale in

¹These words were substituted for the words "Provincial Government" which were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, by s. 32 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²This *Explanation* was added to section 153, for Western Bengal by s. 46 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 46 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

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(Chapter XIII.—Judicial procedure.—Sections
153A, 154.)

execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto.

Deposit on application to set aside *ex parte* decree.

¹153A. Every application for an order under [rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908] to set aside a decree passed *ex parte*, or for a review of judgment, under [section 114 and rule 1 of Order XLVII in Schedule I to the said Code] in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment; Act V of 1908.

and no such application shall be admitted—

- (a) unless the applicant has, at or before the time ~~when~~ the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct; or
- (b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.

Date from which decree for enhancement takes effect.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year,¹ shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

¹Section 153A was inserted, for Western Bengal, by s. 47 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 47 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²These words and figures within square brackets were substituted for the words and figure "section 108 of the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words and figures within square brackets were substituted for the words and figure "section 623 of the said Code" by s. 128 of the same Act.

⁴For definition of "agricultural year", see s. 3(1), *ante*.

of 1885.]

(Chapter XIII.—Judicial procedure.—Sections
155, 156.)

155. (1) A suit for the ejectment of a tenant, on the ground— Relief against forfeitures.

- (a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or
- (b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord liable to ejectment,

shall not be entertained unless the landlord has served in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach; and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

156. The following rules shall apply in the case of every *raiyat* ¹or under-*raiyat* ejected from a holding— Rights of ejected *raiyats* in respect of crops and land prepared for sowing.

- (a) when the *raiyat* ¹[or under-*raiyat*] has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the

¹The words "or under-*raiyat*" were inserted by s. 95 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XIII.—Judicial procedure.—Sections
157, 158.)

landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

- (b) when the *raiyat* ¹[or under-*raiyat*] has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;
- (c) but a *raiyat* ¹[or under-*raiyat*] shall not be entitled to retain possession of any land, or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to the local usage; and
- (d) if the landlord elects under this section to allow a *raiyat* ¹[or under-*raiyat*] to retain possession of the land, the *raiyat* ¹[or under-*raiyat*] shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

Power for Court to fix fair rent as alternative to ejectment.

157. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Application to determine incidents of tenancy.

158. (1) ¹[Subject to the provisions of section 111], the Court having jurisdiction to determine a suit for the possession of land may, on the application of

¹See foot-note¹ on page 135, *ante*.

²The words and figure "Subject to the provisions of section 111," in section 158 (1) were inserted, for Western Bengal, by s. 48 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 48 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

of 1885.]

(Chapter XIII.—Judicial procedure.—Section
158.)

either the landlord or the tenant of the land, determine all or any of the following matters, namely:—

- (a) the situation, quantity and boundaries of the land;
- (b) the name and description of the tenant thereof (if any);
- (c) the class [or classes] to which he belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, occupancy-*raiyat*, non-occupancy-*raiyat*, or under-*raiyat* [with or without a right of occupancy] and if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure; and
- (d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under [Order XXVI in Schedule I to and section 78 of, the Code of Civil Procedure, 1908,] by such Revenue-officer as the [Provincial Government] may authorize in that behalf by rule made under [rule 9 of Order XXVI in Schedule I to the said Code].

Act V of
1908.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

Chapter XIII A (Sections 158A to 158AAA).

(Summary procedure for the recovery of rents under the Bengal Public Demands Recovery Act, 1913.)
Rep. by s. 33 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

¹The words "or classes" were inserted by s. 96 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "with or without a right of occupancy" were inserted by s. 96 of the same Act.

³These words and figures within square brackets were substituted for the words and letters "Chapter XXV of the Code of Civil Procedure" by s. 128 of the same Act.

⁴See foot-note³ on page 2, *ante*.

⁵These words and figure within square brackets were substituted for the words and figure "section 392 of the said Code" by s. 128 of the same Act.

(Chapter XIV.—Sale for arrears under decree.—
Sections 153B—160.)

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

153B. (Passing of tenure or holding sold in execution of decree or certificate.) Rep. by s. 99 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

General powers
of purchaser
as to avoidance
of incumbrances.

159. ¹(1) Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this Chapter as “protected interests,” but with power to annul the interests defined in this Chapter as “incumbrances”:

Provided as follows:—

- (a) a registered and notified incumbrance within the meaning of this Chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;
- (b) the power to annul shall be exercisable only in manner by this Chapter directed.

²(2) Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the date of confirmation of the sale. Act V of 1908.

Protected
interests.

160. The following shall be deemed to be protected interests within the meaning of this Chapter:—

- (a) any under-tenure existing from the time of the Permanent Settlement;
- (b) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;
- (c) any lease of land whereon dwelling houses, manufactories or other permanent buildings have been erected, or permanent gardens,

¹Former section 159 was re-numbered as sub-section (1) by s. 100 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This sub-section was inserted by s. 100 of the same Act.

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Section 161.)

plantations, tanks, canals, places of worship or burning or burying grounds have been made;

- (d) any right of occupancy;
- (e) the right of a non-occupancy-*raiyat* to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;
- (f) any right conferred on an occupancy-*raiyat* to hold at a rent which was a fair and reasonable rent at the time the right was conferred;
* * *
- ²(ff) the right of a *raiyat* at fixed rates to hold at ³[a fixed rent or rate of rent which has not been changed during twenty years;] and
- (g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

161. For the purposes of this Chapter—

- (a) the term “incumbrance”, used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in [section 160];
- (b) the term “registered and notified incumbrance”, used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument, of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided;

Meaning of
“incumbrance”
and “registered
and notified
incumbrance”.

¹The word “and” in s. 160 (f) was omitted by s. 11 (1) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²This clause was inserted by s. 101 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words within square brackets in s. 160 (ff) were substituted for the words “the fixed rent or rate of rent” by s. 11 (2) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II 1930).

⁴The word and figure “section 160” were substituted for the words “the last foregoing section” by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XIV.—Sale for arrears under decree.—
Sections 162, 163.)

¹(c) the terms “arrears” and “arrear of rent” shall be deemed to include interest decreed under section 67 or damages awarded in lieu of interest under sub-section (1) of section 68.

Application for sale of tenure or holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding and the decree-holder applies under [rule 11(2) of Order XXI in Schedule I to the Code of Civil Procedure, 1908] for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the *pargana*, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

Act V of 1908.

Combined order of attachment and proclamation of sale to be issued.

163. ³(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when the decree-holder makes the application mentioned in section 162, the Court if it admits the application under rule 17 of Order XXI in Schedule I to the said Code and orders execution of the decree as applied for, shall issue a combined order of attachment and proclamation in the prescribed form.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in [rule 66 of Order XXI in Schedule I to the said Code] announce—

(a) in the case of a tenure or a holding of a *raiyat* holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given with power to annul all incumbrances; and

¹Clause (c) was added to section 161, for Western Bengal, by s. 51 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 51 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²These words and figures within square brackets were substituted for the words and figure “section 235 of the Code of Civil Procedure” by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This sub-section was substituted for former sub-section by s. 102(a) of the same Act.

⁴These words and figure within square brackets were substituted for the words and figure “section 287 of the said Code” by s. 102 (b) of the same Act.

of 1885.]

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Section 164.)

(b) in the case of an occupancy-holding [not held at fixed rates], that the holding will be sold with power to annul all incumbrances.

²(3) Notwithstanding anything contained in sub-rules (1) and (2) of rule 67 in Order XXI in Schedule I to the said Code, the proclamation shall be published in the following manner—

- (a) by beat of drum at some place on or adjacent to the land comprised in the tenure or holding ordered to be sold and by fixing up a copy thereof in a conspicuous place on such land,
- (b) by affixing a copy thereof in a conspicuous place at the Court-house of the issuing Court,
- (c) by sending in the prescribed form by registered post to the judgment-debtor a concise statement of the order of attachment and proclamation at the time of the issue of the proclamation, and
- (d) in such other manner as may be prescribed.

(4) Notwithstanding anything contained in [rule 68 of Order XXI in Schedule I to the said Code] the sale shall not, without the consent in writing of the judgment debtor, take place, until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

164. (1) When tenure or holding at fixed rates has been advertised for sale under [section 163], it shall be put up to auction subject to registered and notified incumbrances; and if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

¹The words "not held at fixed rates" were inserted by s. 102 (b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This sub-section was substituted for the former sub-section (3) by s. 102(c) of the same Act.

³These words and figure within square brackets were substituted for the words and figure "section 290 of the said Code" by s. 102(d) of the same Act.

⁴The word and figure "section 163" were substituted for the words "the last foregoing section" by s. 126 of the same Act.

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Sections 165—167.)*

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under ²[section 164] does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation ³[in accordance with the procedure provided in sub-section (3) of section 163] announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

166. (1) When an occupancy-holding ³[not held at fixed rates] has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by ⁴[section 167] and not otherwise, annul any incumbrance on the holding.

Procedure for annulling incumbrances, under sections 164, 165 or 166.

167. (1) A purchaser having power to annul an incumbrance under ⁵[sections 164, 165 or 166] ⁶[or under the Bengal Public Demands Recovery Act, 1913], and desiring to annul the same, may, within one

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III of
1913.

¹The word and figure "section 164" were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figure within square brackets were substituted for the words and figure "under section 289 of the Code of Civil Procedure" by s. 128 of the same Act.

³The words "not held at fixed rates" were inserted by s. 103 of the same Act.

⁴The word and figure "section 167" were substituted for the words "the next following section" by s. 103 of the same Act.

⁵The words and figures "sections 164, 165 or 166" were substituted for the words "any of the foregoing sections" by s. 126 of the same Act.

⁶The words and figure "or under the Bengal Public Demands Recovery Act, 1913" in section 167 (1) were inserted by s. 62 (1) of the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

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Section 168.)

year from the date of the [confirmation of the] sale or the date on which he first has notice of the incumbrance, whichever is later, present to the [Court which passed the decree or the Revenue-officer who made the order, as the case may be, for sale of the property] an application in writing requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made [in manner provided by this section, the Court or Revenue-officer, as the case may be,] shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure, or holding is sold in execution of a decree [or a certificate signed under the Bengal Public Demands Recovery Act, 1913,], for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c) the purchaser may, if he has power under this Chapter [or that Act] to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

168. (1) The [Provincial Government] may, from time to time, by notification in the *Official Gazette*,

Power to direct that occupancy-holdings be dealt with under sections 159 to 167 as tenures.

¹The words "confirmation of the" were inserted by s. 104 (a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words within square brackets were substituted for the word "Collector" by s. 104 (a) of the same Act.

³These words within square brackets were substituted for the words "to the Collector in the manner prescribed by this section, he" by s. 104 (b) of the same Act.

⁴The words and figure "or a certificate signed under the Bengal Public Demands Recovery Act, 1913", in section 167(4), were inserted by s. 62 (2) (a) of the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

⁵The words "or that Act" in section 167(4) were inserted by s. 62-(2)(b) of the same Act.

⁶See foot-note 3 on page 2, *ante*.

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Section 168A.)

direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of ¹[a decree for an arrear of rent] due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under ²[sections 159 to 167] of this Chapter, be treated in all respects as if they were tenures.

Attachment and sale of tenure or holding for arrears of rent due thereon, and liability of purchasers thereof.

³168A. (1) Notwithstanding anything contained elsewhere in this Act, or in any other law, or in any contract—

- (a) a decree for arrears of rent due in respect of a tenure or holding, whether having the effect of a rent decree or money decree, or a certificate for such arrears signed under the Bengal Public Demands Recovery Act, 1913, shall not be executed by the attachment and sale of any movable or immovable property other than the entire tenure or holding to which the decree or certificate relates:

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III of
1913.

Provided that the provisions of this clause shall not apply if, in any manner other than by surrender of the tenure or holding, the term of the tenancy expires before an application is made for the execution of such a decree or certificate;

- (b) the purchaser at a sale referred to in clause (a) shall be liable to pay to the decree-holder or certificate-holder the deficiency, if any, between the purchase price and the amount due under the decree or certificate together with the costs incurred in bringing the tenure

¹The words "a decree for an arrear of rent" in section 168 (1) were substituted for the words "decrees for rent" for Western Bengal, by s. 52 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 52 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act, I of 1908).

²The words and figures "sections 159 to 167" were substituted for the words "the foregoing sections" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Section 168A was inserted by section 5 of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Section 169.)

or holding to sale and any rent which may have become payable to the decree-holder between the date of the institution of the suit and the date of the confirmation of the sale.

(2) In any proceeding pending on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1940, in execution of a decree or certificate to which the provisions of sub-section (1) apply, if there has been attached any immovable property of the judgment-debtor other than the entire tenure or holding to which the decree or certificate relates, and if the property so attached has not been sold, the Court or Certificate-officer as the case may be shall, on the application of the judgment-debtor, direct that, on payment by the judgment-debtor of the costs of the attachment, the property so attached shall be released.

(3) A sale referred to in clause (a) of sub-section (1) shall not be confirmed until the purchaser has deposited with the Court or Certificate-officer, as the case may be, the sum referred to in clause (b) of that sub-section.

169. (1) In disposing of the proceeds of a sale under this Chapter ¹[other than a sale in execution of a decree in a suit instituted under sub-section (1) of section 148A] the following rules, instead of those ²[contained in section 73 of the Code of Civil Procedure, 1908,] shall be observed, that is to say:—

Rules for disposal of the sale-proceeds.

Act V of 908.

- (a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;
- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom ³[the costs of the application under this section and] any rent which may have fallen due to him in respect

¹These words, figures and letter within square brackets were inserted by s. 105 (a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figure within square brackets were substituted for the words and figure "prescribed by section 295 of the Code of Civil Procedure" by s. 126 of the same Act.

³The words "the costs of the application under this section and" were inserted by s. 105 (b) of the same Act.

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(Chapter XIV.—Sale for arrears under decree.—
Section 170.)

of the tenure or holding between the institution of the suit and the date of ¹[the confirmation of] the sale;

- (d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application ²[unless the Court for reasons to be recorded in writing otherwise directs]:

* * * * *

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

170. (1) ³[Rules 58 to 63 (both inclusive) of Order XXI in Schedule I to the Code of Civil Procedure, 1908] shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon. Act V of 1908.

Tenure or holding to be released from attachment only on payment into Court of amount of decree, with costs, or on confession of satisfaction by decree-holder.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

¹The words "the confirmation of" in section 169(1)(c) were inserted, for Western Bengal, by s. 53 (1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 53(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²The words "unless the Court for reasons to be recorded in writing otherwise directs" were inserted by s. 105(c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The proviso was omitted by s. 105 (d) of the same Act.

Section 170 as modified by s. 54 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), was substituted for s. 170 as modified by s. 54 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 106(1) of the same Act.

⁴These words and figures within square brackets were substituted for the words and figures "sections 278 to 283 (both inclusive) of the Code of Civil Procedure" by s. 128 of the same Act.

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Sections 171, 172.)

(3) The judgment-debtor or any person ¹[whose interests are affected by the sale], may pay money into Court under this section.

(4) The withdrawal of the amount deposited under ²[this section or section 174] by the decree-holder landlord shall not operate as an admission of the transferability of the tenure or holding sold in execution of the decree.

171. (1) ³[When any person whose interests are affected by the sale of a tenure or holding advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bengal Public Demands Recovery Act, 1913] pays into Court the amount requisite to prevent the sale—

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

Ben. Act III of 1913.

- (a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve *per centum per annum* and secured by a mortgage of the tenure or holding to him;
- (b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and
- (c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

172. When a tenure or holding is advertised for sale—

Inferior tenant paying into Court may deduct from rent.

- (a) under this Chapter, in execution of a decree against a superior tenant defaulting, or

¹The words "whose interests are affected by the sale" were substituted for the words "having in the tenure or holding any interest voidable on the sale" by s. 106(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words and figure "this section or section 174" were substituted for the words, figure and letter "section 310A of the Code of Civil Procedure" by s. 106(3) of the same Act.

³These words and figure within square brackets were substituted for the words "when any person having in a tenure or holding advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bengal Public Demands Recovery Act, 1913, an interest which would be voidable upon the sale" by s. 107 of the same Act.

⁴This section was substituted for the former section by s. 108 of the same Act.

(Chapter XIV.—Sale for arrears under decree.—
Sections 173, 174.)

- (b) in execution of a certificate, signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting,

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or when such sale is set aside under section 174—
and an inferior tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Decree-holder
may bid at sale;
judgment-debtor
may not.

173. (1) Notwithstanding anything contained in [rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908,] the holder of a decree in execution of which a tenure or holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

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1908.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale and the costs of the application and order, and any deficiency of price which may happen on the resale, and all expenses attending it shall be paid by the judgment-debtor.

Application to
set aside sale.

174. (1) Rules 89 and 90 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply in cases where a tenure or holding has been sold for arrears of rent due thereon, but in such cases the judgment-debtor or any person whose interests are affected by the sale, may, at any time within thirty

¹These words and figures within square brackets were substituted for the words and figure "section 294 of the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This section was substituted for the former section by s. 109 of the same Act.

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Section 174.)

days from the date of the sale, apply to the Court to set aside the sale, on his depositing—

- (a) for payment to the decree-holder, the amount recoverable under the decree up to the date when the deposit is made, with costs;
- (b) for payment to the auction-purchaser, as penalty a sum equal to five *per cent.* of the purchase-money, but not less than one rupee.

(2) Where a person makes an application under sub-section (3) for setting aside the sale of his tenure or holding he shall not, unless he withdraws that application, be entitled to make or prosecute an application made under sub-section (1).

(3) Where a tenure or holding has been sold for arrears of rent due thereon, the decree-holder, the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within six months from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale:

Provided as follows:—

- (a) no sale shall be set aside on any such ground unless the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud; and
- (b) no application made by a judgment-debtor or any person whose interests are affected by the sale under this sub-section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court, for reasons to be recorded by it in writing, that no such deposit is necessary.

(4) Rule 91 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to any sale under this Chapter.

(5) An appeal shall lie against an order setting aside or refusing to set aside a sale:

Provided that where the Court has refused to set aside the sale on the application of the judgment-debtor or any person whose interests are affected by the sale and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the appellant deposits such amount in Court.

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*(Chapter XIV.—Sale for arrears under decree.—**Sections 174A—176.)*

Sale when to become absolute or be set aside, and return of purchase money in certain cases.

¹**174A.** (1) Where no application is made under ²[sub-section (1) of section 174 within thirty days from the date of sale] or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where in the case of an application under sub-section (1) of section 174, the deposit required by that sub-section is made within thirty days from the date of sale, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its repayment with or without interest as the Court may direct.

(4) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

³(5) Notwithstanding anything contained in this section, an application may be made under sub-section (3) of section 174 to set aside the sale, and where such application is allowed the order made under sub-section (1) confirming the sale shall be deemed to be cancelled.

175. (*Registration of certain instruments creating incumbrances.*) *Rep. by s. 13 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).*

Notification of incumbrances to landlord.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by

¹Section 174A was inserted by s. 110 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figures within square brackets in s. 174A (1) were substituted for the word and figure "section 174" by s. 12(a) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

³This sub-section was inserted by s. 12(b) of the same Act.

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(Chapter XIV.—Sale for arrears under decree.—Chapter XV.—Contract and custom.—Sections 177, 178.)

him of such fee as the ¹[Provincial Government] may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

177. Nothing contained in this Chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create. Power to create incumbrances not extended.

CHAPTER XV.

CONTRACT AND CUSTOM.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act— Restrictions on exclusion of Act by agreement.

- (a) shall bar in perpetuity the acquisition of an occupancy-right in land, or
- (b) shall take away an occupancy-right in existence at the date of the contract, or
- (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- (d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them, ²[or
- (e) shall entitle a landlord to recover as rent, from a tenant whose rent is a share, as opposed to a fixed quantity of produce, produce in excess of half the gross produce of the holding for the year for which the rent is claimed, or
- (f) shall take away or limit the rights of an under-*raiyat* as against his immediate landlord, as set forth in Chapter VII, or
- (g) shall take away or limit the right of an occupancy-*raiyat* to transfer his holding or

¹See foot-note³ on page 2, *ante*.

²The portion within square brackets was inserted by s. 112(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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(Chapter XV.—Contract and custom.—Section 178.)

any share or portion thereof in accordance with the provisions of sections 26B to ¹26G, or

- (h) shall take away or limit the rights of occupancy-*raiyats* in trees on their holdings, as provided in section 23A, or
- (i) shall affect the provisions of section 67 relating to interest payable on arrears of rent.]

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act, shall prevent a *raiyat* from acquiring in accordance with this Act, an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

- (a) prevent a *raiyat* from acquiring, in accordance with this Act, an occupancy-right in land;
- (b) take away or limit the right of an occupancy-*raiyat* to use land as provided by section 23;
- (c) take away the right of a *raiyat* ²[or under-*raiyat*] to surrender his holding in accordance with section 86;

* * * * *

- ⁴(d) take away the right of an occupancy-*raiyat* to sub-let subject to, and in accordance with, the provisions of this Act;

- ⁴(e) take away the right of a *raiyat* to apply for a reduction of rent under section 38 or section 52;

* * * * *

* * * * *

Provided as follows:—

- (i) nothing in this section shall affect the terms or conditions of a lease granted *bona fide*

¹The figure and letter "26G" in s. 178(1) (g) were substituted for the figure and letter "26J" by s. 34(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²These words within square brackets were inserted by s. 34(2) of the same Act.

³Former clauses (d), (g) and (h) were omitted by s. 112 (b) (i) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴Clauses (e) and (f) were renumbered as clauses (d) and (e), respectively, by s. 112(b) (ii) of the same Act.

of 1885.]

(Chapter XV.—Contract and custom.—Section 179.)

for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

- (ii) when a landlord has reclaimed waste-land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a *raiyat*, nothing in this Act shall affect the terms of any contract whereby a *raiyat* is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a *raiyat*;
- (iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of ¹[horticultural or] orchard land with agricultural crops.

²*Explanation.*—The expression “horticultural land”, as used in proviso (iii), means garden land, in the occupation of a proprietor or permanent tenure-holder, which is used *bona fide* for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant: Permanent *mukarrari* leases.

³Provided that such proprietor or holder shall not be entitled to recover interest at a rate exceeding that set forth in section 67 or anything that is an *abwab* or the recovery of which is illegal under the provisions of section 74 or sub-section (3) of section 77.

¹The words “horticultural or” in proviso (iii) were inserted, for Western Bengal, by s. 56(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 56(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²This *Explanation* was added to proviso (iii), for Western Bengal, by s. 56(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 56(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³This proviso was inserted by s. 113 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[Act VIII]

(Chapter XV.—Contract and custom.—Sections
180, 180A.)*Utbandi, char
and diara lands.***180.** (1) Notwithstanding anything in this Act, a *raiyat*—(a) who, in any part of the country where the custom of *utbandi* prevails, holds land ordinarily let under that custom and for the time being let under that custom, or(b) who holds land of the kind known as *char* or *diara*,

shall not acquire a right of occupancy—

in case (a), in land ordinarily held under the custom of *utbandi* and for the time being held under that custom, orin case (b), in the *char* or *diara* land,

until he has held the land in question for twelve continuous years and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to *raiyats* holding land under the custom of *utbandi* in respect of land held by them under that custom.(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, ¹[or, after hearing both landlord and tenant, of his own motion], declare that any land has ceased to be *char* or *diara* land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.Fixing of
uniform annual
money rent in
respect of
utbandi lands.**²180A.** (1) Notwithstanding anything contained in section 180, when a *raiyat* who is or who but for the operation of section 180 in respect of land held under the custom of *utbandi* would have been, a settled *raiyat* of the village, holds or has held under the custom of *utbandi*, or under any form of tenancy locally known as *utbandi land* (hereinafter referred to as *utbandi land*), either the landlord or the *raiyat* may apply to have a uniform annual money rent determined for the land.¹These words within square brackets were inserted by s. 35 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).²Sections 180A to 180C were inserted by s. 2 of the Bengal Tenancy (*Utbandi* Amendment) Act, 1923 (Ben. Act X of 1923).³These sections extend to the districts of Nadia, Murshidabad and Jessore but will extend to other districts when notified—*vide* section 1(2) of the same Act.

of 1885.]

(Chapter XV.—Contract and custom.—Section 180A.)

(2) The application shall include at the discretion of the applicant either—

- (a) all *utbandi* lands held in the same village by the same *raiyat* under the same landlord in which the *raiyat* has acquired a right of occupancy whether under the provisions of section 180 or otherwise, or
- (b) all the lands held in the same village under the same landlord by the *raiyat* which the *raiyat* or any deceased person whose heir he is, has cultivated as *utbandi* land at any time during the preceding period of six years if he or the said deceased person is the last person to have cultivated the land and has not or had not acquired occupancy-rights therein, or
- (c) both.

(3) Subject to the provisions of sub-section (2), a single application may be made by a landlord in respect of lands held as *utbandi* lands in the same village by one or more *raiyats* under him and a joint application may be made by two or more *raiyats* in respect of lands held by them as *utbandi* lands in the same village under the same landlord.

(4) The application may be made to the Collector or to a Subdivisional Officer or to a Revenue-officer appointed by the ¹[Provincial Government] under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorized by the ¹[Provincial Government].

(5) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (4) to receive applications.

(6) The officer receiving the application or the officer to whom the case is transferred as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

If the immediate landlord or the *raiyat* is a temporary tenure-holder or *ijaradar*, the officer receiving the application shall also give notice to the superior landlord in the lowest degree, who is a proprietor or permanent tenure-holder.

¹See foot-note² on page 2, ante.

(Chapter XV.—Contract and custom.—Section 180A.)

(7) If the application is made in respect of lands in which the *raiyat* has not acquired occupancy-rights, the officer may reject it in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it:

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if in the opinion of the officer who then receives the application the circumstances have in the meantime changed.

(8) If the application is not rejected, the officer shall then determine the sum to be paid as a uniform annual money rent, and also in the case of lands in which the *raiyat* has not acquired occupancy-rights, a premium to be paid to the landlord, and he shall order that the *raiyat* shall, in lieu of paying the rent for the land as *utbandi* land, pay the sum so determined and the premium, if any:

Provided that in any case in which an order fixing a uniform annual money rent is passed *ex parte* the opposite party may within one month of the date of such order or, when the notice has not been duly served, within one month of the date of his knowledge of such order apply to the officer by whom the order was passed for an order to set it aside and, if he satisfies the officer that the notice of the application under sub-section (1) was not duly served on him or that he was prevented by any sufficient cause from appearing when the case was determined, the officer shall set aside the order and shall appoint a day for the determination of the case. No order shall be set aside on application made under this proviso unless notice thereof has been served on the respondent thereto.

(9) In making the determination of the sum to be paid as rent, the officer shall calculate the average of the amount that was actually paid or payable as rent for the land for the previous six years and shall ordinarily declare the same as the sum to be paid as rent:

Provided that the officer may also take into consideration—

- (a) the average money rent payable by occupancy-*raiyats* for land of a similar description and with similar advantages in the vicinity;
- (b) the average rates for lands of a similar description and with similar advantages in the vicinity held as *utbandi* lands;

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(Chapter XV.—Contract and custom.—Section 180A.)

- (c) the average money rent payable for lands of a similar description and with similar advantages in the vicinity by *raiyats* who formerly paid their rent for those lands as *utbandi* lands but whose rents have been converted into uniform annual money rents whether under this section or by agreement or otherwise;
- (d) the charges incurred in accordance with custom by the landlord in respect of the irrigation and drainage of the *utbandi* lands and the arrangements made for continuing those charges;
- (e) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy-*raiyats*;
- (f) any sum agreed to by the parties to be paid as money rent:

Provided that the officer shall in no case determine a rent high is unfair or inequitable.

(10) The premium to be paid to the landlord in the case of lands in which the *raiyat* has not acquired occupancy-rights shall be three times the rent, or, if the application is made under clause (c) of sub-section (2), three times the portion of the rent determined under sub-section (8) on account of such lands.

(11) If the immediate landlord of the *raiyat* is a temporary tenure-holder or *ijaradar* the officer shall apportion the premium payable under sub-section (10) between the said temporary tenure-holder or *ijaradar* and his superior landlord of the lowest degree who is a proprietor or permanent tenure-holder in such manner as may appear fair and reasonable to the officer in view of all the circumstances of the case, and any sum so awarded to the said superior landlord shall be recoverable by him from the temporary tenure-holder or *ijaradar* or his successor in interest as an arrear of rent but shall not be recoverable by the superior landlord from the *raiyat*.

(12) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(13) The officer shall fix the date (not being more than one month from the date of the order) by which

(Chapter XV.—Contract and custom.—Section 180B.)

the premium shall be paid or he may, on the application of the *raiyat*, order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section (8) takes effect and that one of the remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

¹(14) The premium or any instalment thereof shall be recoverable as rent, and interest shall not be payable on any instalment in respect of which default has not been made.

(15) Any order made under this section shall be subject to appeal in the manner provided in section ²[115C] unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(16) An application made under sub-section (1) may be amended if it appears at any time to the officer prior to the issue of the order under sub-section (7) or sub-section (8) or to the appellate or revisional Court that it does not comply with the provisions of sub-section (2) but that it can be brought into conformity with that sub-section. Such amendment may be made either on the initiative of the parties or either of them or of the officer or Court but it shall not be made unless prior notice thereof is given to the parties, and, if such amendment is made, it shall be made only on such terms or conditions as to such officer or Court shall appear to be just.

(17) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any Court in respect of any order passed under this section, save as is provided in this section.

Lands in respect of which a uniform annual money rent has been fixed under section 180A to cease to be *utbandi* lands.

³180B. Whenever an order under section 180A is passed determining a uniform annual money rent for any lands, such lands shall cease to be held as *utbandi* lands with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy-*raiyat* from the date of the order.

¹Sub-section (14) of s. 180A was substituted for the original sub-section (14) by s. 36 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²See foot-note⁴ on p. 104, *ante*.

³See foot-note⁵ on p. 154, *ante*.

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(Chapter XV.—Contract and custom.—Chapter XVI.—
Limitation.—Sections 180C—184.)

180C. (1) Where a uniform annual money rent has been fixed under section 180A, the said rent shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (a) of sub-section (1) of section 38.

Period for which rent fixed under section 180A to remain unaltered.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (12) of section 180A.

181. Nothing in this Act shall affect any incident of a *ghatwali* or other service-tenure, or in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Saving as to service-tenures.

182. When a *raiyat* or an under-*raiyat* holds his homestead otherwise than as part of his holding within the same village or any village contiguous to that village, his status in respect of his homestead shall be that of a *raiyat* or an under-*raiyat* according to the status of the landlord of the homestead, and the incidents of his tenancy of such homestead shall be governed by the provisions of this Act applicable to *raiyats* or under-*raiyats*, as the case may be.

Homesteads.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom.

* * * * *

CHAPTER XVI.

LIMITATION.

184. (1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that

Limitation in suits, appeals and applications in Schedule III.

¹See foot-note³ on p. 154, ante.

²As to *ghatwali* tenures, see the Bengal Ghatwali Lands Regulation, 1814 (XXIX of 1814), and the Bengal Ghatwali Lands Act, 1859 (V of 1859).

³This section 182 was substituted for the former section by s. 114 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴The illustrations to s. 183 were omitted by s. 115 of the same Act.

Chapter XVI.—Limitation.—Chapter XVII.—Supplemental.—Sections 185, 186.)

Schedule for them, respectively; and every such suit or appeal instituted, and application made, after the period of limitation so ¹[provided] shall be dismissed although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

Portions of the Indian Limitation Act not applicable to such suits, etc., mentioned in Schedule III.

²185. Sections 6, 7, 8 and 9 and sub-section (2) of section 29 of the Indian Limitation Act, 1908, shall not and, subject to the provisions of this Chapter, the remaining provisions of that Act, shall apply to all suits, appeals and applications specified in Schedule III annexed to this Act. IX of 1908.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

Penalties.

Penalties for illegal interference with produce.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

(a) distrains or attempts to distrain the produce of a tenant's holding, or,

* * * * *

(c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code. Act XLV of 1860.

(2) Any person who abets, within the meaning of the Indian Penal Code, the doing of any act mentioned

¹The word "provided" was substituted for the word "prescribed" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This section was substituted for the former section by s. 116 of the same Act.

*Clause (b) was omitted by s. 117 of the same Act.

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(Chapter XVII.—Supplemental.—Sections 186A, 187.)

in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

¹Damages for denial of landlord's title.

Damages for denial of landlord's title.

¹186A. (1) When, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

Damages for denial of landlord's title.

(2) The amount of damages decreed under sub-section (1), together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money, or, * * * * * in any of the modes in which a decree for rent may be executed.

Agents and representatives of landlords.

Agents and representatives of landlords.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

Power for landlord to act through agent.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

¹This heading and section 186A were inserted for Western Bengal, by s. 57 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 57 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²The words, figure and letter "subject to the provisions of section 158B" were omitted by s. 118 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XVII.—Supplemental.—Section 188.)

Action to be taken collectively by co-sharer landlords or by their common agents except in certain cases.

188. (1) Subject to the provisions of section 148A where two or more persons are co-sharer landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together or by an agent authorized to act on behalf of both or all of them :

Provided that one or more co-sharer landlords, if all the other co-sharer landlords are made parties defendant to the suit or proceeding in manner provided in sub-sections (1) and (2) of section 148A and are given the opportunity of joining in the suit or proceeding as co-plaintiffs or co-applicants, may—

- * * * * *
- (ii) bring a suit for enhancement of the rent of a tenure under section 7 or of a holding under section 30, or for alteration of rent on account of alteration in area under section 52,
 - (iii) bring a suit for ejection of a tenant on the grounds specified in section 10, clause (b) of section 18, section 25, or clause (a), clause (b), or clause (c) of section 44, or in accordance with the provisions of ³[section 48C] or section 66,
 - (iv) make applications as regards improvements under sections 78, 80 and 81,
 - (v) apply for measurement under sections 90 and 91,
 - (vi) file an application under section 105,
 - (vii) bring a suit under section 106,
 - (viii) apply for record of private lands under section 118,
 - (ix) apply for the determination of the incidents of a tenancy under section 158,
 - (x) apply to the Collector for a declaration under sub-section (3) of section 180.

(2) Any decree passed or order made in a suit or proceeding in which the conditions set forth in sub-section (1) of this section have been complied with, shall have the effect of a decree passed or order made,

¹This section was substituted for the former section by s. 119 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Clause (i) of the proviso to s. 188 (1) was omitted by s. 37 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938.)

³The word, figure and letter within square brackets in clause (iii) of the proviso to section 188 (1) were substituted for the word and figure "section 49" by s. 14 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930.)

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(Chapter XVII.—Supplemental.—Sections 188A, 189.)

on the application of the sole landlord or the whole body of landlords, and shall take effect as regards the whole tenure or holding, as the case may be:

Provided that where a suit is brought under section 7 or section 30 for enhancement of rent, or under section 52 for alteration of rent, or where an application is made under section 105 by a co-sharer landlord for settlement of rent, the Court or Revenue-officer, as the case may be, when the rent has been fixed or settled, shall distribute any amount by which the rent has been increased or reduced between the co-sharer landlords of the tenancy in proportion to their respective shares in such tenancy whether they have or whether they have not joined as plaintiffs or applicants, and such distribution shall be binding on all the co-sharer landlords as if they had all sued or applied for the same, and for the purposes of any appeal, application or suit in regard to such distribution they shall be deemed to have sued or applied under sub-section (1) of this section together with co-sharer plaintiff or applicant.

188A. (*Procedure in suits by joint landlords.*)
Rep. by s. 120 of the Bengal Tenancy (Amendment) Act, 1928 (*Ben. Act IV of 1928*).

Rules under Act.

Rules under Act.

189. The ¹[Provincial Government] may, from time to time, by notification in the *Official Gazette*, make ²rules, consistent with this Act,—

Power to make rules regarding procedure, powers of officers and services of notices.

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules, confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits;

(b) power to enter upon any land, and to survey, demarcate and make a map of the same and any power exercisable by any officer under the Bengal Survey Act, 1875; and

Ben. Act V of 1875.

¹See foot-note³ on p. 2, *ante*.

²For rules made under section 189, see the Bengal Statutory Rules and Orders, 1941, Vol. I.

[Act VIII]

(Chapter XVII.—Supplemental.—Section 189.)

- (c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of soil; and
- ¹(2) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is ²[provided in] this or any other Act;
- ¹(3) to prescribe the manner in which ³[the landlord's fee ⁴* * *] shall be transmitted to the landlord; ⁵*
- ¹(4) to prescribe the authority by whom the fees, deposited under sections 12, 13, 15, 17, ⁶[and 18] may be declared to be forfeited, and the mode in which such fees, when so forfeited, shall be dealt with; ⁷[and]
- ⁸(5) to provide for all or any of the following matters, namely—
- (a) the manner of publication of—
- (i) notifications under sub-section (3) of section 1;
- (ii) price lists under sub-section (3) of section 39;

¹These sub-sections (2) to (4) were substituted for the original sub-section (2), for Western Bengal, by s. 59 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 59 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908). The original sub-section ran thus:—

“(2) to prescribe the mode of service of notices under this Act, where no mode is prescribed by this or any other Act.”

²The words “provided in” were substituted for the words “prescribed by” by s. 121 (1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words “the landlord's fee or the landlord's transfer fee” were substituted for the words “landlord's fee” by s. 121 (2) of the same Act.

⁴The words “or the landlord's fee” in s. 189 (3) were omitted by s. 38 (1) (a) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁵The word “and” at the end of clause (3) of s. 189 was omitted by s. 38 (1) (b) of the same Act.

⁶The word and figure “and 18” in clause (4) of s. 189 were substituted for the words, figures, letters and brackets “18, clause (a), 26C, 26E and 48H” which were substituted for the words, figures, letter and brackets “and 18, clause (a)” by s. 121 (3) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), by s. 38 (2) (a) of the same Act.

⁷This word was inserted by s. 38 (2) (b) of the same Act.

⁸Clause (5) of s. 189 was inserted by s. 121 (4) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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- (iii) notices under sub-section (2) of section 87;
 - (iv) the draft record-of-rights under sub-section (1) of section 103A;
 - (v) the record-of-rights under sub-section (2) of section 103A;
 - (vi) Tables of Rates under sub-section (2) of section 104B;
 - (vii) the draft Settlement Rent-roll under sub-section (1) of section 104E;
 - (viii) proclamation under clause (d) of sub-section (3) of section 163; and
 - (ix) the rules made by authorities other than the ¹[Provincial Government] or the High Court under sub-section (2) of section 190;
- (b) the manner of payment of the landlord's fee under sub-section (4) of section 12 ²* * * *;
- ³(c) the amount of fees—
- (i) for processes referred to in sub-section (2) of section 12, in sub-sections (1), (2), (3), (4) and (5) of section 26C, in sub-section (6) of section 26G, in sub-section (2) of section 85A and in sub-section (2) of section 88;
 - (ii) for service of notice referred to in sub-section (1) of section 13; and
 - (iii) referred to in sub-section (2) of section 61 and in sub-section (6) of section 88;
- (d) the amount of the cost of transmission of fees or other monies;
- (e) the manner of payment or tender of rent by postal money-order;
- (f) the manner of verification of applications under sub-section (2) of section 80;

¹See foot-note³ on page 2, *ante*.

²The words, figures, letter and brackets "and of the landlord's transfer fee and costs of transmission under sub-section (7) of section 26C" were omitted by s. 38 (3) (a) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³This new sub-clause (c) of s. 189 (5) was substituted for the original sub-clause (c) by s. 38 (3) (b) of the same Act.

(Chapter. XVII.—Supplemental.—Section 190.)

- (g) the information to be contained in the applications referred to in sub-section (2) of section 80;
 - (h) the form of the register referred to in clause (a) of sub-clause (2) of section 99A and the particulars to be therein entered;
 - (i) the manner of making a survey and preparing a record-of-rights under sub-section (4) of section 101;
 - (j) the particulars referred to in the proviso to clause (j) of section 102;
 - (k) the period of publication of the draft record-of-rights under sub-section (1) of section 103A and of the draft Settlement Rent-roll under sub-section (1) of section 104E;
 - (l) the manner in which objections shall be considered and disposed of under sub-section (2) of section 103A;
 - (m) the empowering of the "confirming authority" referred to in sub-section (4) of section 104B;
 - (n) the superior Revenue authority referred to in section 104G;
 - (o) the stamp to be borne by applications under sub-section (1) or sub-section (2) of section 105;
- * * * * *
- (q) any other matter required or permitted under this Act to be prescribed.

Procedure for making, publication and confirmation of rules.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the ²[Provincial Government] or High Court, in such manner as may, in its opinion, be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the *Official Gazette*.

¹Sub-clause (p) of s. 189 (5) was omitted by s. 38 (3) (c) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²See foot-note¹ on page 2, *ante*.

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(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the *Official Gazette* of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

Provisions as to temporarily-settled districts.

191. Where the area comprised in a tenure or holding is situate in an estate not subject to a subsisting permanent settlement and when,

Settlement of rent of land held in a district, not permanently settled.

(a) land-revenue is for the first time made payable in respect of the land, or

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

nothing in this Act or in any lease or contract made after the passing of the Bengal Tenancy Act, 1885, shall entitle any tenant to hold his tenancy free of rent or, at a particular rent, unless in the case of a fresh settlement made under clause (b) the right so to hold beyond the term of the previous settlement has been expressly recognised at the previous settlement by a Revenue authority empowered by ²[the Provincial Government] to make definitively or confirm settlements, and the Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the

¹This section was substituted for former sections 191 and 192 by s. 122 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words within square brackets were substituted for the word "Government" by Schedule I to the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter XVII.—Supplemental.—Sections 192—194.)

application of the landlord or of the tenant, or of his own motion, fix a fair and equitable rent for all grades of tenants in accordance with the principles laid down in sections 6, 7, 8, 9, 27 to 36, 38, 39, 43, 50 to 52 and 180:

Provided that, notwithstanding anything contained in sub-section (3) of section 7 he may divide the minimum profit of ten *per centum* provided for in that sub-section among two or more grades of tenure-holders if such exists.

192. (*Power to alter rent in case of new assessment of revenue.*) Amalgamated with section 191 by s. 122 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

*Rights of
pasturage, etc.*

Rights of pasturage, etc.

Rights of
pasturage,
forest-rights,
etc.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-right, rights over fisheries and the like.

*Saving for
conditions
binding on
landlords.*

Saving for conditions binding on landlords.

Tenant not
enabled by Act
to violate
conditions
binding on
landlord.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition:

¹Provided that this section shall not apply to a *raiyat* or an under-*raiyat* doing any act in exercise of the rights conferred by this Act upon *raiyats* or under-*raiyats*, as the case may be.

¹This proviso was inserted by s. 123 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter XVII.—Supplemental.—Sections 195, 195A.)

Savings for special enactments.

Savings for special enactments. Savings for special enactments.

195. Nothing in this Act shall affect—

- (a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;
- (b) any enactment regulating the procedure for the realisation of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue authorities;
- (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;
- (d) any enactment relating to the partition of revenue-paying estates;
- (e) any enactment relating to *patni*-tenures in so far as it relates to those tenures, except that—
 - (i) the provisions of section 67 and of clause (i) of sub-section (1) of section 178 shall apply to all *patni*-tenures, and
 - (ii) the expression "*khudkast raiyat* or resident and hereditary cultivator" in sub-section (3) of section 11 of the Bengal *Patni Taluks Regulation, 1819*, shall be deemed to include all *raiya*t*s* having a right of occupancy; or
- (f) any other special or local law not repealed either expressly or by necessary implication by this Act.

Reg. VIII of 1819.

Protection for certain acts.

Protection for certain acts.

¹195A. No suit or other proceeding shall be instituted against the ²[Crown] or against any officer of the

Protection in certain cases for acts done.

¹Clause (e) was substituted for former clause (e) as substituted by s. 124 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), by s. 39 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²This section was inserted by s. 15 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

³The word "Crown" was substituted for the words "Secretary of State for India in Council" by Schedule I to the Government of India (Adaptation of Indian Laws) Order, 1937.

[Act VIII

(Chapter XVII.—Supplemental.—Section 196.)

¹[Crown] in respect of anything done by the registering officer, the Collector or the Court in regard to the receiving, distribution or payment of the landlord's fee or the landlord's transfer fee:

Provided that nothing in this section shall prevent any person entitled to receive the amount of any such landlord's fee or landlord's transfer fee or any portion thereof from recovering the same from a person to whom it has been paid by the Collector or the Court.

* * * * *

196. (*Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.*) *Rep. by s. 125 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).*

¹This word was substituted for the word "Government" by Schedule I to the Government of India (Adaptation of Indian Laws) Order, 1937.

²The heading "construction of Act" and s. 196 were repealed by s. 125 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Schedule.—Repeal of enactments.)

SCHEDULE I.

(See section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
8 of 1793 ..	A regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the public revenue payable from the lands of the <i>zamindars</i> , independent <i>talukdars</i> and other actual proprietors of land in Bengal, Bihar and Orissa, passed for those Provinces, respectively, on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
12 of 1805 ..	A regulation for the settlement and collection of the public revenue in the <i>zila</i> of Cuttack, including the <i>parganas</i> of Pataspur, Kamardachor and Bhograï, at present included in the <i>zila</i> of Midnapore.	Section 7.
5 of 1812 ..	A regulation for amending some of the rules at present in force for the collection of the land revenue.	Sections 2, 3, 4, 26 and 27.
18 of 1812 ..	A regulation for explaining section 2, Regulation 5, 1812, and rescinding sections 3 and 4, Regulation 44, 1793, and sections 3 and 4, Regulation 50, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
11 of 1825	A regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "Nor if annexed to a subordinate tenure" to the end of the clause.

[Act VIII]

*(Schedule I.—Repeal of enactment.)**Acts of the Bengal Council.*

Number and year.	Subject of Act.	Extent of repeal.
6 of 1862 ..	An Act to amend Act 10 of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
4 of 1867 ..	An Act to explain and amend Act 6 of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
8 of 1869 ..	An Act to amend the Procedure in suits between landlords and tenants.	The whole Act.
8 of 1879 ..	An Act to define and limit the powers of Settlement-officers. <i>Act of the Governor General in Council.</i>	The whole Act.
10 of 1859 ..	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

of 1885.]

(Schedule II.—Particulars of receipt and of statement of account.)

¹SCHEDULE II.

PARTICULARS OF RECEIPT AND ²[OF STATEMENT OF ACCOUNT].

(See sections 56 and 57.)

Particulars of receipt (landlord's portion).	Particulars of receipt (tenant's portion).
1. Serial number of receipt.	1. Serial number of receipt.
2. Name of village, pargana, thana.	2. Name of village, pargana, thana.
3. (a) Name of the estate and <i>tsuri</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.	3. (a) Name of the estate and <i>tsuri</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.	4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.	5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar, bankar</i> and <i>phalkar</i> .	6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar, bankar</i> and <i>phalkar</i> .
7. Amount paid, specifying for which of the items (c), (d) and (e) and for which year and <i>kist</i> .	7. Amount paid, specifying for which of the items (c), (d) and (e) and for which year and <i>kist</i> .
8. Date of payment.	8. Date of payment.
9. Signature of landlord or his authorized agent.	9. Signature of landlord or his authorized agent.

¹Schedule II was substituted for former schedule by s. 130 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words within square brackets in the heading to Schedule II, were substituted for the word "Account" by s. 16 (a) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

[Act VIII]

(Schedule II.—Particulars of receipt and of statement of account.)

[Particulars of statement of account.] (Landlord's portion.)	[Particulars of statement of account.] (Tenant's portion.)
1. Serial number of receipt.	1. Serial number of receipt.
2. Name of village, pargana, thana.	2. Name of village, pargana, thana.
3. (a) Name of the estate and <i>tauzi</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.	3. (a) Name of the estate and <i>tauzi</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.	4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.	5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar, bankar</i> and <i>phalkar</i> .	6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar, bankar</i> and <i>phalkar</i> .
7. Amounts due at the beginning of the year:— (a) under each of the items (c), (d) and (e) and for which years; and (b) as interest on above.	7. Amounts due at the beginning of the year:— (a) under each of the items (c), (d) and (e) and for which years; and (b) as interest on above.
8. Amounts paid during the years against each of the above dues, with dates of payment and serial number of the rent-receipt granted.	8. Amounts paid during the years against each of the above dues, with dates of payment and serial number of the rent-receipt granted.
9. Amounts remaining due at the end of the year.	9. Amounts remaining due at the end of the year.
10. Date of the statement of account.	10. Date of the statement of account.
11. Signature of landlord or his authorized agent.	11. Signature of landlord or his authorized agent.

¹These words within square brackets in the sub-heading were substituted for the words "Particulars of account" by s. 16 (b) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

of 1885.]

(Schedule III.—Limitation.)

¹SCHEDULE III.

LIMITATION.

(See section 184.)

PART I.—Suits.

Description of suit.	Period of limitation.	Time from which period begins to run.
1. To eject any tenure-holder, ² [<i>raiyat</i> or under- <i>raiyat</i>] on account of any breach of a condition in respect of which there is a contract expressly providing that ejection shall be the penalty of such breach.	One year	The date of the breach.
² 1(a) To eject a non-occupancy- <i>raiyat</i> ³ [or under- <i>raiyat</i>] on the ground of the expiration of the term of his lease.	Six months	The expiration of the term.
2. For the recovery of an arrear of rent ⁴ in a suit brought by— (⁵) a sole landlord, (⁶) the entire body of landlords, or (⁷) one or more co-sharer landlords— (a) when the arrear fell due before a	Six months	The date of the service of notice of the

¹The word "rent" in Schedule III includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3 (13), *ante*.

²These words within square brackets in Article 1 of Schedule III were substituted for the words "or *raiyat*" by s. 17 (1) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

³Article 1 (a) was inserted, for Western Bengal, by s. 61 (1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 61 (1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁴These words within square brackets in Article 1 (a) of Schedule III were inserted by s. 17 (2) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

⁵The words "in a suit brought by—

(⁵) a sole landlord,

(⁶) the entire body of landlords, or

(⁷) one or more co-sharer landlords"

in Article 2 were inserted, for Western Bengal, by s. 61 (a) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 61 (a) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

(Schedule III.—Limitation.)

Description of suit.	Period of limitation.	Time from which period begins to run.
deposit was made under section 61 on account of the rent of the same tenure or holding.		deposit or presentation of the postal money-order, as the case may be.
(b) in other cases	Three years	³ The last day of the agricultural year in which the arrear fell due.
3. To recover possession of land claimed by the plaintiff as ⁴ a <i>raiyat</i> or an under- <i>raiyat</i> .	Two years	The date of dispossession.

PART II.—Appeals.

Description of appeal.	Period of limitation.	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days	The date of the decree or order appealed against.
5. From any order of a Collector under this Act, to the Commissioner.	Thirty days	The date of the order appealed against.

¹The words "tenure or holding" were inserted by s. 131 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "or presentation of the postal money-order, as the case may be" were inserted by s. 131 of the same Act.

³This entry was substituted for the original entry, for Western Bengal, by s. 61 (b) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 61 (b) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908). The original entry ran thus:—

"The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of *Jeth* of the *Amlî* or *Fasî* year in which the arrear fell due, where either of those years prevails".

⁴The words "a *raiyat* or an under-*raiyat*" in Article 3 were substituted for the words "an occupancy-*raiyat*", for Western Bengal, by s. 61 (3) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 61 (3) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

of 1885.]

(Schedule III.—Limitation.)

PART III.—Applications.

Description of application.	Period of limitation.	Time from which period begins to run.
<p>6. For the execution of a decree or order made [in a suit between landlord and tenant to whom the provisions of this Act are applicable,] and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, *1908 : *Provided that, where a sale in execution of arrears of rent is set aside on application, the proceedings in execution shall continue and the time between the date of such sale and the date of the order setting it aside shall be excluded from the period of limitation provided by this Article.</p>	<p>Three years</p>	<p>(1) The date of the decree or order ; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court ; or (3) where there has been review of judgment, the date of the decision passed on the review.</p>

IX of 1908.

*These words within square brackets in Article 6 were substituted for the words "under this Act or any Act repealed by this Act," for Western Bengal, by s. 61 (4) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by s. 61 (4) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

*The figure '1908' was substituted for the figure "1877" by s. 132 (1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

*This proviso was inserted by s. 132 (2) of the same Act.

BENGAL ACT No. I OF 1903.

[PUBLISHED IN THE CALCUTTA GAZETTE OF THE 25TH FEBRUARY, 1903.]

An Act to validate certain transfers, made under the Bengal Tenancy Act, 1885, of permanent tenures and holdings at fixed rents or fixed rates and of shares in the same; and to amend section 106 of that Act. VIII of 1885.

WHEREAS doubts and difficulties have arisen respecting the meaning and effect of sections 12, 13, 17 and 18 of the Bengal Tenancy Act, 1885, as regards the payment of the prescribed landlord's fee, and the effect of the non-payment of such fee; VIII of 1885.

And whereas it is expedient to declare that registered transfers and sales and decrees or orders for foreclosure of mortgage, confirmed and made absolute by the Civil Courts, of permanent tenures and holdings at fixed rates and fixed rents, and of shares in such tenures and holdings, shall not be deemed to be invalid merely on the ground that the landlord's prescribed fee has not been paid;

And whereas it is also expedient to amend section 106 of the said Act in manner hereinafter appearing;

And whereas, the said Act having been passed by the Governor General of India in Council, the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

55 & 56
Vict., c. 14.

It is hereby enacted as follows:—

1. No transfer which has heretofore been made or which may hereafter be made under section 12, section 13, section 17 or section 18 of the Bengal Tenancy Act, 1885, of a permanent tenure, or of a holding at a rent or rate of rent fixed in perpetuity or of a share in such tenure or holding, shall be deemed to be invalid merely on the ground that the landlord's fee prescribed by the said sections 12 or 13 has not been paid: VIII of 1885.

Provided always that, subject to the *Explanation* following, nothing in this section shall be held to affect the decision of a Court of competent jurisdiction which has become final before the commencement of this Act.

Explanation.—A decree in a suit for rent which has become final disallowing a claim for rent on the ground that the relationship of landlord and tenant does not exist between the parties

[Price—Indian, six pies; English, ½d.]

Tenancy. [Ben. Act I of 1903.]

to the suit by reason of the non-payment of the landlord's fee, shall not bar a suit for rent which became payable subsequently to such claim.

Realization
of fee when
left unpaid.

2. In any case where the prescribed fee has been or may hereafter be left unpaid, the landlord may, within two years of the commencement of this Act,

or within two years of the date of registration of the document effecting the transfer,

or within two years of the date of confirmation of the sale by the Civil Court,

or within two years of the date upon which a decree or order absolute for the foreclosure of a mortgage has been or may hereafter be made by the Civil Court,

apply to the Collector for realization of such fee from the transferee, or from the auction-purchaser or from the person who has obtained an order absolute for foreclosure of mortgage in the Civil Court, and on such application being presented, the Collector shall realize such fee if still unpaid, together with costs of realization, from such person as if it were an arrear of revenue.

Saving of
section 88.

3. Nothing in section 1 shall be deemed to affect the provisions of section 88 of the said Bengal Tenancy Act, 1885.

VIII of 18

Substitution
of a new section
for section 106.

4. For section 106 of the said Act, the following shall be substituted, namely:—

“106. In proceedings under this Part, a suit may be instituted before a Revenue-officer at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A of this Act, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from, the record, whether such dispute be between landlord and tenant or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter, and the Revenue-officer shall hear and decide the dispute:

Provided that the Revenue-officer may, subject to such rules as the Local Government may prescribe in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial.”

Short title.

5. This Act may be called the Bengal Tenancy (Validation and Amendment) Act, 1903.

BENGAL ACT No. I. OF 1907.

[PUBLISHED IN THE CALCUTTA GAZETTE OF THE 22ND MAY, 1907.]

An Act to amend and supplement the Bengal Tenancy Act, 1885.

SECTION.

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XDCJ: C2262

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CHAPTER IVA.

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- 18A. Saving as to statements in instruments of transfer where landlord no party.
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[Price—Indian, four annas; English, four pence.]

SECTION.

18. Amendment of section 88.
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 - 111B. Stay of suits in which certain issues arise.
36. Amendment of section 112.
37. Amendment of section 114.

SECTION.

38. New section 115A—

115A. Demarcation of village boundaries.

39. Addition to heading to Chapter XI.

40. Amendment of section 116.

41. Amendment of section 120.

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147A. Compromise of suits between landlord and tenant.

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43. Amendment of section 148.

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148A. Suits for arrears of rent by co-sharer landlords.

45. Amendment of sections 149 and 150.

46. Addition of *Explanation* to section 153.

47. New section 153A—

153A. Deposit on application to set aside *ex parte* decree.

48. Amendment of sub-section (1) of section 158.

49. New Chapter XIII A and new section 158A—

CHAPTER XIII A.

SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS
UNDER THE PUBLIC DEMANDS RECOVERY
ACT, 1895.

158A. Recovery of arrears by the certificate procedure in certain areas.

50. New section 158B—

158B. Passing of tenure or holding sold in execution of decree.

51. Addition of clause (v) to section 161.

52. Amendment of section 168.

53. Amendment of sub-section (1) of section 169 and addition of proviso.

54. Amendment of section 170.

iv. *Bengal Tenancy (Amendment)*. [BEN. ACT I OF 1907.]

SECTION.

55. Amendment of section 174.
56. Amendment of sub-section (3) of section 178.
57. New heading and new section 186A—
Damages for denial of landlord's title.
186A. Damages for denial of landlord's title.
58. New section 188A—
188A. Procedure in suits by joint-landlords.
59. New clauses (2), (3) and (4) in section 189.
60. Amendment of section 192.
61. Amendment of Schedule III.

BENGAL ACT No. I OF 1907.

[PUBLISHED IN THE CALCUTTA GAZETTE OF THE 22ND MAY, 1907.]

An Act to amend and supplement the Bengal Tenancy Act, 1885.

WHEREAS it is expedient to amend the Bengal Tenancy Act, 1885, in the manner hereinafter appearing; VIII 1885.

And whereas the previous sanction of the Governor General has been obtained under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

55 & 56
Vict., c. 14.

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bengal Tenancy (Amendment) Act, 1907.

Repeal. of sections 14 and 45 of Act VIII of 1885.

2. Sections 14 and 45 of the Bengal Tenancy Act, 1885, are hereby repealed. VIII 1885.

Additions to section 1.

3. (1) In sub-section (3) of section 1 of the said Act, after the words "the town of Calcutta" the words "any area constituted a Municipality under the provisions of the Bengal Municipal Act, 1884, or part thereof, and specified in a notification in this behalf by the Local Government" shall be inserted.

Ben. Act III
of 1884.

(2) To the said sub-section the following *Explanation* shall be added, namely :—

"*Explanation.*—The words 'the town of Calcutta' mean, subject to the exclusion or inclusion of any local area by notification under section 637 of the Calcutta Municipal Act, 1899, the area described in Schedule I to that Act."

Ben. Act III
of 1899.

Amendment of clauses (5) and (10) of section 3.

4. In section 3 of the Bengal Tenancy Act, 1885,—

(1) in clause (5), after the word and figures "Chapter XII," the word and figures "Chapter XIV" shall be inserted; VIII of 1885.

Bengal Tenancy (Amendment). [BEN. ACT I

(Secs. 5—7.)

(2) for clause (10) the following shall be substituted, namely:—

“ (10) ‘village’ means the area defined, surveyed and recorded as a distinct and separate village in—

(a) the general land-revenue survey which has been made of the Province of Bengal, or

(b) any survey made by the Government which may be adopted by notification in the Calcutta Gazette, as defining villages for the purposes of this clause in any specified area;

and where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village. ”

Amendment
of sections 12
and 13 (2).

5. (1) To sub-section (2) of section 12 of the said Act the following shall be added, namely:—

“ together with the costs necessary for the transmission of the landlord’s fee to the landlord.”

(2) In sub-section (3) of the said section and in sub-section (2) of section 13—

(i) after the words “landlord’s fee” the words “the costs necessary for the transmission of the same” shall be inserted;

(ii) for the word “paid” the word “transmitted” shall be substituted, and

(iii) after the word “landlord” the words “named in the notice” shall be inserted.

Amendment
of sections 13
(1) and 15.

6. (1) In sub-section (1) of section 13 of the said Act, after the words “foregoing section”, and in section 15 after the word and figures “section 12”, the words “together with the costs necessary for its transmission to the landlord” shall be inserted.

(2) In the said section 15—

(i) for the word “paid” the word “transmitted” shall be substituted, and

(ii) after the word “landlord” the words “named in the notice” shall be inserted.

Amendment
of section 16.

7. In section 16 of the said Act, for the words “and fees” the words “fees and costs” shall be substituted.

(Secs. 8, 9.)

Chapter 8. After section 18 of the said Act the following shall be inserted, namely:—

“CHAPTER IVA.

“PROVISIONS AS TO TRANSFERS OF TENURES AND HOLDINGS AND LANDLORD’S FEES.

“18A. Nothing contained, in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, amount or fixity of rent, area, transferability or any incident of any tenure or holding referred to in such instrument.

Saving as to statements in instruments of transfer where landlord no party.

“18B. The acceptance by a landlord of any landlord’s fee payable under Chapter III or Chapter IV in respect of any tenure or holding shall not operate—

Saving as to acceptance of landlord’s fees.

- (a) as an admission as to the permanence, amount or fixity of rent, area, transferability or any incident of such tenure or holding, or
- (b) as an express consent under section 88 to the division of such tenure or holding, or to the distribution of the rent payable in respect thereof.

“18C. All landlord’s fees paid under Chapter III or Chapter IV which are held in deposit on or after the commencement of the Bengal Tenancy (Amendment) Act, 1907, may, unless accepted or claimed by the landlord within three years from such commencement or from the date of the service of the notice prescribed in section 12, section 13 or section 15 (as the case may be), whichever is later, be forfeited to the Government.”

9. (1) Section 19 of the Bengal Tenancy Act, 1885, shall be re-numbered section 19, sub-section (1).

Amendment section 19.

(2) In the said sub-section (1), after the words “this Act”, in both places where they occur, the words, brackets and figures “or the Bengal Tenancy (Amendment) Act, 1907,” shall be inserted.

(3) After the said sub-section (1), the following shall be inserted, namely:—

“(2) The exclusion from the operation of this Act, by a notification under sub-section (3) of section 1, of any area constituted a Municipality under the provisions of

Ben. Act I of 1907.
Ben. Act I of 1907.

Bengal Tenancy (Amendment). [BEN. ACT I

((Secs. 10, 11.)

the Bengal Municipal Act, 1884, or of any part of such area, or the inclusion of any area in the town of Calcutta by notification under section 637 of the Calcutta Municipal Act, 1899, shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area." Ben. Act of 1884.
Ben. Act of 1899.

Amendment
of section 22.

10. In section 22 of the Bengal Tenancy Act, 1885,— VIII of 188

- (a) in sub-section (1), for the words "the occupancy-right shall cease to exist" the words "such person shall have no right to hold the land as a tenant, but shall hold it as a proprietor or permanent tenure-holder (as the case may be)" shall be substituted ;
- (b) in sub-section (2) for the words from "it shall cease to exist" to the end of the sub-section the following shall be substituted, namely:—

"he shall be entitled to hold the land subject to the payment to his co-proprietors or joint permanent tenure-holders of the shares of the rent which may be from time to time payable to them ; and if such transferee sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be, in respect of the land.

Illustration.—A, a co-sharer landlord, purchases the occupancy holding of a raiyat X. A is entitled himself to hold the land on payment to his co-sharers of the shares of the rent payable to them in respect of the holding. A sub-lets the land to Y, who takes it for the purpose of establishing tenants on it ; Y becomes a tenure-holder in respect of the land. Or A sub-lets it to Z, who takes it for the purpose of cultivating it himself ; Z becomes a raiyat in respect of the land."

- (c) in sub-section (3), after the word "acquire" the words "by purchase or otherwise" shall be inserted.

Amendment
of section 40.

11. In section 40 of the said Act—

- (i) in sub-section (1), after the words "partly in another" the words "or partly in any of those ways and partly in cash" shall be inserted ;
- (ii) in sub-section (2), for the words "an officer making a settlement of rents" the following shall be substituted, namely:—

"a Revenue-officer appointed by the Local Government under the designation of

OF 1907.]

Bengal Tenancy (Amendment).

(Secs. 12, 13.)

Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights ;”

(iii) in clause (b) of sub-section (4), the word “and” shall be omitted, and

(iv) to the said sub-section (4) the following shall be added, namely :—

“and (d), improvements effected by the landlord or by the occupancy-raiyat in respect of the raiyat’s holding, and to the rules laid down in section 33 regarding enhancement of rent on the ground of a landlord’s improvement.”

section 12. After section 40 of the said Act the following shall be inserted, namely :—

“40A. (1) Where the rent of a holding has been commuted

Period for which commuted rents are to remain unaltered.

under section 40, it shall not, except on the ground of a landlord’s improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years ; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (a) of sub-section (1) of section 38.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (5) of section 40.”

13. To section 52 of the said Act, the following shall be added, namely :—

“(6) When in a suit under this section the landlord or tenant proves that, at the time the measurement on which the claim is based was made, there existed in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situate, a practice of settlement being made after measurement of the land assessed with rent, it may be presumed that the area of the tenure or holding specified in any patta or kabuliyat, or (where there is an entry of area in a counter-foil receipt corresponding to the entry in the rent-roll) in any rent-roll relating to it, has been entered in such patta, kabuliyat or rent-roll after measurement.”

(Secs. 14, 15.)

Amendment
of section 58.

14. For sub-section (3) of section 58 of the said Act, the following shall be substituted, namely :—

“(3) If a landlord or his agent without reasonable cause fails to deliver to the tenant a receipt or statement, or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

“(4) The Collector may hold a summary inquiry under sub-section (3) either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

“(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

“(6) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (3) or awarding compensation under sub-section (5); and the orders passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

“(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

“(8) For the purpose of an inquiry under this section, the Collector shall have power to summon, and enforce the attendance of, witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under the Code of Civil Procedure.”

15. In section 67 of the Bengal Tenancy Act, 1885— VII

Amendment
of section 67.

(a) after the word “twelve” the words “and-a-half” shall be inserted, and

(b) for the words “to the institution of the suit” the words “to the date of payment or of the institution

(S. cs. 16—19.)

of the suit, whichever date is earlier," shall be substituted.

Amendment
section 69.

16. (1) To sub-section (3) of section 69 of the said Act, the following shall be added, namely:—

“but an order made by the Collector under this sub-section shall not prevent the execution of any order passed by the Court for the distraint of the tenant's crops.”

(2) To the said section the following shall be added, namely:—

“(4) Every officer appointed by the Collector under sub-section (1) to appraise or divide the produce shall, for the purposes of the Indian Penal Code, be deemed to be a public servant.” XLV of 1860.

Amendment
section 75.

17. In section 75 of the Bengal Tenancy Act, 1885, after the word “rent” the words “or interest” shall be inserted. VIII of 1885.

Amendment
section 88.

18. (1) In section 88 of the said Act, for the words “with his consent in writing” the words “with his express consent in writing, or with that of his agent duly authorized in that behalf” shall be substituted.

(2) To the same section the following proviso shall be added, namely:—

“Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided, or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.”

Amendment
Section-
section.

19. In sub-section (2) of section 101 of the said Act,—

(1) for clause (a) the following clause shall be substituted, namely:—

“(a) where—

- (i) the landlord or tenants, or
- (ii) a proportion of not less than one-half of the total number of landlords, or
- (iii) a landlord, or a proportion of the landlords, whose interest, or the aggregate of whose interests, respectively, in the lands of the local area, estate or tenure or part thereof

(Sec. 20.)

is not less than one-half of the total shares of all the landlords therein, or

(iv) a proportion of not less than one-fourth of the total number of tenants,

applies, or apply, for such an order, depositing, or giving security for, such amount for the payment of expenses as the Local Government directs;” and

(2) to clause (c) the following shall be added, namely:—

“or a Manager appointed by the District Judge under section 95.”

Amendment of section 102. 20. In section 102 of the said Act—

(1) after clause (d) the following clause shall be inserted, namely:—

“(dd) the name of each proprietor in the local area or estate;”

(2) after clause (g) the following clause shall be inserted, and shall be deemed to have been so inserted from the commencement of the Bengal Tenancy (Amendment) Act, 1898, namely:—

—“(gg) the rights and obligations of each tenant and landlord in respect of—

(i) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well or any other source of supply, and

(ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land;”

(3) After clause (h) the following shall be inserted, namely:—

“(i) any right of way or other easement attaching to the land for which a record-of-rights is being prepared;”

and the existing clause (i) shall be re-lettered clause (j).

(Secs. 21, 22.)

New section
102A.

21. After section 102 of the Bengal Tenancy Act, 1885, VIII of 1885, so amended, the following shall be inserted, namely:—

“102A. The Local Government may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes regarding the use or passage of water,

Power to order survey and preparation of record-of-rights as to water.

make an order directing that a survey be made, and a record-of-rights be prepared, by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

(a) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well or any other source of supply; and

(b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.”

Amendment
of section
103B.

22. For section 103B of the said Act the following shall be substituted, namely:—

“103B. (1) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied; and a certificate signed by the Revenue-officer, or by the Collector of any district in which the local area, estate or tenure or part thereof to which the record-of-rights relates, is wholly or partly situate, stating that a record-of-rights has been finally published under this Chapter, shall be conclusive evidence of such publication.

(2) The Local Government may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in such area, and such notification shall be conclusive evidence of such publication.

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry, and shall be

(Secs. 23-26)

presumed to be correct until it is proved by evidence to be incorrect."

Amendment
of heading to
Part II of
Chapter X.

23. In the heading to Part II of Chapter X of the said Act, for the words "*decision of disputes*" the words "*disposal of objections*" shall be substituted.

Amendment
of sections 104
and 105.

24. (1) In clause (b) of section 104, and in sub-section (2) of section 105 of the said Act, for the word, letter and brackets "clause (i)" the word, letter and brackets "clause (j)" shall be substituted.

(2) To the said section 104 the following proviso shall be added, namely:—

"Provided that the Revenue-officer shall not settle the rents of tenants of every class in an estate or tenure belonging to the Government, if it does not appear to the Local Government to be expedient that he should do so."

Amendment
of sub-section
(3), clause (g),
of section
104H.

25. In clause (g) of sub-section (3) of section 104H of the said Act, for the words "have not been recorded or have" the words "or any right of way or other easement attaching to the land which is the subject of the tenancy have not, or has not, been recorded or have, or has," shall be substituted.

New section
105A.

26. After section 105 of the said Act the following shall be inserted, namely:—

"105A. Where, in any proceedings for the settlement of rents under this Part, any of the following issues arise:—

Decision of questions
arising during the course
of settlement of rents
under this Part.

- (a) whether the land is, or is not, liable to the payment of rent;
- (b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
- (c) whether the relation of landlord and tenant exists;
- (d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;

(Secs. 27, 28.)

(f) whether the special conditions and incidents of the tenancy or any right-of-way or other easement attaching to the land have not, or has not, been recorded or have, or has, been wrongly recorded ;

the Revenue-officer shall try and decide such issue and settle the rent under section 105 accordingly :

Provided that the Revenue-officer shall not try any issue under this section, which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue-officer in a suit instituted before him under section 106."

Addition of proviso to section 106.

27. To section 106 of the said Act the following proviso shall be added, namely:—

"Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A."

Amendment of section 107.

28. In section 107 of the said Act—

(a) in sub-section (1) for the words and figures "In all proceedings for the settlement of rents under this Part, and in all proceedings under section 106" the words, figures and letter "In all proceedings under section 105, section 105A and section 106" shall be substituted, and

(b) for sub-section (2) the following shall be substituted, namely:—

"(2) A note of all rents settled under section 105 and of all decisions of issues or disputes under section 105A or section 106, and of all rents commuted under section 40 by a Revenue-officer appointed by the designation of Settlement Officer or Assistant Settlement Officer, shall be made in the record-of-rights finally published under sub-section (2) of section 103A, and such note shall be considered as part of the record."

(Secs. 29—33.)

Amendment
of section 108.

29. In section 108 of the said Act, after the word and figures "section 105" the word, figures and letter "section 105A" shall be inserted.

New section
108A.

30. After section 108 of the said Act the following shall be inserted, namely:—

"108A. Any Revenue-officer specially empowered by the Local Government in this behalf, may, on application or of his own motion, within twelve months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bona-fide* mistake:

Provided that no such correction shall be made if an appeal affecting such entry is pending under section 109A, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter."

Amendment
of section 109.

31. In section 109 of the said Act, for the words and figures "or suit instituted under section 105, section 106, section 107 or section 108", the words, figures and brackets "suit instituted or proceedings taken under sections 105 to 108 (both inclusive)" shall be substituted.

Amendment
of section
109A.

32. In sub-section (2) of section 109A of the said Act, after the figures "108" the letter "A" shall be inserted.

New sections
109B, 109C and
109D.

33. In Part IV of Chapter X of the said Act so amended immediately before section 110, the following shall be inserted, namely:—

"109B. (1) In framing a record-of-rights, and in deciding disputes, under this Chapter, the Revenue-officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant,

but he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(2) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Revenue-officer shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a

(Sec. 33.)

manner, or to an extent, not allowed by section 29 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(3) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue-officer shall not give effect to such agreement or compromise, unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-ryyat; this affects the rights of the tenants of B. The Revenue-officer must, under sub-section (3), inquire whether B is a tenure-holder or a raiyat, as defined in section 5. If he finds on the evidence that B is a raiyat, he may give effect to the agreement, but shall not do so if he finds that B is a tenure-holder.

“109C. (1) Notwithstanding anything contained in section 109B, if, in any case, while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding, a Revenue-officer specially empowered in this behalf by the Local Government may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act; and the provisions of section 113 shall apply to a rent so settled.

(2) A landlord or tenant may appeal to the Special Judge appointed under section 109A on the ground that the rent settled by the Revenue-officer, under sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken; within one year from the date of the order, under sub-section (1), settling a rent as a fair and equitable rent, direct the revision of the rent so settled:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

“109D. A note of all rents settled and of all decisions of disputes, on revision or appeal under section 108, section 109A, or sub-section (2)

Note of decisions on record.

(Secs. 34, 35.)

or sub-section (3) of section 109C, shall be made in the record-of-rights finally published under sub-section (2) of section 103A, and such note shall be considered as part of the record."

Amendment of section 111. 34. In section 111 of the said Act, after the word "entertain" the words and figures "any application made under section 158, or" shall be inserted.

New section III B. 35. After section 111A of the said Act, the following shall be inserted, namely:—

"111B. (1) Where a record-of-rights has been prepared and finally published in respect of the land in any area in which a settlement of land-revenue is not being made, or is not about to be made, no application or suit affecting such land or any tenant thereof shall, within three months from the date of the certificate of final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely:—

Stay of suits in which certain issues arise.

- (a) whether the land is or is not liable to the payment of rent;
- (b) whether the relation of landlord and tenant exists;
- (c) whether the land is part of a particular estate or tenancy; or
- (d) whether there is any special condition or incident of the tenancy, or whether any right-of-way or other easement attaches to the land.

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not entertain any suit under section 106 involving the decision of the same issue.

(3) Where, in the course of settling fair rents under section 105, the Revenue-officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court before the final publication of the record-of-rights, or before a Revenue-officer under section 106, he is unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings, for the settlement of a fair rent, pending a final decision on the issue.

(Secs. 36, 37.)

And, after the issue has been finally decided, he shall settle a fair rent, as if the record-of-rights had been framed in accordance with such decision.

(4) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (1), the period of three months therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.

Amendment
of section 112.

36. (1) In sub-section (1) of section 112 of the said Act, for the words "invest a Revenue-officer acting under this Chapter" the following shall be substituted, namely:—

"or that any landlord is demanding rents which have been illegally enhanced above those entered as payable in a record-of-rights prepared under this Chapter, invest a Revenue-officer."

(2) After sub-section (2) of the said section the following shall be inserted, namely:—

"(2a) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive)."

(3) To sub-section (3) of the said section the following shall be added, namely:—

"and the revision, by direction of the Board of Revenue under sub-section (2) of section 104G, of a record-of-rights, or any portion of a record-of-rights, prepared under this section, shall be subject to a like confirmation by the Governor General in Council."

Amendment
of section 114.

37. In section 114 of the said Act—

(1) in sub-section (1)—

(a) the words "by the Government" are hereby repealed, and

(b) for the words "from time to time in the maintenance," the following shall be substituted, namely:—

"at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration";

(c) after the word "proportions" the words and brackets "and in such instalments (if any)," shall be inserted.

(Secs. 38—40.)

(2) after sub-section (1), the following shall be inserted namely:—

“(2) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary-marks for a period not exceeding fifteen years, or such part of such amount as the Local Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred”;

(3) the present sub-section (2) shall be re-numbered sub-section (3), and

(4) after sub-section (3), so re-numbered, and before the *Explanation*, the following shall be inserted, namely:—

“(4) The cost of preparing copies of survey maps and records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.”

New section
115A.

38. After section 115 of the said Act, the following shall be inserted, namely:—

“115A. In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue-officer shall, so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875, preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey, if any;

and, where village maps prepared at a previous revenue survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such unit.”

Ben. Act
of 1875.

Addition to
heading
Chapter XI.

39. To the heading to Chapter XI of the Bengal Tenancy Act, 1885, the following words shall be prefixed, namely:—

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“NON-ACCRUAL OF OCCUPANCY AND NON-OCCUPANCY RIGHTS,
AND”.

Amendment
of section 116.

40. In section 116 of the said Act, after the words “shall apply to” the following shall be inserted, namely:—

“lands acquired under the Land Acquisition Act, 1894, for the Government or for any Local Authority or for a Railway

I of 1894.

(Secs. 41, 42.)

Company, or lands belonging to the Government within a Cantonment, while such lands remain the property of the Government, or of any Local Authority or Railway Company, or to”.

Amendment
of section 120.

41. After sub-section (2) of section 120 of the Bengal Tenancy Act, 1885, the following shall be inserted, namely:—

VIII of 1885.

“(2a) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land as a proprietor’s private land, unless it is proved to be such by satisfactory evidence of the nature described in sub-section (1) or sub-section (2).”

New sections
147A and 147B.

42. After section 147 of the said Act the following shall be inserted, namely:—

“147A. (1) The provisions of section 375 of the Code of Civil Procedure shall not apply to any suit between landlord and tenant as such.

XIV of 1882.

(2) If any suit between landlord and tenant as such is adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfies the plaintiff in respect to the whole or any part of the matter of the suit, the Court shall pass a decree in accordance with such agreement, compromise or satisfaction, so far as it relates to the suit:

Provided that no decree shall be passed in accordance with any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(3) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Court shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 29 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(4) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise, unless and until it is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-riyat; this affects the rights of the tenants of B. The Court must, under

(Sec. 43.)

sub-section (4), inquire whether *B* is a tenure-holder or a raiyat as defined in section 5. If the Court finds on the evidence that *B* is a raiyat, it may pass a decree in accordance with the agreement, but shall not do so if it finds that *B* is a tenure-holder.

(5) A decree passed in accordance with any lawful agreement, compromise or satisfaction shall be final so far as it relates to so much of the subject-matter of the suit as is dealt with by such agreement, compromise or satisfaction.

“147B. In all areas for which a record-of-rights has been prepared and finally published under sub-section (2) of section 103A, a Civil Court shall, in all suits between landlord and tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.”

43. (1) After clause (b) of section 148 of the Bengal Tenancy Act, 1885, the following shall be inserted, namely:—

“(b1) where the suit is for the rent of land situated within an area for which a record-of-rights has been prepared and finally published, the plaint shall further contain a list of the survey plots comprised in the tenancy and a statement of the rental of the tenancy according to the record-of-rights, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such list or statement:

Provided that, in all cases in which the Court admits a plaint which does not contain such statement, the Court shall, and in any other case in which it sees fit, the Court may, require the Collector to supply, without payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy;

“(b2) where an alteration has been made in the area of the tenancy, since the record-of-rights was prepared and finally published, the plaint shall further contain a statement of the rental of the original tenancy according to the record-of-rights, together with a statement showing how the amount of rent claimed in the suit has been computed.”

Amendment
of section 148.

VIII of 1885

(Secs. 44—46.)

(2) After clause (f) of the same section, the following shall be inserted, namely:—

“(f) when any account-books, rent-rolls, collection-papers, measurement-papers or maps have been produced by the landlord before any Court, and have been admitted in evidence in a suit pending therein, copies of, or extracts from, such documents, certified by a duly authorized officer of such Court to be true copies or extracts, may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to the landlord; and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals.”

New section
148A.

44. After section 148 of the said Act the following shall be inserted, namely:—

“148A. Where a co-sharer landlord who has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords defendant to the suit, to furnish him with correct information on these points, or on either of them,

such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent, and a decree obtained by him in a suit so framed shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.”

Amendment
of sections 149
and 150.

45. The words “except for special reasons to be recorded in writing”, in sections 149 and 150 of the said Act, are hereby repealed.

Addition of
Explanation to
section 153.

46. To section 153 of the said Act the following *Explanation* shall be added, namely:—

“*Explanation.*—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a

(Secs. 47—49.)

decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto."

New section
153A.

47. After section 153 of the said Act the following shall be inserted, namely :—

"153A. Every application for an order under section 108 of the Code of Civil Procedure to set aside a decree XIV of 1885 passed *ex parte*, or for a review of judgment, under section 623 of the said Code, in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment;

Deposit on application to set aside *ex parte* decree.

and no such application shall be admitted—

- (a) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct; or
- (b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary."

Amendment
of sub-section
(1) of section
153.

48. In sub-section (1) of section 158 of the Bengal Tenancy Act, 1885, before the words "The Court having jurisdiction" the words and figures "Subject to the provisions of section 111" shall be inserted. VIII of 1885.

New Chapter
XIII A and
new section
153A.

49. After section 158 of the said Act the following shall be inserted, namely :—

"CHAPTER XIII A.

"SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE PUBLIC DEMANDS RECOVERY ACT, 1895.

Ben. Act
of 1895.

"153A. (1) Any landlord whose land is situate in an area for which a record-of-rights has been prepared and finally published, and in which such record is maintained,

Recovery of arrears by the certificate procedure in certain areas.

may apply to the Local Government, through the Collector of the district in which his land is situate, for the application of

(Sec. 49.)

the procedure prescribed by the Public Demands Recovery Act, 1895, to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area. Ben. Act I
of 1895.

(2) The Local Government may reject any such application, or may allow it subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed, or withdraw its allowance of the application, without, in any of these cases, assigning any reason for its action.

(3) When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed, to such Revenue-officer as the Local Government may appoint, for the purpose of this section, to perform the functions of a Certificate Officer under the Public Demands Recovery Act, 1895, for the recovery of any arrears of rent which he alleges are due to him from any tenant. Ben. Act I
of 1895.

(4) Every such requisition shall be signed and verified by the landlord making it, in accordance with the provisions of sections 51 and 52 of the Code of Civil Procedure as to the verification of XIV of 1882. complaints; and there shall be payable in respect of every such requisition a Court-fee of the same amount as is payable under the Court-fees Act for the time being in force in respect of a VII of 1870. plaint for the recovery of a sum of money equal to that stated in such requisition.

(5) On receipt of such requisition the Revenue-officer may in accordance with such rules as the Local Government may prescribe in this behalf, issue certificates in the form prescribed therefor for the recovery of the arrears alleged to be due,

and any such certificate shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a Civil Court passed in a suit for the recovery of rent, and the provisions of Chapter XIV shall, so far as may be practicable, be applicable to all proceedings for the execution of such certificate :

Provided that—

(a) no certificate shall be issued for the recovery of arrears of rent of a tenancy regarding which a suit has been instituted in a Civil Court for the alteration of the rent payable by the tenant or the determination of his status as a tenant, in respect of the

(Sec. 50.)

period during which it is alleged in the requisition made under sub-section (3) the arrears of rent sought to be recovered have accrued; and,

(b) if after the issue of a certificate it is found that such a suit has been instituted in a Civil Court before the issue of the certificate, such certificate shall be cancelled.

(6) The following provisions of the Public Demands Recovery Act, 1895, shall, so far as they are applicable, apply to the proceedings for the execution of all certificates for the recovery of arrears of rent issued under sub-section (5), namely:—

Ben. Act I
of 1895.

‘the proviso to sub-section (1) of section 7, and sections 10 to 17 (both inclusive), and 22 to 33 (both inclusive).’

(7) No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Civil Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (3);

and, subject to the provisions of section 15 of the Public Demands Recovery Act, 1895, no tenant shall, after the issue of any certificate against him under sub-section (3), institute a suit in, or apply to, a Civil Court for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent for which such certificate was issued have accrued.

Ben. Act I
of 1895.

(8) The word ‘landlord’ in this section includes an entire body of landlords, and also one or more co-sharer landlords who collect or collect his or their share or shares of the rent separately, and, where the Revenue-officer issues a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate.”

New section
158B.

50. In Chapter XIV of the Bengal Tenancy Act, 1885, VIII of 1885, immediately before section 159, the following shall be inserted, namely:—

“158B. (1) Where a tenure or holding is sold in execution of a decree for arrears of rent due in respect thereof, or of a decree for damages under section 186A, the tenure

Passing of tenure or holding sold in execution of decree.

(Secs. 51—53.)

or holding shall, subject to the provisions of section 22, pass to the purchaser, provided that the decree in execution of which it has been sold has been obtained by—

- (a) a sole landlord ; or
- (b) the entire body of landlords ; or
- (c) one or more co-sharer landlords, who has, or have, sued for the rent due to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit.

(2) When one or more co-sharer landlords, having obtained a decree in a suit framed under sub-section (1) or under section 148A applies, or apply, for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application for execution to the other co-sharers."

Addition of clause (c) to section 161.

51. To section 161 of the said Act the following shall be added, namely :—

"(c) the terms 'arrear' and 'arrear of rent' shall be deemed to include interest decreed under section 67 or damages awarded in lieu of interest under sub-section (1) of section 68."

Amendment of section 168.

52. In sub-section (1) of section 168 of the said Act, for the words "decrees for rent" the words "a decree for an arrear of rent" shall be substituted.

Amendment of sub-section (1) of section 169 and addition of proviso.

53. (1) In clause (c) of sub-section (1) of section 169 of the said Act, after the words "the date of" the words "the confirmation of" shall be inserted.

(2) To the said sub-section the following proviso shall be added, namely :—

"Provided that, where a tenure or holding has been sold in execution of a decree obtained by one or more co-sharer landlords in a suit framed under section 148A or sub-section (1) of section 158B,—

- (i) payment of the amount due under such decree shall, notwithstanding anything contained in clause (b), be made to the decree-holder and to the other co-sharer landlords in proportion to the amount found to be due to each, and,
- (ii) if there remains a balance, payment of any rent which may have fallen due in respect of

(Secs. 54—57.)

the tenure or holding between the institution of the suit and the date of the confirmation of the sale shall, notwithstanding anything contained in clause (c), but subject to the determination, in the manner and with the effect mentioned in sub-section (2), of any dispute as to their respective rights to receive such rent, be made to the said decree-holder and the other co-sharer landlords in proportion to their respective shares in the tenure or holding."

Amendment
of section 170.

54. In section 170 of the said Act, after the words and brackets "(both inclusive)," the word, figures and letter "and 310A" shall be inserted.

Amendment
of section 174.

55. To the proviso to sub-section (2) of section 174 of the said Act, the following shall be added, namely:—

"and if he applies under this section, he shall not be entitled to make an application under section 311 of the Code of Civil Procedure."

XIV of 188:

Amendment
of sub-section
(3) of section
178.

56. (1) In proviso (iii) to section 178 of the Bengal Tenancy Act, 1885, after the words "cultivation of" the words "horti-cultural or" shall be inserted.

VIII of 188:

(2) To the same proviso the following *Explanation* shall be added, namely:—

"*Explanation.*—The expression 'horticultural land,' as used in proviso (iii), means garden land in the occupation of a proprietor or permanent tenure-holder, which is used *bona fide* for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale."

New heading
and new sec-
tion 186A.

57. After section 186 of the said Act, the following shall be inserted, namely:—

"*Damages for denial of landlord's title.*"

"186A. (1) When, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself

Damages for denial of
landlord's title.

(Secs. 58—60.)

the Court may pass, a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

(2) The amount of damages decreed under sub-section (1), together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money, or, subject to the provisions of section 158B, in any of the modes in which a decree for rent may be executed."

New section
8A.

58. After section 188 of the said Act, the following shall be inserted, namely:—

"188A. Notwithstanding anything contained in this Act, Procedure in suits by every suit between landlord and tenant joint landlords as such instituted by—

- (a) a sole landlord,
- (b) the entire body of landlords, or
- (c) one or more co-sharer landlords

shall be subject to the provisions of sections 143 to 153 (both inclusive);

and to every decree passed in a suit framed under sub-section (1) or sub-section (2) of section 158B, the provisions of Chapter IV shall, so far as may be practicable, be applicable."

New clauses
(3) and (4)
section 189.

59. For sub-section (2) of section 189 of the said Act, the following shall be substituted, namely:—

"(2) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is prescribed by this or any other Act;

"(3) to prescribe the manner in which landlord's fees shall be transmitted to the landlord; and

"(4) to prescribe the authority by whom the fees deposited under sections 12, 13, 15, 17 and 18, clause (a), may be declared to be forfeited, and the mode in which such fees, when so forfeited, shall be dealt with."

Amendment
in 192.

60. In section 192 of the said Act, before the words "fix a fair and equitable rent" the words "or of his own motion" shall be inserted.;

(Sec. 61.)

Amendment
of
Schedule
III.

61. In Schedule III to the said Act,—

(1) after Article 1 the following shall be inserted,
namely:—

"1 (a) To eject a non-occupancy raiyat on the ground of the expiration of the term of his lease.	Six months	... The expiration of the term."
--------------------------------------------------------------------------------------------------	------------	----------------------------------

(2) in Article 2,—

(a) after the words "arrear of rent" the following shall be inserted, namely:—

"in a suit brought by—

(i) a sole landlord,

(ii) the entire body of landlords, or

(iii) one or more co-sharer landlords;"

(b) for the entry in the third column opposite clause (b) the following entry shall be substituted, namely:—

"the last day of the agricultural year
in which the arrear fell due."

(3) in Article 3, for the words "an occupancy-raiyat" the words "a raiyat or an under-raiyat" shall be substituted;

(4) in Article 6, for the words "under this Act, or any Act repealed by this Act," the words "in a suit between landlord and tenant to whom the provisions of this Act are applicable," shall be substituted.

BENGAL ACT NO. II OF 1918.

THE BENGAL TENANCY (AMENDMENT) ACT, 1918.

[Published in the *Calcutta Gazette* on the 13th
March, 1918.]

*An Act to supplement and amend the Bengal
Tenancy Act, 1885.*

WHEREAS it is expedient to supplement and amend
the Bengal Tenancy Act, 1885, in the manner herein
after appearing;

And whereas the previous sanction of the Governor
General has been obtained under section 79, sub-
section (2), of the Government of India Act, 1915, to
the passing of this Act;

It is hereby enacted as follows :—

Short title. 1. This Act may be called the Bengal Tenancy
(Amendment) Act, 1918.

New Chapter
VIIA. 2. After Chapter VII of the Bengal Tenancy Act
1885, the following Chapter shall be inserted
namely :—

“ CHAPTER VIIA.

“ Restrictions on alienation of land by aboriginals.

Application of Chapter. **“49A.** (1) This Chapter shall apply in the first
instance only to the Sonthals of the
districts of Birbhum, Bankura and
Midnapore, who shall be deemed to
be aboriginals for the purposes of this Chapter.

(2) The Local Government may, from time to time,
by notification published in the *Calcutta Gazette*,
declare that the provisions of this Chapter shall, in
any district or local area, apply to such of the follow-
ing aboriginal castes or tribes as may be specified in
the notification, and that such castes or tribes shall
be deemed to be aboriginals for the purposes of this
Chapter, namely :—

Sonthals of other districts, Bhuiyas, Bhumijes,
Garos, Gonds, Hadis, Hajangs, Hos,
Kharias, Kharwars, Kochs (Dacca Divi-
sion), Koras, Maghs (Bakarganj District),
Mal and Sauria Paharias, Meches, Mundas,
Oraons and Turis.

*The Bengal Tenancy (Amendment) Act, 1918.**(Section 2.)*

"49G. No transfer by an aboriginal tenure-holder, raiyat or under-raiyat in contravention of the provisions of this Chapter shall be registered or in any way recognized as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.

Courts not to register, or recognize as valid, transfers in contravention of this Chapter.

"49H. (1) If a transfer of a tenure or holding, or any portion thereof, is made by an aboriginal tenure-holder, raiyat or under-raiyat in contravention of the provisions of section 49B, or if the transferee has continued or is in possession in contravention of the provisions of section 49E, sub-section (1), or section 49F, as the case may be, the Collector may, on his own initiative or on application made in that behalf, by an order in writing, eject the transferee from such tenure, holding or portion :

Power to Collector to set aside improper transfers by tenure-holder, raiyat or under-raiyat.

Provided that—

- (a) the transferee whom it is proposed to eject has not been in continuous possession in contravention of this Act for twelve years, and
- (b) he is given an opportunity of showing cause against the order of ejection.

(2) When the Collector has passed any order under sub-section (1), he shall either—

- (a) restore the transferred land to the aboriginal tenure-holder, raiyat or under-raiyat, or his heir or legal representative, or
- (b) failing the transferor or his heir or legal representative, declare that the right of settlement is vested in the landlord subject to the provisions of section 49J, provided that if the right is not exercised within one year, the Collector may, within six months, settle the land on behalf of the landlord on such terms as he deems fit with an aboriginal; and, if the Collector is unable to make such settlement within the said period, an unrestricted right of settlement will vest in the landlord.

*The Bengal Tenancy (Amendment) Act, 1918.**(Section 2.)*

Resettlement of certain
tenancies. 4

“49J. (1) Whenever—

(a) the right of settlement of any tenancy, or any portion thereof, is declared to be vested in the landlord under clause (b) of sub-section (2) of section 49H, or

(b) an aboriginal tenant surrenders his tenancy, or a portion thereof, or abandons his residence and ceases to hold his tenancy,

the landlord may, subject to the provisions of sections 86 and 87,—

(i) settle the tenancy, or a portion thereof, with an aboriginal; or

(ii) with the approval of the Collector in writing, settle the same with a person who is not an aboriginal or retain it in his own possession: provided that such approval shall not be withheld if the Collector is satisfied that the surrender or abandonment referred to in this sub-section is not made with the object of evading the provisions of section 49B, 49E or 49F.

(2) If any landlord resettles or otherwise deals with any tenancy as aforesaid in contravention of the provisions of sub-section (1), the Collector may take action, so far as may be, in accordance with the provisions of section 49H.

“49K. Notwithstanding anything in this Act, no decree or order shall be passed by any Court for the sale of the right of an aboriginal tenure-holder, raiyat or under-raiyat in his tenure or holding, or in any portion thereof, nor shall any such right be sold in execution of any decree or order:

Provided as follows:—

(a) any tenure or holding belonging to an aboriginal may be sold, in execution of a decree of a competent Court, to recover an arrear of rent which has accrued in respect of the tenure or holding;

*The Bengal Tenancy (Amendment) Act, 1918.**(Section 2.)*

(b) nothing in this section shall affect any right to execute a decree for the sale of any such tenure or holding, or the terms or conditions of any *bond fide* contract relating thereto, if such decree was passed, or such contract registered,—

(i) in the case of the Sonthals of the districts of Birbhum, Bankura and Midnapore, before the 1st November, 1916, and

(ii) in the case of other castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under section 49A, sub-section (2), in respect to such castes or tribes ;

(c) nothing in this section shall affect any right for the sale of any such tenure or holding for the recovery of any dues which are recoverable as public demands.

"49L. If the sale of a tenure or holding, or any portion thereof, is ordered in execution of a decree against an aboriginal tenure-holder, raiyat or under-raiyat in respect of such tenancy or portion thereof, the Court executing the decree shall allow the tenant reasonable time in which to pay the amount due.

"49M. (1) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Collector of the district from any order made under sections 49F, 49H or 49J by any officer in the district exercising the powers of a Collector, and the order of the Collector on appeal shall be final:

Provided that every order passed by the Collector on appeal shall be subject to revision and modification by the Commissioner.

OF 1918.]

The Bengal Tenancy (Amendment) Act, 1918.

(Section 2.)

(2) Notwithstanding anything in sub-section (1), an appeal from any order made under any of the sections mentioned in that sub-section by an officer acting under Chapter X of this Act shall be to such officer as the Local Government may appoint in this behalf, and the orders of such officer on appeal shall be final:

Provided that, in every such case, every order passed by the said officer on appeal shall be subject to revision and modification by such officer as the Local Government may appoint to deal therewith.

(3) An appeal, as provided in sub-section (1), shall lie to the Commissioner from any original order made by the Collector of the district under any of the sections mentioned in that sub-section.

"49N. Notwithstanding anything in this Act, no suit shall lie in any Civil Court to vary or set aside any order passed by the Collector in any proceeding under this Chapter except on the ground of fraud or want of jurisdiction.

Bar to suits.

"49-O. Nothing in this Chapter shall affect the validity of any transfer (not otherwise invalid) by a tenure-holder, raiyat or under-raiyat of his tenure or holding, or any portion thereof, made *bonâ fide*,—

(a) in the case of the Sonthals of the districts of Birbhūm, Bankura and Midnapore before the 1st November, 1916, and

(b) in the case of other castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under section 49A, sub-section (2), in respect to such castes or tribes".

BENGAL ACT No. III OF 1919.

**[THE BENGAL TENANCY (AMENDMENT)
ACT, 1919.]**

**[Published in the Calcutta Gazette of the 19th
February, 1919.]**

*An Act further to amend the Bengal Tenancy
Act, 1885.*

WHEREAS it is expedient further to amend the Bengal Tenancy Act, 1885, in the manner hereinafter appearing;

And whereas the previous sanction of the Governor-General has been obtained under section 79, sub-section (2), of the Government of India Act, 1915, to the passing of this Act;

It is hereby enacted as follows :-

1. This Act may be called the Bengal Tenancy Short title.
(Amendment) Act, 1919.

2. Section 74 of the Bengal Tenancy Act, 1885 Amendment
of section 74
of Act VIII of
1885.
(hereinafter called the said Act), shall be renumbered as sub-section (1) of section 74, and after the said sub-section the following shall be added, namely:—

“(2) All impositions upon tenants of road cess or public works cess, or of both,—

(a) in excess of the net amount prescribed by clause (2) of section 41 of the Cess Act, 1880, or

(b) on any scale in excess of that prescribed by clause (3) of that section,

levied in addition to the actual rent, shall be illegal, and all stipulations and reservations for payment of any such excess contained in any contract made between a landlord and a tenant on or after the 13th day of October, 1880, shall be void:

[Price—Indian, 3 pice; English, penny.]

*The Bengal Tenancy (Amendment) Act, 1919.**(Section 3.)*

Provided that nothing in this sub-section shall affect the terms of a written contract registered before the commencement of the Bengal Tenancy (Amendment) Act, 1919:

Provided also that, subject to the provisions of section 72 of the Indian Contract Act, 1872, no suit shall lie for the recovery of anything paid before the commencement of the Bengal Tenancy (Amendment) Act, 1919, on account of the impositions referred to in sub-section (2).

(3) Nothing in this section shall be deemed to affect the terms of a permanent *mukarrari* lease granted by a proprietor or holder of a permanent tenure in a permanently settled area."

Amendment of
section 75.

3. In section 75 of the said Act,—

- (1) after the words "in excess of the rent" the words "or road cess or public works cess" shall be inserted; and
- (2) after the words "lawfully payable, may" the following shall be inserted, namely:—

subject to the second proviso to sub-section (2) of section 74."

BENGAL ACT No. I OF 1925.
THE BENGAL TENANCY (AMENDMENT)
ACT, 1925.

[Published in the *Calcutta Gazette* of the 26th March, 1925.]

An Act further to amend the Bengal Tenancy Act, 1885.

III of
385.

WHEREAS it is expedient further to amend the Bengal Tenancy Act, 1885, in the manner herein-after appearing;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Tenancy (Amendment) Act, 1925. Short title.

2. After sub-section (1) of section 20 of the Bengal Tenancy Act, 1885, the following shall be inserted, namely :— Amendment of section 20 of Act VIII of 1885.

“(1A) A person shall be deemed, for the purposes of this section, to have continuously held land in a village, notwithstanding that such village was defined, surveyed and recorded as, or declared to constitute a village at a date subsequent to the commencement of the said period of twelve years.”



Government of Bengal
Legislative Department

Bengal Act IV of 1928

**The Bengal Tenancy
(Amendment) Act, 1928**

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BENGAL ACT IV OF 1928.

THE BENGAL TENANCY (AMENDMENT) ACT, 1928.

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21. Amendment of section 23.
22. Insertion of new section 23A—
 - 23A. Rights of occupancy *raiyat* and landlord in trees.

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23. Insertion of new sections 26A to 26J—
 - 26A. Application of sections 26B to 26J.
 - 26B. Holdings of occupancy *raiyats* with occupancy rights transferable.
 - 26C. Manner of transfer and notice to landlord.
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 - 26E. Procedure on sale in execution of a decree, certificate or foreclosure of mortgage.
 - 26F. Power of immediate landlord to purchase.
 - 26G. Limitation on mortgage by occupancy *raiyat*.
 - 26H. Transfer of rent-free holdings.
 - 26I. Interpretation and savings.
 - 26J. Landlord's transfer fee with compensation in certain cases of transfer.
24. Amendment of section 30.
25. Substitution of new section for section 36—
 36. Power to order progressive enhancement.
26. Amendment of section 37.
27. Amendment of section 38.
28. Repeal of heading and section 40.
29. Repeal of section 40A.
30. Amendment of section 46.
31. Substitution of new sections for sections 48 and 49—
 48. Liability of under-*raiyat* to pay rent.
 - 48A. Enhancement of rent of under-*raiyat*.
 - 48B. Enhancement by contract.
 - 48C. Ejectment of under-*raiyat*.
 - 48D. Enhancement by suit.
 - 48E. Application for restitution by under-*raiyat*.
 - 48F. Incidents of holding of under-*raiyat*.
 - 48G. Occupancy rights of under-*raiyat*.
 - 48H. Provision as to *salami*.
 49. Mortgage by under-*raiyat*.

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32. Amendment of section 49A.
33. Amendment of section 49E.
34. Amendment of section 52.
35. Substitution of new section for section 54—
 54. Time and place for payment of rent.
36. Amendment of section 56.
37. Amendment of section 57.
38. Amendment of section 58.
39. Amendment of section 61.
40. Substitution of new section for section 63—
 63. Procedure for payment to the landlord of rent deposited.
41. Amendment of section 64.
42. Insertion of new section 64A—
 - 64A. Penalty for refusing to receive rent tendered by postal money-order or deposited.
43. Amendment of section 66.
44. Amendment of section 68.
45. Repeal of heading and of sections 69, 70 and 71.
46. Substitution of new section for section 73—
 73. Liability for rent before transfer of occupancy holding.
47. Amendment of section 74.
48. Amendment of section 76.
49. Amendment of section 77.
50. Amendment of sections 78, 82, 83 and 87.
51. Repeal of section 79.
52. Amendment of section 80.
53. Repeal of section 85 and heading.
54. Amendment of section 86.
55. Insertion of new section 86A—
 - 86A. Effect of exemption from payment of rent or abatement of rent on account of diluvion.
56. Amendment of section 87.
57. Amendment of section 88.

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- 58. Substitution of new section for section 93—
 - 93. Power to call upon co-owners to show cause why they should not appoint a common manager.
- 59. Amendment of section 98.
- 60. Insertion of new section 99A—
 - 99A. Appointment of common agent.
- 61. Substitution of new section for section 100—
 - 100. Power to make rules.
- 62. Amendment of section 101.
- 63. Amendment of section 102.
- 64. Amendment of section 103B.
- 65. Amendment of section 104G.
- 66. Amendment of section 104H.
- 67. Amendment of section 105.
- 68. Amendment of section 105A.
- 69. Insertion of new sections 105B and 105C—
 - 105B. Court-fees for raising an issue under section 105A.
 - 105C. Costs not to be awarded ordinarily in proceedings under section 105 by Revenue-officers.
- 70. Amendment of section 106.
- 71. Amendment of sections 107, 108, 119 and 180A.
- 72. Amendment of section 107.
- 73. Amendment of section 108.
- 74. Re-numbering of section 108A as section 115B and amendment of that section.
- 75. Amendment of section 109.
- 76. Amendment of section 109A.
- 77. Amendment of section 109B.
- 78. Amendment of section 109C.
- 79. Substitution of new section 109D for sections 109C and 109D—
 - 109D. Note of decisions on record.
- 80. Amendment of section 110.
- 81. Amendment of section 111.
- 82. Amendment of section 111B.
- 83. Amendment of section 112.

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84. Amendment of section 115A.
85. Amendment of section 116.
86. Amendment of section 120.
87. Repeal of sections 121 to 142.
88. Amendment of section 144.
89. Amendment of section 145.
90. Insertion of new sections 146A and 146B—
 - 146A. Joint and several liability for rent of co-sharer tenants in a tenure or holding.
 - 146B. Procedure in rent suit against co-sharer tenants in a tenure or holding.
91. Amendment of section 147.
92. Amendment of section 147A.
93. Amendment of section 148.
94. Substitution of new section for section 148A—
 - 148A. Power of co-sharer landlord to sue for rent in respect of his share in a tenure or holding against the tenure or holding on making remaining co-sharers parties.
95. Amendment of section 156.
96. Amendment of section 158.
97. Amendment of section 158A.
98. Insertion of new sections 158AA and 158AAA—
 - 158AA. Recovery of arrears under the certificate procedure in certain other cases.
 - 158AAA. Passing of tenure or holdings sold in execution of certificate.
99. Repeal of section 158B.
100. Amendment of section 159.
101. Amendment of section 160.
102. Amendment of section 163.
103. Amendment of section 166.
104. Amendment of section 167.
105. Amendment of section 169.
106. Amendment of section 170.
107. Amendment of section 171.
108. Substitution of new section for section 172—
 172. Inferior tenant paying into Court may deduct from rent.

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- 109. Substitution of new section for section 174—
 - 174. Applications to set aside sale.
- 110. Insertion of new section 174A—
 - 174A. Sale when to become absolute or be set aside and return of purchase-money in certain cases.
- 111. Amendment of section 175.
- 112. Amendment of section 178.
- 113. Amendment of section 179.
- 114. Substitution of new section for section 182—
 - 182. Homesteads.
- 115. Amendment of section 183.
- 116. Substitution of new section for section 185—
 - 185. Portions of the Indian Limitation Act not applicable to such suits, etc., mentioned in Schedule III.
- 117. Amendment of section 186.
- 118. Amendment of section 186A.
- 119. Substitution of new section for section 188—
 - 188. Action to be taken collectively by co-sharer landlords or by their common agents except in certain cases.
- 120. Repeal of section 188A.
- 121. Amendment of section 189.
- 122. Substitution of new section for sections 191 and 192—
 - 191. Settlement of rent of land held in a district not permanently settled.
- 123. Amendment of section 194.
- 124. Amendment of section 195.
- 125. Repeal of section 196 and heading.
- 126. Formal amendments.
- 127. Formal amendments.
- 128. References to the Code of Civil Procedure.
- 129. Re-arrangement of definitions in section 3 and re-lettering of section 148.
- 130. Substitution of new schedule for Schedule II.
- 131. Amendment of Article 2 in Part I of Schedule III.
- 132. Amendment of Article 6 in Part III of Schedule III.

16

BENGAL ACT IV OF 1928.

THE BENGAL TENANCY (AMENDMENT) ACT, 1928.

[Published in the *Calcutta Gazette* of the 21st
February, 1929.]

*An Act further to amend the Bengal Tenancy
Act, 1885.*

VIII of 1885. WHEREAS it is expedient further to amend the Bengal Tenancy Act, 1885, in the manner hereinafter appearing; Preamble.

5 & 6 Geo. V, c. 61; 6 & 7 Geo. V, c. 27; 9 & 10 Geo. V, c. 101. And whereas the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Tenancy (Amendment) Act, 1928. Short title.

2. For sub-section (3) of section 1 of the Bengal Tenancy Act, 1885 (hereinafter referred to as "the said Act"), the following shall be substituted, namely:— Amendment of section 1.

"(3) It extends by its own operation to the whole of Bengal, except—
Local extent.

(i) Calcutta, that is to say, the area described in Schedule I to the Calcutta Municipal Act, 1923, but excluding the area added to Calcutta as defined in clause (1) of section 3 of that Act;

Ben. Act III of 1923.

(ii) (a) the area added to Calcutta as defined in clause (1) of section 3 of the Calcutta Municipal Act, 1923, or any part thereof; and

(b) any area or part of any area included in Calcutta by notification under sub-section (3) of section 543 of that Act,

if such area or part is specified in a notification made in this behalf by the Local Government;

(iii) lands other than agricultural lands situated within any area constituted a municipality under the provisions of the Bengal Municipal Act, 1884, or part thereof, if such area or part is specified in a notification made in this behalf by the Local Government; and

Ben. Act III of 1884.

[Ben. Act IV

(Sections 3, 4.)

(iv) the Scheduled Districts specified in the Part III of the First Schedule to the Scheduled Districts Act, 1874 :

XIV of
1874.

Provided that no notification shall be issued under clause (ii) or clause (iii) of this sub-section, unless—

(a) it is previously published in the area concerned or part thereof in the prescribed manner ; and

(b) the Bengal Legislative Council by a resolution recommends that the notification be issued."

Amendment of
section 2.

3. In section 2 of the said Act—

(1) sub-section (2) shall be omitted, and

(2) the existing sub-sections (3) and (4) shall be renumbered as sub-sections (2) and (3).

Amendment of
section 3.

4. In section 3 of the said Act—

(a) to clause (3) the following shall be added, namely:—

"Provided that a person who, under the system generally known as 'adhi', 'barga' or 'bhag', cultivates the land of another person on condition of delivering a share of the produce to that person, is not a tenant, unless—

(i) such person has been expressly admitted to be a tenant by his landlord in any document executed by him or executed in his favour and accepted by him, or

(ii) he has been or is held by a Civil Court to be a tenant",

(b) in clause (5) the word and figures "Chapter XII" shall be omitted,

(c) for clause (9) the following clause shall be substituted, namely:—

"(9) 'holding' means a parcel or parcels of land or an undivided share thereof, held by a *raiyat* or an under-*raiyat* and forming the subject of a separate tenancy";

(d) (i) in clause (10), as inserted by clause (2) of section 4 of the Bengal Tenancy (Amendment) Act, 1907, after the words "by the Government", the words "which has been adopted by notification in the *Calcutta* or *Eastern Bengal and Assam Gazette* or" shall be inserted;

Ben Act I
of 1907.

of 1928.]

(Section 4.)

E. B. & A.
Act I of
1908.

- (ii) to that clause the proviso to clause (10), as inserted by clause (2) of section 4 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be added, with the following modifications, namely :—

for the words "*Eastern Bengal and Assam Gazette*" the words "*Calcutta Gazette*" shall be substituted, and after the words "Board of Revenue" the words "accorded under the provisions of section 115A" shall be inserted; and

Ben. Act I
of 1907.

- (iii) clause (10), as inserted by clause (2) of section 4 of the Bengal Tenancy (Amendment) Act, 1907, and as so modified, shall be substituted for clause (10) as inserted by clause (2) of section 4 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908;

E. B. & A.
Act I of
1908.

- (e) for clause (11) the following clause shall be substituted, namely :—

"(11) 'agricultural year' means the Bengali year commencing on the first day of *Baisakh* :

Provided that where, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, any other year has prevailed for agricultural purposes that year shall continue to prevail for those purposes until the first day of *Baisakh* next following the date of the commencement of that Act."

Ben. Act IV
of 1928.

- (f) in clause (12) the words "Bihar and Orissa" shall be omitted,

- (g) for clause (15) the following clause shall be substituted, namely :—

"(15) 'prescribed' means prescribed by rules made by the Local Government under this Act"; and

- (h) after clause (18) the following clause shall be added, namely :—

"(19) 'complete usufructuary mortgage' means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage."

[**Ben. Act IV**

(*Sections 5-9.*)

Amendment of section 5.

5. In sub-section (2) of section 5 of the said Act for the words "hired servants" the words "servants or labourers" shall be substituted.

Substitution of new section for section 8.

6. For section 8 of the said Act, the following section shall be substituted, namely:—

"8. If it thinks that an immediate increase of rent would produce hardship, the Court may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf."

Amendment of section 5.

7. To section 9 of the said Act the following shall be added, namely:—

"and for the purposes of this section, if an order for gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 8, the full rent fixed by such order shall be deemed to have come into effect from the date of such order."

Amendment of section 12.

8. In section 12 of the said Act—

(1) in sub-section (2)—

(a) after the words "permanent tenure" the words "in favour of any person other than the sole landlord of such tenure" shall be inserted;

(b) for the words "the costs necessary for the transmission" the words "the prescribed cost of transmission" shall be substituted; and

(c) in sub-section (3) for the word "costs" the word "cost" shall be substituted; and

(2) after sub-section (3) the following sub-section shall be added, namely:—

"(4) The landlord's fee or the prescribed cost of transmission payable under this section and under sections 13 and 15 shall be paid to the registering officer or the Court or the Collector, as the case may be, in the prescribed manner."

Amendment of sections 12, 13 and 15.

9. In sub-section (3) of section 12, in sub-section (2) of section 13 and in section 15 of the said Act, after the words "landlord named in the notice" the words "or his common agent, if any", shall be inserted.

of 1928.]

(Sections 10-14.)

10. (1) In sub-section (1) of section 13 of the said Act, for the words "the costs necessary for its transmission" the words "the prescribed cost of transmission thereof" shall be substituted. Amendment of section 13.

(2) In sub-section (2) of the same section, for the words "the costs necessary for the transmission" the words "the prescribed cost of transmission" shall be substituted.

11. (1) In section 15 of the said Act, for the words "the costs necessary for its transmission" the words "the prescribed cost of transmission thereof" shall be substituted. Amendment of section 15.

(2) To the said section the following proviso shall be added, namely:—

"Provided that where, at the instance of the person succeeding, mutation is made in the rent-roll of the landlord within six months of the succession, the person succeeding shall not be required to give notice under this section."

12. In section 16 of the said Act the word "distrain" shall be omitted and for the words "until the Collector has received the notice, fees and costs referred to in the last foregoing section" the words "until the duties imposed upon him by section 15 have been performed" shall be substituted. Amendment of section 16.

13. After section 16 of the said Act the following section shall be inserted, namely:— Insertion of new section 16A.

"16A. In sections 13, 15 and 16 the words 'person succeeding,' 'transferee', 'purchaser', 'mortgagee' and 'person becoming entitled to a permanent tenure by succession' include the successors in interest of such persons, but do not include the landlord where he is the sole landlord."

Interpretation.

14. (1) Section 18 of the said Act shall be re-numbered as sub-section (1) of section 18. Amendment of section 18.

(2) In that sub-section as renumbered—

(i) the word "and" at the end of clause (a) shall be omitted;

(ii) for clause (b) the following clauses shall be substituted, namely:—

"(b) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord liable to be ejected;

[Ben. Act IV

(Sections 15-18.)

(c) shall be deemed to be a settled *raiyat* of the village if he complies with the conditions set forth in section 20; and

(d) shall be entitled—

(i) to plant,

(ii) to enjoy the flowers, fruits and other products of,

(iii) to fell, and

(iv) to utilize or dispose of the timber of,

any tree on the land comprised in his holding.”

(3) After that sub-section as renumbered the following sub-section shall be added, namely :—

“(2) The provisions of sections 23A to 38 (both inclusive) shall not apply to *raiyats* holding at fixed rates, even though such *raiyats* have a right of occupancy in the lands of their holdings.”

Amendment of section 18A.

15. For section 18A of the said Act, as inserted by section 8 of the Bengal Tenancy (Amendment) Act, 1907, section 18A of the said Act, as inserted by section 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Ben. Act I of 1907.
E. B. & A. Act I of 1908.

Amendment of section 18B.

16. In section 18B of the said Act, as inserted by section 8 of the Bengal Tenancy (Amendment) Act, 1907, and in section 18B of the said Act, as inserted by section 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, for the words “any landlord’s fee” the words “the landlord’s fee” shall be substituted.

Amendment of section 18B.

17. For clause (a) of section 18B of the said Act, as inserted by section 8 of the Bengal Tenancy (Amendment) Act, 1907, clause (a) of that section, as inserted by section 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Substitution of new section for section 18C.

18. For section 18C of the said Act, as inserted by section 8 of the Bengal Tenancy (Amendment) Act, 1907, and for section 18C of the said Act, as inserted by section 8 of the Eastern Bengal and Assam Tenancy (Amendment)

of 1928.]

(Sections 19, 20.)

Act, 1908, the following section shall be substituted, namely :—

“18C. All landlord's fees and landlord's transfer fees deposited with the Collector before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928, under Chapter III, IV or V, and all fees deposited with the Collector under sub-section (1) of section 48H, shall unless accepted or claimed by the landlord within five years from the date of service of notice, be forfeited to the Government to be credited to the District Boards within the respective jurisdictions of which such fees accumulate.”

Ben. Act IV
of 1928.

19. For section 19 of the said Act, as modified by section 9 of the Bengal Tenancy (Amendment) Act, 1907, and for section 19 of the said Act, as modified by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the following section shall be substituted, namely :—

Substitution of
new section for
section 19.

Ben. Act I
of 1907.

E. B. & A.
Act I of
1908.

“19. (1) Every *raiyat* who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, has, by the operation of any enactment by custom or otherwise, a right of occupancy in any land, shall, when that Act comes into force, have a right of occupancy in that land.

Continuance of exist-
ing occupancy rights.

(2) The exclusion from the operation of this Act, by a notification under clause (ii), or clause (iii) of sub-section (3) of section 1, of any area or part of any area referred to in those clauses shall not affect any right, obligation, or liability, previously acquired, incurred or accrued, in reference to such area or part thereof.”

20. For section 22 of the said Act the following section shall be substituted, namely :—

Substitution of new
section for section
22.

“22. (1) When the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder and the entire interests of the landlord and the *raiyat* in the holding become united in the same person by transfer, succession or in any other way whatsoever, such person shall have no right to hold the land as a *raiyat*, but shall hold it as a proprietor or a permanent tenure-holder, as the case may be, but nothing in this sub-section shall prejudicially affect the rights of any third person.

Effect of acquisition of
occupancy right by
landlord.

[Ben. Act IV

(Sections 21, 22.)

- (2) Nothing in this section shall prevent the acquisition by transfer, succession or in any other way whatsoever, of the holding of an occupancy-*raiyat* or share or portion thereof, together with the occupancy rights therein by a person who is, or becomes, jointly interested in the lands as a proprietor or a permanent tenure-holder :

Provided that a co-sharer landlord who purchases a holding of a *raiyat* at a sale in execution of a rent decree or of a certificate under this Act shall not hold the land comprised in such holding as a *raiyat* but shall hold the land as a proprietor or tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same. The rent payable by the *raiyat* to the other co-sharer landlords at the time of the transfer shall be regarded as the fair and equitable sum until otherwise determined in accordance with the principles of this Act regulating the enhancement or reduction of the rents of occupancy-*raiyats*.

- (3) A person holding land as a temporary tenure-holder or farmer of rents shall not, while so holding, acquire a right to hold as a *raiyat* any land comprised in his temporary tenure or farm.

Explanation.—A person having a right to hold the lands of an occupancy holding as a *raiyat* does not lose it by subsequently holding the land as a temporary tenure-holder or farmer of rents."

Amendment of section 23.

21. In section 23 of the said Act the words "but shall not be entitled to cut down trees in contravention of any local custom" shall be omitted.

Insertion of new section 23A.

22. After section 23 of the said Act the following section shall be inserted, namely :—

"23A, Subject to the provisions of section 23, when a *raiyat* has a right of occupancy in respect of any land, he shall be entitled—

Rights of occupancy-*raiyat* and landlord in trees.

- (i) to plant,
- (ii) to enjoy the flowers, fruits and other products of,
- (iii) to fell, and
- (iv) to utilize or dispose of the timber of, any tree on such land."

of 1928.]

(Section 23.)

23. After section 26 of the said Act the following sections shall be inserted, namely :—

Insertion of new sections 26A to 26J.

“26A. The provisions of sections 26B to 26J shall apply to all transfers of holdings or portions or shares of holdings of occupancy-*raiyats* and the occupancy rights therein made after the 1st day of April, 1929.

Application of sections 26B to 26J.

26B. The holding of an occupancy-*raiyat* or a share or a portion thereof, together with the right of occupancy therein, shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property.

Holdings of occupancy-*raiyats* with occupancy rights transferable.

26C. (1) Every transfer shall be made by registered instrument, except in the case of a bequest or a sale in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913.

Manner of transfer and notice to landlord.

Ben. Act III of 1913.

(2) A registering officer shall not register any such instrument unless the sale price or where there is no sale price, the value of each holding, portion or share thereof, is stated separately in the instrument and unless it is accompanied by—

- (a) a notice giving particulars of the transfer in the prescribed form ;
- (b) the process fee prescribed for the service of such notice on the landlord or his common agent, if any ;
- (c) a fee (hereinafter referred to as ‘ the landlord’s transfer fee’) of the amount provided by section 26D ; and
- (d) the prescribed cost of transmission of the landlord’s transfer fee to the landlord or his common agent, if any.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord’s transfer fee, the prescribed cost of transmission thereof and the notice of the transfer in the prescribed form, and the Collector shall cause the landlord’s transfer fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner :

[Ben. Act IV

(Section 23.)

Provided that where there is no common agent, a co-sharer landlord may draw his proportionate share of landlord's transfer fee by an application to the Collector, accompanied by copies of extracts from the intermediate register maintained by the Collector under section 4 of the Land Registration Act, 1876, or copies of finally published record-of-rights under Chapter X of this Act, or any other document showing the share and title of the applicant.

Ben. Act
VII of 1876.

Provided also that when a sole landlord purchases a holding or a share or a portion thereof, no deposit of landlord's transfer fee need be made and no notice need be served. And when a co-sharer landlord purchases a holding or a share or a portion thereof and his share is specified in the instrument of transfer, he shall deposit only the amount of landlord's transfer fee proportionate to the share or shares of the remaining co-sharers.

- (4) In the case of a bequest, the Court shall, before granting probate or letters of administration, require the applicant to file a notice giving particulars of the transfer in the prescribed form and to deposit a process fee of the prescribed amount, and the landlord's transfer fee provided by section 26D, together with the prescribed cost of transmission thereof to the landlord or his common agent, if any.
- (5) When probate or letters of administration have been granted, the Court shall send to the Collector the landlord's transfer fee, the prescribed cost of transmission thereof and the notice in the prescribed form, and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner.
- (6) Any sum payable at the date of the transfer as an arrear of rent of the holding, or on account of a mortgage of the holding, or portion or share thereof, which the transferee has paid or agreed to pay in satisfaction of the sale price wholly or in part shall be entered in the instrument of transfer, and such sum shall, as set forth in the instrument, be deemed to be the consideration money or part thereof, as the case may be, for the purposes of sections 26D and 26F.

of 1928.]

(Section 23.)

- (7) The landlord's transfer fee and the cost of transmission payable under this section or under section 26E shall be paid to the registering officer or the Court, as the case may be, in the prescribed manner.

26D. The landlord's transfer fee shall amount—

Landlord's transfer fee.

- (a) in the case of the sale of a holding or a portion or share of a holding, in respect of which a produce rent is payable in whole or in part, to twenty per cent. of the consideration money as set forth in the instrument of transfer ;
- (b) in the case of the sale of a holding or a portion or share of a holding, in respect of which a money rent is payable, to twenty per cent. of the consideration money as set forth in the instrument of transfer, or to five times the annual rent of the holding or of the portion or share transferred, whichever is greater ;
- (c) in the case of a transfer by exchange of a holding or a portion or share of a holding, to five per cent. of the value thereof as set forth in the instrument of transfer or one and a quarter times the annual rent of the holding or of the portion or share transferred to each party to the transfer whichever is greater, payable by each party ;
- (d) in the case of a transfer by gift of a holding or a portion or share of a holding, to twenty per cent. of the value thereof as set forth in the instrument of transfer, or to five times the annual rent of the holding or of the portion or share transferred whichever is greater ;
- (e) in the case of a transfer by bequest of a holding or a portion or share thereof, to ten per cent. of the value thereof as determined by the Court for the purposes of stamp duty for the grant of probate or letters of administration, or to two and a half times the annual rent of the holding or of the portion or share transferred, whichever is greater :

[**Ben. Act IV**

(*Section 23.*)

Provided that where only a portion or share of a holding of an occupancy-*raiyat* is transferred, the rent of that portion or share shall, for the purpose of determining the landlord's transfer fee, under this section or section 26E, bear the same proportion to the rent of the entire holding as the area or share transferred bears to that of the entire holding:

Provided also that the landlord's transfer fee shall not be payable in the case of—

- (i) a transfer by bequest or gift (including *heba*) in favour of the husband or wife of the testator or donor or of any relation by consanguinity within three degrees of such testator or donor;
- (ii) a *wakf* in accordance with the provisions of the Muhammadan law which provides amongst other purposes for the purpose of the maintenance of the donor himself or the husband or wife of the donor or any relation by consanguinity within three degrees of the donor; or
- (iii) a dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual.

Provided nevertheless that any *wakf* which includes amongst its object any provision for the maintenance of any person who is not one of the following, namely, the donor himself or the husband or wife of the donor or a relation by consanguinity within three degrees of the donor shall be liable to the payment of landlord's transfer fee as provided in this section.

Explanation 1.—The expression "*heba*" shall not include *heba-bil-awaj* for any pecuniary consideration.

Explanation 2.—A relation by consanguinity shall, for the purposes of this section, include a son adopted under the Hindu I.w.

of 1928.]

(Section 23.)

26E. (1) When the holding of an occupancy-

Procedure on sale in execution of a decree, certificate or foreclosure of mortgage. *raiyat* or a portion or share thereof is sold in execution of a decree or a certificate signed under the

Ben. Act III
of 1918.

Bengal Public Demands Recovery Act, 1913, other than a decree or certificate for arrears of rent due in respect of the holding or dues recoverable as such, and neither the purchaser nor the decree-holder is the sole landlord, the Court or the Revenue Officer, as the case may be, shall, before confirming the sale, require the purchaser to file a notice giving particulars of the transfer in the prescribed form and to deposit in addition to the purchase money a process fee of the prescribed amount, the landlord's transfer fee, calculated at the rate of twenty per cent. of the purchase money, or five times the annual rent of the holding sold or of the portion or share thereof sold, whichever is greater, together with the prescribed cost of transmission thereof to the landlord :

Provided that where a co-sharer landlord is the purchaser, he shall deposit in addition to the prescribed process fee the amount of landlord's transfer fee proportionate to the shares of the remaining co-sharers together, with the prescribed cost of transmission thereof.

(2) When a mortgage of a holding of an occupancy-*raiyat* or of a portion or share thereof is foreclosed, and the decree-holder is not himself the sole landlord, the Court shall, before making a decree or order absolute for the foreclosure upon notice to the landlord or to his common agent, if any, determine the market value of the holding and require the mortgagee to file a notice giving particulars of the transfer in the prescribed form and to deposit a process fee of the prescribed amount and the landlord's transfer fee calculated at twenty per cent. of such market value, together with the prescribed cost of transmission thereof to the landlord.

(3) If the purchaser fails to comply with the order of the Court or the Revenue Officer under sub-section (1) within such time as may be specified in the said order, the Court or the Revenue Officer may make an order for the forfeiture of the purchase money and for the resale of the holding or portion or share thereof. If the mortgagee fails to comply with the order under sub-section (2) within such time as may be specified therein, the Court may make an order for dismissal of the suit for foreclosure.

[**Ben. Act IV**

(*Section 23.*)

- (4) When the sale has been confirmed, or the decree or order absolute for the foreclosure has been made, the Court shall send to the Collector the landlord's transfer fee, the prescribed cost of transmission thereof, and the notice of the sale or final foreclosure, in the prescribed form, and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner :

Provided that where there is no common agent, a co-sharer landlord may draw his proportionate share of landlord's transfer fee by an application to the Collector, accompanied by copies of extracts from the intermediate register maintained by the Collector under section 4 of the Land Registration Act, 1876, or copies of finally published record-of-rights under Chapter X of this Act, or any other document showing the share and title of the applicant.

Ben. Act
VII of
1876.

- 26F. (1) Except in the case of a transfer—

Power of immediate
landlord to purchase.

- (a) to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase,
- (b) in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of the holding or dues recoverable as such,
- (c) by exchange, or
- (d) referred to in the second proviso to section 26D,

Ben. Act
III of
1913.

the immediate landlord of the holding or the transferred portion or share may, within two months of the service of notice issued under section 26C or 26E, apply to the Court that the holding or portion or share thereof shall be transferred to himself.

- (2) The application shall be dismissed, unless such landlord at the time of making it, deposits in Court the amount of the consideration money or the value of the property, as the case may be, as stated in the notice served on him, together with compensation at the rate of ten per cent. of such amount.

of 1928.]

(Section 23.)

- (3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as the Court may fix and state what other sums he has paid in respect of rent for the period after the date of transfer or as the landlord's transfer fee or in annulling encumbrances on the property. The Court shall then direct the applicant and any person who has joined as a co-applicant under clause (b) of sub-section (4) to deposit within such period as the Court thinks reasonable such amount as the transferee has paid on this account, together with interest at a rate not exceeding twelve and a half per cent. per annum with effect from the date on which such rent or the landlord's transfer fee has been paid or the encumbrances have been annulled.
- (4) (a) When an application has been made by a co-sharer immediate landlord under sub-section (1), any of the remaining co-sharer landlords, including the transferee, if one of them, may within the period of two months referred to in that sub-section or within one month of the application, whichever is later, apply to join in the application of the co-sharer immediate landlord aforesaid, and any co-sharer landlord who has not applied under sub-section (1) or has not applied to join under this sub-section shall not have any further power of purchase under this section.
- (b) The application to join as a co-applicant shall be granted, if within such period as the Court may fix not extending beyond the period referred to in sub-section (4) (a) the applicant deposits in Court, for payment to the co-sharer landlord who has made the application under sub-section (1), such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section (2).
- (5) If the deposits required under sub-section (2) or clause (b) of sub-section (4), as the case may be, and under sub-section (3) are made, the Court shall make an order allowing the application and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such other persons as the Court thinks fit.

[Ben. Act IV

(Section 23.)

(6) From the date of the making of the order under sub-section (5)—

(i) the right, title and interest in the holding or portion or share thereof accruing to the transferee from the transfer shall, subject to the provisions of section 22, be deemed to have vested in the immediate landlord and co-sharer immediate landlord, if any, whose application has been allowed free from all encumbrances which have been discharged or created after the date of the transfer,

(ii) the liability of the transferee for the rent due on account of the holding shall cease, and

(iii) the Court on the further application of such landlord or co-sharer immediate landlord may place him in possession of the property so vested in him.

(7) When a transferee is divested of his right, title and interest under the provisions of sub-section (6), he shall for the purposes of clauses (a), (c) and (d) of section 156 be deemed to be a *raiyyat* ejected from his holding by proceedings for his ejectment commencing on the date on which the landlord applied to the Court under sub-section (1).

(8) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhammadan law.

26G. (1) An occupancy-*raiyyat* may enter into a complete usufructuary mortgage in respect of his holding or of a portion or share thereof for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed fifteen years.

(2) Notwithstanding any contract to the contrary, such mortgage may be redeemed at any time before the expiry of the said period.

(3) Every such mortgage shall be registered under the Indian Registration Act, 1908. XVI of 1908.

of 1928.]

(Section 23.)

(4) Notwithstanding anything contained elsewhere in this Act or in any other law, no other form of usufructuary mortgage entered into by an occupancy-*raiyat* in respect of his holding or portion or share thereof shall have any force or effect, and no document creating or purporting to create—

(a) a complete usufructuary mortgage of the holding or of a portion or share of the holding of an occupancy-*raiyat* for a period exceeding or which can exceed fifteen years, or

(b) an usufructuary mortgage of such holding, portion or share, other than a complete usufructuary mortgage,

shall be admitted to registration, nor shall any such document be received in evidence or acted on in any Court or by any public servant.

26H. The fee payable by the transferee to the landlord for the transfer of a rent-free holding or of a portion or share of a rent-free holding of an occupancy-*raiyat* shall be two rupees and shall be paid in the manner provided in section 12 or section 13, as the case may be, and notice of the transfer of such holding, portion or share shall be given to the landlord in the manner set forth in sub-section (3) of section 12, section 13 or section 15 according to the circumstances of the transfer.

26I. (1) In sections 26C, 26D, 26F, 26H and 26J, 'transferee' includes the successors in interest of the transferee.

Interpretation and savings.

(2) In sections 26B, 26C, 26D, 26F, 26H and 26J 'transfer' includes bequest but in sections 26C, 26D, 26F, 26H and 26J it does not include—

(i) partition,

(ii) lease or simple mortgage,

(iii) usufructuary mortgage, or

(iv) mortgage by conditional sale, until a decree or order absolute for foreclosure is made.

(3) In section 26E 'purchaser' includes the successors in interest of the purchaser and 'mortgagee' includes the successors in interest of the mortgagee.

(Section 24.)

(4) Neither the acceptance of the landlord's transfer fee provided in section 26D, 26E or 26J nor the making of an application to the Court under the provisions of section 26F shall operate as an admission of the amount of rent or the area or any incident of such occupancy holding other than the existence of a right of occupancy therein, or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof.

26J. In cases where sections 26C and 26E apply—

(1) A transferee of the holding of an occupancy-*raiyat* or a share or portion thereof, whose Landlord's transfer fee with compensation in certain cases of transfer. instrument of transfer or sale certificate purports to transfer the interest of a permanent tenureholder or of a *raiyat* holding at a rent or rate of rent fixed in perpetuity or of a rent-free holding shall, notwithstanding anything contained in the instrument of transfer, be liable to pay the landlord's transfer fee as provided in those sections.

(2) If such payment is not made, the landlord shall be entitled to recover the balance of the landlord's transfer fee, after deducting any amount paid as the landlord's fee under section 12, 13, 17, 18 or 26H, together with such compensation as the Court thinks fit, not exceeding the amount provided in section 26D or 26E, as the case may be, as the landlord's transfer fee.

(3) The provisions of section 26F shall apply to the case of a transfer referred to in sub-section (1) and the immediate landlord shall be competent to exercise his rights of purchase under that section within two months of the date of payment into Court of the balance of the landlord's transfer fee and the compensation allowed."

Amendment of section 80.

24. In clause (c) of section 30 of the said Act after the words "effected by, or" the words "wholly or partly" shall be inserted.

The Bengal Tenancy (Amendment) Act, 1928. 25
of 1928.]

(Sections 25-30.)

25. For section 36 of the said Act, the following section shall be substituted, namely :—

Substitution of new section for section 36.

“36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the *raiyat*, it may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf. For the purposes of section 37, however, the full rent shall be deemed to have come into force from the date of the decree.”

Power to order progressive enhancement.

26. In section 37 of the said Act the words “within the said period of fifteen years the rent has been commuted under section 40, or” shall be omitted.

Amendment of section 37.

27. In sub-section (1) of section 38 of the said Act—

Amendment of section 38.

(i) after the words “an occupancy *raiyat*” the words “holding at a money rent” shall be omitted,

(ii) after the words “of his rent on” the words “one or more of” shall be inserted, and the word “or” at the end of clause (a) shall be omitted, and

(iii) after clause (b), the following word and clause shall be added, namely :—

“or

(c) on the ground that the landlord has refused or neglected to carry out the arrangements, in respect of the irrigation or the maintenance of embankments which were in force at the time when the rent was settled, and the soil of the holding has thereby deteriorated.

Explanation.—A suit for reduction of rent properly framed for the purpose may be instituted or a plea for reduction of rent taken by any one among a number of co-sharer tenants of a holding.”

28. The heading above section 40 and section 40 of the said Act are repealed.

Repeal of heading and of section 40.

29. Section 40A of the said Act is repealed.

Repeal of section 40A.

30. In section 46 of the said Act—

Amendment of section 46.

(a) in sub-sections (1), (2) and (3) for the words “an agreement” the words “a draft of an agreement” shall be substituted ;

[Ben. Act IV

(Section 31.)

- (b) in sub-section (3) for the words "executes it" the words "executes the agreement" shall be substituted;
- (c) in sub-section (6) after the word "agreement" the words "of which a draft has been" shall be inserted; and
- (d) in sub-section (7) for the words "under the conditions mentioned in the last foregoing section" the words "subject to the provisions of this Act" shall be substituted.

Substitution of new sections for sections 48 and 49.

31. For sections 48 and 49 of the said Act, the following sections shall be substituted, namely:—

"48. When an under-*raiyat* is admitted to the occupation of land, he shall, subject to the provisions of this Act, become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission:

Provided that the rent or rate of rent agreed upon shall not be less than the rent or the rate of rent payable by the *raiyat* to his landlord.

48A. The rent of an under-*raiyat* shall not be enhanced except under the provisions of section 48B or section 48D.

48B. (1) The money rent of an under-*raiyat* may be enhanced by a written registered contract:

Provided that the rent shall not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the under-*raiyat*, except in the following cases, namely:—

- (i) When an under-*raiyat* binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding wholly or partly at the cost of the *raiyat* and to the benefit of which the under-*raiyat* is not otherwise entitled, but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the under-*raiyat* is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

of 1928.]

(Section 31.)

- (ii) When an under-*raiyat* has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of his landlord, and the under-*raiyat* agrees, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

(2) The rent fixed by a contract under the provisions of sub-section (1), shall not be liable to enhancement during a period of fifteen years from the date of such contract.

48C. An under-*raiyat* shall, subject to the Ejectment of under- provisions of this Act, be *raiyat*. liable to ejectment on one or more of the following grounds, and not otherwise, namely:—

- (a) on the ground that he has failed to pay an arrear of rent:

Provided that, if the under-*raiyat* is one whose rent is payable in terms of cash and not of produce and he pays through the Court all arrears up to date together with such interest and damages as the Court may award, he shall not be liable to ejectment on account of such arrears;

- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on the breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected;
- (c) on the ground that the term of his lease has expired, when he holds the land under a written lease;
- (d) on the ground that the tenancy has been terminated by his landlord by one year's notice expiring at the end of the agricultural year when he holds the land otherwise than under a written lease; or

[Ben. Act IV

(Section 31.)

(e) on the ground that he does not agree to pay the rent determined by the Court under sub-section (4) of section 48D :

Provided that an under-*raiyat* shall not be liable to ejection on the grounds specified in clause (c) or clause (d)—

(i) if the under-*raiyat* has—

(1) been admitted in a document by the landlord to have a permanent and heritable right to his land, or

(2) been in possession of his land for a continuous period of twelve years whether before or after and partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon,

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of 1928.

(ii) in the case of under-*raiyats* other than those described in clause (i) of this proviso unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with the aid of partners.

48D. (1) The landlord of an under-*raiyat* may, subject to the provisions of this Act, institute a suit to enhance the rent of the under-*raiyat*, and to eject the under-*raiyat* if he refuses to pay the rent determined by the Court.

of 1928.]

(Section 31.)

(2) The Court shall determine what rent is fair and equitable for the holding : provided that the rate of rent so determined shall not in the case of a money rent exceed one-third of the value of the average estimated produce of the land for the decennial period preceding the institution of the suit and in the case of a produce rent one-half of such produce.

(3) The Court shall thereupon inquire from the under-*raiyat* if he agrees to pay the rent so determined. If the under-*raiyat* agrees, he shall be entitled to remain in occupation of his holding at that rent for a term of fifteen years from the date of the agreement.

(4) If the under-*raiyat* does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(5) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

48E. When a *raiyat* has ejected an under-*raiyat* on the grounds specified in clause (c) or clause (d) of section 48C, the under-*raiyat* may apply to the Court by which the decree for ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within four years of the ejectment, the landlord sublets the holding or any portion thereof; and thereupon the Court may, if satisfied after inquiry that the landlord did not use the land for his homestead, or for cultivation by himself or by hired servants or by members of his family or with the aid of partners, order a recovery of possession on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just.

48F. The holding of an under-*raiyat* shall descend in the same manner as other immovable property, but shall not be transferable except with the consent of the landlord.

48G. (1) Every under-*raiyat* who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, had by custom a right of occupancy in any land, shall have a right of occupancy in that land.

[**Ben. Act IV**

(*Section 31.*)

(2) Every under-*raiyat* who has a right of occupancy in his holding shall have, as regards his immediate landlord, all the rights and liabilities of a *raiyat* with a right of occupancy, as set forth in —

- (i) chapter V other than those conferred or imposed by sections 20, 21, 22, 26A to 26J,
- (ii) sections 65, 86, 116 and 178, so far as possible, and
- (iii) chapter XIV,

and his holding, as against such landlord, shall be deemed to be the holding of an occupancy-*raiyat* for the purposes of the said sections or chapters.

(3) The interest of an under-*raiyat* who has a right of occupancy in his holding shall not be deemed to be a protected interest under clause (d) of section 160.

(4) The provisions of sections 48A to 48E shall not apply to an under-*raiyat* who has a right of occupancy in his holding, in so far as such provisions are inconsistent with this section.

48H. (1) No lease to an under-*raiyat* for a Provision as to term exceeding 12 years shall *salami*. be registered unless a landlord's fee equal to twenty per cent. of the value of the leasehold created or five times the annual rent of the lessor whichever is greater together with the prescribed cost of transmission, a notice giving particulars of the lease in the prescribed form and the prescribed process fee for the service of such notice on the landlord or his common agent, if any, is paid to the Registering Officer.

Explanation 1.—When the lease comprises a portion or a share of the lessor's holding the rent of that portion or share shall for the purpose of determining the landlord's fee under this sub-section bear the same proportion to the rent of the entire holding as the area or share sublet bears to that of the entire holding.

Explanation 2.—A lease may include either a *patta* executed by the lessor or a *kabuliyat* executed by the lessee but where the landlord's fee has been paid for the *patta* it shall not be again payable for the *kabuliyat* and *vice versa*.

(2) The manner of transmission of the landlord's fee to the immediate landlord shall so far as possible be that provided in section 26C.

of 1928.]

(Sections 32-34.)

(3) The acceptance by the landlord of the landlord's fee provided in sub-section (1) shall not operate as an admission of the amount of rent or the area or any incident of the *raiyat's* or *under-raiyat's* holding, or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof.

49. (1) Notwithstanding anything contained in section 48F, an *under-raiyat* may enter into a complete usufructuary mortgage in the same manner and on the same conditions as are provided in section 26G for *occupancy-raiyats* and the provisions of that section shall apply so far as may be to *under-raiyats* as if they were *occupancy-raiyats*.

(2) Such mortgage shall not be binding upon the landlord of the *under-raiyat*."

32. To section 49A of the said Act the following sub-section shall be added, namely:— Amendment of section 49A.

"(5) Notwithstanding anything elsewhere contained in this Act, the Local Government may, in the manner provided for in sub-sections (2) and (4), declare that the provisions of this Chapter applicable to aboriginal *raiyats* shall apply, so far as may be, or cease to apply to *raiyats* within such colonisation areas in the Sundarbans as may be specified in the notification."

33. In sub-section (2) of section 49E the explanation shall be omitted. Amendment of section 49E.

34. For sub-section (6) of section 52 of the said Act the following sub-section shall be substituted, namely:— Amendment of section 52.

"(6) When in a suit under this section the landlord or tenant proves that—

(i) at or about the time when the area was recorded in any *patta* or *kabuliyat* there existed in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situated a practice of settlement being made after measurement of the land assessed with rent, or,

(ii) the area entered in the counterfoil receipts corresponds with the area in the rent-roll on which the claim is based and that a practice of settlement on measurement prevailed at the time when the rent-roll was prepared,

it shall be presumed that the area of the tenure or holding was settled by measurement."

[**Ben. Act IV**

(Sections 35-38.)

Substitution of
new section for
section 54.

35. For section 54 of the said Act the following section shall be substituted, namely:—

Time and place for payment of rent. “54. (1) Every tenant shall pay or tender each instalment of rent before sunset of the day on which it falls due :

Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made—

(i) at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord ; or

(ii) by postal money-order in the manner prescribed by rules made by the Local Government.

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 61.

(3) Where rent is sent by postal money-order in the manner prescribed, the Court may presume until the contrary is proved that a tender has been made.

(4) When a landlord accepts rent sent by postal money-order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money-order form, or that he has waived his rights under sections 26D, 26E, 26F or 26J.

(5) Any instalment or part of an instalment of rent not duly paid at or before the time, when it falls due shall be deemed to be an arrear.”

Amendment of
section 56.

36. In sub-section (3) of section 56 of the said Act, the words “the form of receipt given in” shall be omitted.

Amendment of
section 57.

37. In sub-section (2) of section 57 of the said Act, the words “the form of account given in” shall be omitted.

Amendment of
section 58.

38. In section 58 of the said Act after sub-section (8) the following sub-section shall be added, namely:—

“(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

(a) a receipt for any amount actually paid on account of rent, or

(b) the statement of account required by section 57,

and the refusal of the tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt, as required by section 56.”

of 1928.]

(Section 39-41.)

39. In section 61 of the said Act—

Amendment of
section 61.

(a) at the end of sub-section (1), for the words "the full amount of the money then due" the words "a sum not less than the amount of the money then due" shall be substituted, and

(b) in sub-section (2)—

(i) after the words "the deposit is to be entered" the words "and the name of his common agent, if any," shall be inserted,

(ii) for the words beginning with "and shall be accompanied" and ending with "by rule directs" the words "and shall in cases (a) and (b) be accompanied by the prescribed cost of transmission of the money deposited to the landlord and in cases (c) and (d) by a fee of the prescribed amount" shall be substituted.

40. For section 63 of the said Act the following section shall be substituted, namely:—

Substitution of
new section for
section 63.

Procedure for payment
to the landlord of rent
deposited.

"63. The Court receiving a
deposit—

(i) in case (a) or (b) of section 61 shall forthwith forward the same by postal money-order to the address of the landlord, or of the common agent, if any, of the landlord empowered to receive rent;

(ii) in case (c) or (d) of that section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under section 64 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in case (c) cause a notice of the receipt of the deposit to be posted free of charge at the landlord's village office, if any, and in some conspicuous place in the village in which the tenure or holding or any portion thereof is situated, and in case (d) cause a like notice to be served free of charge on every person who it has reason to believe claims, or is entitled to, the deposit."

41. In section 64 of the said Act—

Amendment of
section 64.

(a) in sub-section (1) after the words "amount of the deposit" the words "notified under section 63" shall be inserted;

(Sections 42, 43.)

- (b) sub-section (2) shall be omitted ;
- (c) sub-sections (3) and (4) shall be renumbered as sub-sections (2) and (3) ; and
- (d) in sub-section (2) as renumbered for the words "under this section" the words and figures "under clause (i) of section 63 or under sub-section (1) of this section" shall be substituted.

Insertion of new section 64A.

42. After section 64 of the said Act the following section shall be inserted, namely :—

"Penalty for refusing to receive rent.

64A. If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering by suit interest, costs or damages in respect of the same, and the Court may in addition award to the tenant damages not exceeding twenty-five per cent. on the whole amount claimed, by the plaintiff.

The plea of the existence of any dispute as to the amount of rent or area of land of the tenure or holding shall not be deemed to be a reasonable cause under this section :

Provided that, when a landlord accepts rent, which has been deposited or remitted by postal money-order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form."

Amendment of section 66.

43. In section 66 of the said Act—

- (a) in sub-section (1) for the words "Bengali year" the words "agricultural year" shall be substituted, and the words "where that year prevails or at the end of the month of Jeth where the Fasli or Amli year prevails" shall be omitted ; and
- (b) in sub-sections (2) and (3) for the words "fifteen days" the words "thirty days" shall be substituted and for the word "fifteenth" in sub-section (2) the word "thirtieth" shall be substituted.

of 1928.]

(Sections 44-48.)

44. After the proviso to sub-section (1) of section 68 of the said Act the following proviso shall be inserted, namely :—

Amendment of section 68.

“ Provided also that where damages are awarded—

- (i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and
- (ii) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.”

Ben Act I of 1907, B. B. & A. Act I of 1908.

45. The heading above section 69 and section 69 of the said Act, as amended by the Bengal Tenancy (Amendment) Act, 1907, and the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and sections 70 and 71 of the said Act are repealed.

Repeal of heading and of sections 69 70 and 71.

46. For section 73 of the said Act the following section shall be substituted, namely :—

Substitution of new section for section 73.

“ 73. When an occupancy *raiyat* transfers his holding in whole or in part the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer :

Liability for rent before transfer of occupancy holding. Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer.”

47. To sub-section (3) of section 74 of the said Act the following shall be added, namely :—

Amendment of section 74.

“ and registered before the commencement of the Bengal Tenancy (Amendment) Act, 1928.”

Ben. Act IV of 1928.

48. In section 76 of the said Act—

Amendment of section 76.

- (a) in sub-section (1) the word “*raiyat's*” shall be omitted ;
- (b) in clause (a) of sub-section (2) after the words “of agriculture” the words “or for drinking” shall be inserted.
- (c) to clause (a) of sub-section (2) the following shall be added, namely :—

“ *Explanation.* Such construction on agricultural land shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy.”

[**Ben. Act IV**

(Sections 49-54.)

(d) for clause (f) the following clause shall be substituted, namely:—

“(f) the erection of a dwelling-house whether of masonry, bricks, stone or any other material whatsoever, for the tenant and his family together with all necessary out-offices”; and

(e) in sub-section (3), for the word “*raiyat*” the word “tenant” shall be substituted.

Amendment of section 77.

49. In section 77 of the said Act—

(a) in sub-section (1) the words “where a *raiyat* holds at fixed rates or has an occupancy-right in his holding” shall be omitted;

(b) for the word “*raiyat*,” wherever it occurs, the word “tenant” shall be substituted; and

(c) after sub-section (2) the following sub-section shall be inserted, namely:—

“(3) Any fee realized from a tenant for permission to make any improvement in respect of his holding shall be deemed to be an *abwab* and the provisions of sub-section (1) of section 74 shall apply thereto.”

Amendment of sections 78, 82, 83 and 87.

50. In sections 78, 82, 83 and 87 of the said Act for the word “*raiyat*” wherever it occurs the words “*raiyat* or under-*raiyat*” shall be substituted.

Repeal of section 79.

51. Section 79 of the said Act is repealed.

Amendment of section 80.

52. In section 80 of the said Act—

(a) in sub-section (1) after the words “been lawfully made” the words “wholly or partly” shall be inserted; and

(b) in sub-section (2) for the words “by rule directs” the word “prescribes” shall be substituted.

Repeal of section 85 and heading.

53. The heading to section 85 and section 85 of the said Act are repealed.

Amendment of section 86.

54. In sub-section (6) of section 86 of the said Act after the words “a registered instrument” the words “or when there is an under-*raiyat* on the holding or part thereof” and at the end the words “or the under-*raiyat*, as the case may be,” shall be inserted.

of 1928.]

(Sections 55, 56.)

55. After section 86 of the said Act the following section shall be inserted, namely :—

Insertion of new section 86A.

“86A. (1) If—

(i) the lands of a tenure or holding are wholly lost by diluvion and the tenant obtains on that account exemption from payment of rent in respect of such tenure or holding,

Effect of exemption from payment of rent or abatement of rent on account of diluvion.

(ii) any portion of the lands of a tenure or holding is lost by diluvion and the tenant obtains on that account an abatement of rent in respect of such portion,

the tenant shall, unless there is a contract to the contrary made by registered instrument, be deemed to have surrendered his rights in such lands or portion thereof, as the case may be, and his tenancy and rights therein shall be extinguished.

(2) Nothing in this section shall prevent the accrual of rights under the operation of any other enactment in any portion of the lands of a tenure or holding which have been lost by diluvion, if such lands thereafter re-appear as an accretion thereto.”

56. In section 87 of the said Act—

Amendment of section 87.

- (a) in sub-section (2) for the words “such manner as the Local Government by rule directs” the words “the prescribed manner” shall be substituted ;
- (b) in sub-section (4) for the words “a reasonable time” the words “two months” shall be substituted ; and
- (c) after sub-section (4) the following sub-section shall be added, namely :—

“(5) If an under-raiyat has—

(a) a right of occupancy in a holding or portion thereof, or

(b) been admitted in a document by the landlord to have a permanent and heritable right in his land, or

[**Ben. Act IV**

(*Section 57.*)

(c) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a home-stead thereon,

Ben. Act IV
of 1928

the landlord shall, before entering on the holding, under this section, offer the whole holding, or part thereof, to the under-*raiyat* at the rent paid by him to the *raiyat* and on condition of the under-*raiyat* paying up all arrears due from that *raiyat* and a *salami* of five times the aforesaid rent. If the under-*raiyat* refuses or neglects within two months to accept the offer, the landlord may avoid the sub-tenancy and may enter on the holding and let it to another tenant, or cultivate it himself, as provided in sub-sections (1) and (2)."

Amendment of
section 88.

57. Section 88 of the said Act, as modified by section 18 of the Bengal Tenancy (Amendment) Act, 1907, shall be substituted, for section 88, as first enacted, and the following further proviso shall be added at the end of section 88, namely :—

Ben. Act I
of 1907.

"Provided further that (1) no division of a tenure or holding or distribution of rent shall be valid unless made with the consent of all the co-sharer landlords and co-sharer tenants, and (2) also that when a landlord withholds his consent to the division of a tenancy or to the distribution of rent on the application of a tenant made on that behalf, or when a co-sharer tenant withholds his consent to such subdivision of tenancy or distribution of rent, or when a co-sharer tenant considers himself aggrieved by a division of the tenancy or distribution of the rent made by the landlord, the Civil Court may, on an application made on that behalf by the tenant within six months from the date of notice to the landlord hereinafter provided, by an order in writing direct such division of the tenancy or distribution of rent as it considers fair and equitable or annul or modify the division or distribution made by the landlord, if considered unfair and inequitable.

Nothing herein contained shall be deemed to authorise a Court to make an order for subdivision of the tenancy or distribution of rent,

- (i) if the division results in the creation of unreasonably small holdings ;
- (ii) if the distribution of rent results in bringing the rent for any portion below rupees two and eight annas in case of holdings and rupees four in case of tenures.

of 1928.]

(Section 58.)

No court shall make any such order without notice of the application made to it to all the landlords and tenants, and no such application as is provided for in this proviso shall be made without a notice of the same sent to the landlord or other co-sharer tenants or both as the case may be by registered post.

Every order of the court directing division of the tenancy or distribution of rent shall also direct payment by the applicant to the landlord of a mutation fee being equal to twice the amount of rent made payable by the tenant in case of tenures, and four times such rent in case of holdings."

58. For section 93 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 93.

"93. (i) When any dispute exists between co-owners of an estate or tenure or of lands held jointly between two or more estates or tenures as to the management thereof; or

Power to call upon co-owners to show cause why they should not appoint a common manager.

(ii) when, owing to the existence of a large number of small co-sharers in an estate or tenure, the tenants or landlords are put to inconvenience and harassment in the payment or receipt of the rent due,

the District Judge may, if it appears to him to be just and convenient, on the application of—

in case (i),—

(a) the Collector, or

(b) any one having an interest in the estate or tenure or in any of the estates or tenures; and

in case (ii),—

(a) more than half the tenants, or

(b) co-sharers holding more than half the aggregate interests in the estate or tenure,

direct notice to be served on all the co-owners or co-sharers calling on them to show cause why they should not appoint a common manager—

in case (i), either for the whole of the estate or tenure or estates or tenures, as the case may be, or for those portions of the estate or tenure or estates or tenures, as the case may be, which are affected by the dispute, and

in case (ii), for the estate or tenure in which the tenants or landlords are put to inconvenience or harassment:

[**Ben. Act IV**

(Sections 59-61.)

Provided that a co-owner or co-sharer of an estate or tenure or a co-owner of lands held jointly between two or more estates or tenures shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner or co-sharer of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876."

Ben Act
VII of 1926.

Amendment of
section 98.

59. In sub-section (7) of section 98 of the said Act after the word and figures "section 103" the words, figures and letter "or section 158A" shall be inserted.

Insertion of new
section 99A.

60. After section 99 of the said Act, the following section shall be inserted, namely :—

"99A. (1) Where two or more persons are joint or co-sharer landlords they may by an instrument in writing appoint a common agent for the whole of their joint property or for any portion thereof to receive on behalf of all of them—

Appointment of com-
mon agent.

- (a) notices of transfer under sections 12, 13, 15, 17, 18, 26C and 26F of tenures or holdings or portions or shares thereof held under them within that property,
- (b) the landlord's fee or the landlord's transfer fee payable under those sections, and
- (c) the rent deposited in Court under section 61.

(2) (a) The Collector shall, on application by the common agent and on production by him of the instrument of appointment, register the names of the common agent and the landlords appointing him and their addresses and other particulars in the prescribed manner,

(b) The name and address of such common agent shall be entered upon the receipt required under section 56 to be given on the payment of rent for the tenure or holding situated within the area for which he has been appointed under sub-section (1)."

Substitution of
new section for
section 100.

61. For section 100 of the said Act, the following section shall be substituted, namely :—

"100. (1) The High Court may, from time to time, make rules defining the powers and duties of managers under sections 95 to 99.

(2) The Board of Revenue may, from time to time, make rules defining the powers and duties of common agents under section 99A."

of 1928.]

(Sections 62-66.)

62. In sub-section (1) of section 101 of the said Act— Amendment of section 101:
(i) for the words "the lands" the words "all lands" shall be substituted; and

(ii) at the end the following shall be added, namely:—
"Provided that the provisions of sections 104 to 105A, 109C, 109D, 110, 112 and 113 shall not apply in respect of any lands which are held by a non-agriculturist and are not used for purposes connected with agriculture or horticulture."

63. In section 102 of the said Act— Amendment of section 102.

(i) in clause (b) after the word "class" the words "or classes" and after the word "under-raiyat" the words "with or without a right of occupancy" shall be inserted;

(ii) after clause (e) the following clause shall be inserted, namely:—

"(ee) the amount payable in respect of any rights of pasturage, forest rights, rights over fisheries and the like at the time the record-of-rights is being prepared, the conditions and incidents appertaining to such rights, and if the amount is a gradually increasing amount, the time at which, and the increments by which, it increases"; and

(iii) after clause (j) the following shall be added, namely:—

"Provided that, if lands are not used for purposes connected with agriculture or horticulture, it shall be sufficient to record that fact, together with the prescribed particulars relating to the occupant, the landlord and the tenancy."

64. For section 103B of the said Act, as inserted by Amendment of section 103B.
section 22 of the Bengal Tenancy (Amendment) Act, 1907,
section 103B of the said Act as inserted by section 21
of the Eastern Bengal and Assam Tenancy (Amendment)
Act, 1908, shall be substituted.

Ben. Act I of 1907.
E. B. & A. Act I of 1908.

65. In sub-section (1) of section 104G of the said Amendment of section 104G.
Act for the words "such superior Revenue authority as the Local Government may by rule prescribe" the words "the prescribed superior Revenue authority" shall be substituted.

66. In sub-section (3) of section 104H of the said Act Amendment of section 104H.
for clause (g), as modified by section 25 of the Bengal Tenancy (Amendment) Act, 1907, clause (g), as enacted by the Bengal Tenancy Act, 1885, and clause (h), as inserted by section 24 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

[Ben. Act IV

(Sections 67-70.)

Amendment of section 105.

67. (1) In section 105 of the said Act, as modified by sections 23 (1) and 25 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and by the Devolution Act, 1920,—

E. B. & A.
Act I of
1908.
XXXVIII
of 1920.

(a) in sub-sections (1) and (2) for the words “two months” the words “four months” shall be substituted;

(b) in sub-section (3) the words “from time to time” and “by notification in the local official gazette” shall be omitted.

(c) in sub-section (5) after the words “if accepted” the words “orally or” shall be omitted.

(2) The said section 105, as so amended, shall be substituted for section 105, as modified by section 24 (1) of the Bengal Tenancy (Amendment) Act, 1907, and by the Devolution Act, 1920.

Ben. Act I
of 1907.

Amendment of section 105A.

68. In section 105A of the said Act after clause (f) the following clause shall be inserted, namely:—

“(g) whether the rent payable at the time of final publication of the record-of-rights was correctly entered, and if not, what was the rent payable at that time.”

Insertion of new sections 105B and 105C.

69. After section 105A of the said Act the following sections shall be inserted, namely:—

“105B. When any issue is raised under section 105A, the party raising it shall pay, in addition to any other court-fees which he may be liable to pay such court-fees as he would have been liable to pay if he had claimed relief under section 106.

Court-fees for raising an issue under section 105A.

105C. Except for reasons to be recorded in writing, no Revenue-officer shall award to any party any portion of his costs in a proceeding under section 105.”

Costs not to be awarded ordinarily in proceedings under section 105 by Revenue-officer.

Amendment of section 106.

70. (1) Section 106 of the said Act, as substituted by the Bengal Tenancy (Validation and Amendment) Act, 1903, shall be re-numbered as sub-section (1) of section 106, and in that sub-section, as re-numbered, and in sub-section (1) of section 106 of the said Act, as re-numbered by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, for the words “three months” the words “four months” shall be substituted.

Ben. Act I
of 1903.

of 1928.]

(Sections 71-75.)

E. B. & A
Act I of
1908.

(2) After sub-section (1) of section 106 of the said Act as amended by sub-section (1) of this section, sub-section (2) of section 106 of the said Act, as inserted by sub-section (3) of section 27 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be inserted.

71. In sections 107, 108, 119 and 180A of the said Act for the figures and letter "109A" wherever they occur, the figures and letter "115C" shall be substituted. Amendment of sections 107, 108, 119 and 180A.

72. In section 107 of the said Act—

Amendment of section 107.

Ben. Act I
of 1907.

(a) sub-section (2) as substituted by clause (b) of section 28 of the Bengal Tenancy (Amendment) Act, 1907 ;

(b) sub-section (2) as substituted by clause (b) of section 28 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 ; and

(c) the number and brackets "(1)"

shall be omitted.

73. In section 108 of the said Act for the words "is pending" the words "has been filed" shall be substituted. Amendment of section 108.

74. Section 108A of the said Act shall be transferred to Part IV of Chapter X and shall be re-numbered as 115B, and in that section as re-numbered, for the words "twelve months" the words "two years" and for the figures and letter "109A" the figures and letter "115C" and for the words "is pending" the words "has been filed" shall be substituted. Re-numbering of section 108A as section 115B and amendment of that section.

75. In section 109 of the said Act—

Amendment of section 109.

(i) for the figures and letter "109A" the figures and letter "115C" shall be substituted, and

(ii) to the said section the following shall be added, namely :—

"Provided that nothing contained in this section shall debar a Civil Court from entertaining a suit concerning any matter which—

(a) was the subject-matter of an application under section 105, or section 105A, or of a suit under section 106, if such application or suit has been dismissed for default or withdrawn, or

(b) has not been finally adjudicated upon in any such proceeding or suit."

(Sections 76-79.)

Amendment of
section 109A.

76. Section 109A of the said Act shall be transferred to Part IV of Chapter X and shall be re-numbered as section 115C and in that section as re-numbered—

(1) in sub-section (1) after the word “inclusive” the words, figures and letter “and section 115B” shall be inserted ;

(2) in sub-section (2) for the words, figures and letter “105 to 108A (both inclusive)” the words, figures and letter “105 to 108 (both inclusive), and section 115B” shall be substituted.

Amendment of
section 109B.

77. Section 109B of the said Act, as inserted by section 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted for section 109B of the said Act, as inserted by section 33 of the Bengal Tenancy (Amendment) Act, 1907.

E. B. & A.
Act I of
1908.
Ben. Act I
of 1907.

Amendment of
section 109C.

78. (1) In section 109C of the said Act, as inserted by section 33 of the Bengal Tenancy (Amendment) Act, 1907—

(a) in sub-section (1) the words “specially empowered in this behalf by the Local Government” shall be omitted, and

(b) in sub-section (2) for the figures and letter “109A” the figures and letter “115C” shall be substituted.

(2) The said section 109C, as so amended, shall be inserted after section 109B of the said Act, as inserted by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908.

Substitution of
new section 109D
for sections 109C
and 109D.

79. For section 109D of the said Act, as inserted by section 33 of the Bengal Tenancy (Amendment) Act, 1907, and for section 109C of the said Act, as inserted by section 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the following shall be substituted, namely :—

“109D. A note of all rents settled under section 105, of all decisions of
Note of decisions on issues under section 105A
record. or section 106 and of all
orders regarding the same on appeal or
revision under section 108 or section 115C
shall be made in, or appended to, the record-
of-rights finally published under sub-section (2)
of section 103A, and such note shall be con-
sidered as part of the record.”

of 1928.]

(Sections 80-83.)

80. In section 110 of the said Act for the words "settlement rent-roll" the words "record-of-rights" shall be substituted. Amendment of section 110.

81. In clause (b) of section 111 of the said Act, for the words "three months" the words "four months" shall be substituted. Amendment of section 111.

82. (1) In sub-sections (1) and (4) of section 111B of the said Act, as inserted by section 35 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, for the words "three months" the words "four months" shall be substituted. Amendment of section 111B.

E. B. & A
Act I of
1908.

(2) The said section 111B, as so modified, shall be substituted for section 111B of the said Act, as inserted by section 35 of the Bengal Tenancy (Amendment) Act, 1907.

Ben. Act I
of 1907.

83. In section 112 of the said Act—

Amendment of
section 112.

(1) in sub-section (1), for the portion commencing with the words "or that any landlord is demanding," and ending with the words "a Revenue-officer," as inserted by sub-section (1) of section 36 of the Bengal Tenancy (Amendment) Act, 1907, the portion commencing with the words "or that any landlord is demanding or exacting" and ending with the words "a Revenue-officer" as inserted by sub-section (1) of section 36 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted; and

(2) after sub-section (2a), as inserted by sub-section (2) of section 36 of the Bengal Tenancy (Amendment) Act, 1907, and after sub-section (2a), as inserted by sub-section (2) of section 36 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the following shall be inserted, namely:—

"(2b) If any rent other than rent for which a decree has already been obtained is in arrear in respect of a tenancy at the time when a settlement of rents is made under this section, such arrear shall not be recoverable in any Court in so far as it exceeds the amount which would have been due as rent of the tenancy had the settlement of rent taken place at the commencement of the period for which such rent is claimed."

[Ben. Act IV

(Sections 84-88.)

Amendment of
section 115A

84. For section 115A of the said Act, as inserted by section 38 of the Bengal Tenancy (Amendment) Act, 1907, section 115A of the said Act, as inserted by section 38 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Ben. Act I
of 1907.
E. B. & A.
Act I of
1908.

Amendment of
section 116.

85. In section 116 of the said Act—

(a) after the words “or Railway Company,” the words “or lands owned by the Government or by any local authority which are used for any public work, such as a road, canal or embankment, or are required for the repair or maintenance of the same,” shall be inserted, and

(b) for the words “known in Bengal as *khamar*, *nij* or *nij-jot*, and in Bihar as *zirat*, *nij*, *sir* or *khamat*” the words “known as *khamar*, *nij*, *nij-jot*, *zirat*, *sir*, or *khamat*” shall be substituted.

Amendment of
section 120.

86. In section 120 of the said Act for the word “*kamat*” where it occurs the word “*khamat*” shall be substituted.

Repeal of sections
121 to 142.

87. Sections 121 to 142 (both inclusive) of the said Act are repealed.

Amendment of
section 144.

88. In section 144 of the said Act—

(a) to sub-section (1) the following shall be added, namely :—

“and no suit between landlord and tenant as such shall be instituted in any Court other than a Court within the local jurisdiction of which the lands of the tenure or holding, as the case may be, are wholly or partly situated ;”

(b) after sub-section (1) the following sub-section shall be inserted, namely :—

“(2) A landlord may institute one suit in respect of the rent of more than one tenancy, if the tenancies, in respect of the rent of which the suit is brought, are held in similar right and equal status by the same tenant under him :

of 1928.]

(Sections 89-90.)

Provided that—

- (i) the claim in respect of each tenancy shall be stated separately in the plaint;
 - (ii) separate decrees shall be made in respect of each tenancy;
 - (iii) the costs of the suit shall be apportioned by the Court in respect of each tenancy; and
 - (iv) separate court-fees shall be levied on the plaint in respect of the claim on account of each tenancy; and”
- (c) sub-section (2) shall be re-numbered as sub-section (3).

89. To section 145 the following proviso shall be added, namely :— Amendment of section 145.

Act V of 1908.

“Provided that notwithstanding anything contained in the Code of Civil Procedure, 1908, every such *naib* or *gomashita* may verify the pleadings on behalf of the landlord and shall not be required to obtain the permission of the Court for the purpose of such verification.”

90. After section 146 of the said Act the following sections shall be inserted, namely :— Insertion of new sections 146A and 146B.

IX of 1872.

“146A. (1) Notwithstanding anything contained in the Indian Contract Act, 1872, all co-sharer tenants in a tenure or holding and their successors in interest shall be liable to the landlord jointly and severally for the rent payable to such landlord on account of the tenure or holding, whether such rent has accrued during the time of their own occupation or during the time of the occupation of their predecessors in interest.

(2) Notwithstanding anything contained elsewhere in this Act or in any other law, a decree for arrears of rent of a tenure or holding and a sale in execution of such decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not and against the holding in the manner provided in Chapter XIV, if the defendants to the suit represented the entire body of co-sharer tenants in the tenure or holding for the rent of which the suit was brought.

(Section 90.)

- (3) The entire body of co-sharer tenants in a tenure or holding shall for the purposes of sub-section (2) be deemed to be represented by the defendants to the suit if such defendants include—
- (i) all the co-sharer tenants in the tenure or holding whose homesteads are situated in the village in which the tenure or holding is situated ;
 - (ii) such of the co-sharer tenants in the tenure or holding, as have, at any time during the three years previous to that for the rent of which the suit is brought, made any payment of rent for the tenure or holding ;
 - (iii) such co-sharer tenants who having purchased an interest in the tenure or holding, have given notice of the purchase under sub-section (3) of section 12 or section 26E or section 26F, as the case may be, or, who having succeeded to an interest by inheritance have given notice of their succession under section 15 ; and
 - (iv) all other co-sharer tenants in the tenure or holding whose names are entered in the landlord's rent-roll.

146B. (1) Notwithstanding anything contained in the Indian Limitation Act, IX of 1908, 1908, any person who claims that he should have been joined as a co-sharer

Procedure in rent suit against co-sharer tenants in a tenure or holding.

tenant defendant in a suit for the recovery of arrears of rent due in respect of a tenure or holding may at any time before the hearing of the suit has been commenced apply to be made a party defendant to the suit, and the Court shall consider his claim, and if it finds that he should have been so joined shall join him as a party defendant :

Provided that if any such person at any time in the course of such suit pays into Court the full amount of the claim together with such costs as the Court may direct, the suit shall be dismissed and in any such case the provisions of section 171 shall apply.

- (2) The provisions of sub-sections (2) and (3) of section 146A shall, so far as may be, apply in the case of a co-sharer tenant joined as a defendant under sub-section (1) of this section."

of 1928.]

(Sections 91-92.)

91. To section 147 of the said Act the following proviso shall be added, namely :— Amendment of section 147.

“Provided that where a subsequent suit for rent is instituted by a co-sharer landlord and has been consolidated with a previous suit for rent under the provisions of sub-section (4) of section 148A the date of institution of the subsequent suit shall, for the purposes of this section, be deemed to be the date of the suit which was first instituted and with which it was consolidated.”

92. (1) In section 147A of the said Act, as inserted by section 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, — Amendment of section 147A.

E. B. & A.
Act I of
1908.

Act V of
1908.

(a) for the words and figures “section 373 of the Code of Civil Procedure” the words and figures “rule 3 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908,” shall be substituted; and

(b) after the words “the Court,” where they occur for the first time, the words “shall not order an agreement or compromise to be recorded and” shall be inserted.

(2) The said section, as so amended, shall be re-numbered as sub-section (1) of section 147A.

(3) (a) After that sub-section as re-numbered, sub-section (4) of section 147A of the said Act, as inserted by the Bengal Tenancy (Amendment) Act, 1907, with the illustration thereto, shall be inserted and numbered as sub-section (2).

Ben. Act I
of 1907.

(b) In the illustration aforesaid, for the words and figures “sub-section (4)” the words “this sub-section” shall be substituted.

(4) Section 147A of the said Act, as inserted by section 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and as modified by sub-sections (1), (2) and (3) of this section, shall be substituted for section 147A of the said Act, as inserted by the Bengal Tenancy (Amendment) Act, 1907.

[**Ben. Act IV**

(*Section 93.*)

Amendment of
section 148.

93. In section 148 of the said Act—

(1) for clause (a) the following clause shall be substituted, namely:—

“(a) sections 68 to 72 of the Code of Civil Procedure, 1908, and rules 1 to 13 of Order XI, rule 83 of Order XXI and rule 2 of Order XLVIII in Schedule I to the said Code, and Schedule III to the said Code, shall not apply to any such suit;”

(2) in clause (b)—

(i) for the words and figures “section 50 of the Code of Civil Procedure” the words and figures “rules 1, 2, 4, 5 and 6 and sub-rule (2) of rule 9 of Order VII in Schedule I to the Code of Civil Procedure, 1908,” shall be substituted, and

(ii) after the words “sufficient for identification” the words “and the plaint shall further contain a statement whether a record-of-rights has been prepared and finally published in respect of such land” shall be inserted;

(3) for the second proviso to clause (b1) as inserted by sub-section (1) of section 43 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the following shall be substituted, namely:—

E. B. & A.
Act 1 of
1908.

“Provided also that, when the plaint contains such a statement, no statement of the situation, designation, extent and boundaries of the land held by the tenant referred to in clause (b) shall be required, except in so far as may be necessary for the purposes of clause (b2);”

(4) clause (b1), as inserted by section 43 (1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, as so amended, shall be substituted for clause (b1) as inserted by sub-section (1) of section 43 of the Bengal Tenancy (Amendment) Act, 1907;

Ben. Act 1
of 1907.

(5) for clause (b2) the following clause shall be substituted, namely:—

“(b2) where any changes have occurred in the area, survey plots, or rent of the tenancy since the record-of-rights was finally published, the plaint shall further contain a statement showing the particulars of such changes;”

of 1928.]

(Section 93.)

(6) after clause (d) the following clauses shall be inserted, namely:—

Act V of
1908.

“(d1) notwithstanding anything contained in the Code of Civil Procedure, 1908, or any rules made thereunder the plaintiff in a suit for recovery of arrear of rent shall not be required to supply any identifier for the purpose of serving the summons on the defendant or on any witness, and the serving officer shall serve the summons after due inquiry as to the identity of the person on whom, or the house or property where, the summons is served. The serving officer shall serve the summons in the presence of at least two persons and he shall, whenever possible, require the signature of those persons to be endorsed on the original summons and, where he is unable to serve the summons, he shall, whenever possible, require the signatures of two persons of the locality to be so endorsed :

“(d2) notwithstanding anything contained in rule 4 (3) of Order XXXII in Schedule I to the Code of Civil Procedure, 1908, the Court may serve on the natural guardian of a minor defendant in a suit for arrears of rent a notice informing him that he will be treated as the guardian of such defendant in respect of such suit, unless he appears and objects within such time, not being less than fourteen clear days after the service of the notice, as may be specified in the said notice, and, in default of compliance with such notice, such natural guardian shall, unless the Court otherwise directs, be deemed to be the duly appointed guardian of the said minor defendant for all the purposes of such suit :”

(7) to clause (e) the following shall be added, namely:—

“but the court shall record its reasons for granting or refusing such leave ;”

(8) in clause (f) for the words and figures “prescribed by section 189 of the Code of Civil Procedure” the words and figures “contained in rule 13 of Order XVIII in Schedule I to the Code of Civil Procedure, 1908,” shall be substituted ;

[**Ben. Act IV**

(*Section 93.*)

(9) after clause (*f*) the following clause shall be inserted, namely :—

“(f1) (i) Notwithstanding anything contained in the Code of Civil Procedure, 1908, where a suit is instituted for rent entered in a record-of-rights finally published under Chapter X or where the rent is payable under a registered lease between the landlord and the tenant or where the annual rent payable has been decreed in a previous suit between the landlord and the tenant, the Court may, if the plaintiff desires to proceed under this section, issue a special summons in the prescribed form. Act V of 1908.

(ii) When a special summons has been issued under sub-clause (i), if the defendant fails to appear and defend the suit, the allegations in the plaint as regards the rent due shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons together with interest at the rate of 6 per cent. per annum from the date of the suit up to the date of payment and for costs with interest thereon :

Provided that the Court may at its discretion in any case in which it thinks fit, direct the plaintiff to adduce evidence in support of his claim.

Provided also that notwithstanding anything contained in section 13 of the Indian Evidence Act, 1872, where a decree has been passed under this clause, no statement in the plaint regarding the nature, area and incidents of the tenancy or regarding any liability other than the rent claimed as due shall be evidence against the tenant in any subsequent suit or proceeding. I of 1872.

of 1928.]

(Section 93.)

(iii) Within seven days after the passing of a decree under sub-clause (ii) the Court shall send at the cost of the plaintiff to the defendant or defendants against whom the decree has been passed a registered post-card in the prescribed form stating the particulars contained in the decree.

(iv) Notwithstanding anything contained in rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908, or in section 153A of this Act, where a decree is passed *ex parte* against a defendant under sub-clause (ii), he may apply to the Court by which the decree was passed for an order to set aside the decree and the Court, if it is satisfied that summons was not duly served and that there is *prima facie* evidence of a *bona fide* defence; may, upon his depositing one-half of the amount recoverable under the decree, make an order setting aside the decree as against him or if necessary against all or any of the other defendants also ;

Act V of
1908.

(10) (a) in clause (ff), as inserted by sub-section (2) of section 43 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908,—

E. B. & A.
Act I of
1908.

(i) for the words "the landlord" in the first place where they occur the words "a party" and in the second place where they occur the words "the party" shall be substituted ;

(ii) after the words "such documents" the words "may be" and after the words "copies or extracts", the words "without the payment of any court-fee, and such copies or extracts" shall be inserted ;

(b) clause (ff) as inserted by sub-section (2) of section 43 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, as amended, shall be substituted for clause (ff) as inserted by sub-section (2) of section 43 of the Bengal Tenancy (Amendment) Act, 1907 ;

Ben. Act I
of 1907.

[Ben. Act IV

(Section 94).

(11) after clause (g) the following clause shall be inserted, namely :—

“(gg) notwithstanding anything contained in sub-rule (3) of rule 11 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the Court shall not, unless for special reasons to be recorded in writing, direct the decree-holder to file a copy of the decree or any fresh *vakalatnama* for the purpose of executing the decree :” and

Act V of 1908.

(12) in clause (h) for the words and figures “section 232 of the Code of Civil Procedure” the words and figures “rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908,” shall be substituted.

Substitution of new section for section 148A.

94. For section 148A of the said Act, as inserted by section 44 of the Bengal Tenancy (Amendment) Act, 1907, and for section 148A of the said Act, as inserted by section 44 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the following shall be substituted, namely :—

Ben. Act I of 1907.

E. B. & A. Act I of 1908.

“148A. (1) A co-sharer landlord may institute a suit to recover the rent due to him in respect of his share in a tenure or holding, by making all the remaining co-sharer landlords parties defendant to the suit, and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding.

Power of co-sharer landlord to sue for rent in respect of his share in a tenure or holding against the tenure or holding on making remaining co-sharers parties.

(2) On the plaint being admitted, the Court shall by summons in the prescribed form call upon the remaining co-sharer landlords aforesaid to join in the suit as co-plaintiffs for their shares of the rent due to them in respect of the tenure or holding up to the date of the institution of the suit.

(3) On the date named in the summons for his appearance or on any subsequent date fixed by the Court in this behalf, any co-sharer landlord, who has been summoned as defendant, may apply to be joined in the suit as a co-plaintiff, and on his paying the court-fee on the amount of his claim, he shall be joined as a co-plaintiff in respect of the rent claimed to be due to him up to the date of the institution of the suit.

of 1928.]

(Section 94.)

(4) If it comes to the notice of the Court that any co-sharer landlord has before the service upon him of a summons under sub-section (2) instituted a separate suit to recover his share of the rent of the tenure or holding, the separate suit shall be consolidated with that brought under sub-section (1) and such co-sharer landlord shall be deemed to be a co-plaintiff and shall amend his plaint so as to claim the rent due to him up to the date of the institution of the suit under sub-section (1):

Provided that, if the Court is not competent to consolidate and try the suit, such suit shall be transferred to a Court of competent jurisdiction for consolidation and trial.

(5) The summons on all the defendants to the suit other than co-sharer landlords shall thereafter be served, and the Court shall thereupon proceed to the trial of the suit.

(6) A decree passed by the Court for the rent claimed in a suit brought in accordance with the foregoing provisions of this section shall, so far as may be, specify separately the amounts payable to each co-sharer and shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

(7) When one or more co-sharer landlords, having obtained a decree in a suit framed under this section, applies or apply for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application of the execution to the other co-sharers.

(8) (i) In disposing of the proceeds of a sale in execution of the decree referred to in sub-section (6) the following rules, instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed,—

(a) there shall first be paid to the decree-holders the costs incurred by them in bringing the tenure or holding to sale;

(b) there shall in the next place be paid to the decree-holders the amount due to them under the decree in execution of which the sale was made;

[**Ben. Act IV**

(*Section 94.*)

(c) if there remains a balance after these sums have been paid, there shall be paid therefrom to the decree-holders and to any defendant landlords, who have not joined as plaintiffs, but have made application in this behalf within one month from the date of the confirmation of the sale, any rent which may have fallen due to them in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale, in proportion to their respective shares in the tenure or holding :

Provided that the Court shall issue a notice to the judgment-debtor or his pleader, if any, before ordering any such payment.

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor on his application unless the Court for reasons to be recorded in writing otherwise directs.

(ii) If the judgment-debtor disputes the right of the decree-holder or of the co-sharer landlord who has been made a party defendant to receive any sum on account of rent under clause (c), the Court shall determine the dispute and the determination shall have the force of a decree.

(9) When a suit has been instituted under the provisions of sub-section (1), no co-sharer landlord, who has been made a party defendant thereto and duly served with summons issued under sub-section (2), shall be entitled to recover, save as co-plaintiff in that suit, any rent in respect of the tenure or holding for the period in suit or for any period previous thereto.

(10) Where a suit instituted under the provisions of sub-section (1) has been withdrawn with leave to bring a fresh suit, the procedure, remedies and disabilities hereinbefore provided by this section shall apply to such fresh suit when instituted and to the parties thereto.

of 1928.]

(Sections 95-98.)

(11) In the event of the holding or tenure not being sold as a result of a suit instituted under sub-section (1), nothing contained in rule 2 of Order II in Schedule I to the Code of Civil Procedure, 1908, shall preclude a co-sharer landlord who has been joined as plaintiff under sub-section (3) or is deemed to be a co-plaintiff under sub-section (4) from recovering by suit, rent and interest due to him and damages, if awarded, in respect of the tenure or holding for the period subsequent to the date of the institution of the suit under this section.

(12) If the rent claimed in a plaint as amended under sub-section (4) is less than the rent claimed in the original plaint in the separate suit referred to in that sub-section, the balance of rent may be recovered under the provisions of clause (c) of sub-section (8) or of sub-section (11)."

lot V of
908.

95. In section 156 of the said Act after the word "*raiyyat*" wherever it occurs the words "or under-*raiyyat*" shall be inserted. Amendment of section 156.

96. In clause (c) of sub-section (1) of section 158 of the said Act after the word "class" the words "or classes" and after the words "or under-*raiyyat*" the words "with or without a right of occupancy" shall be inserted. Amendment of section 158.

97. In section 158A of the said Act for sub-section (2) the following shall be substituted, namely:— Amendment of section 158A.

"(2) The Local Government shall specify the terms and conditions on which such applications may be allowed and shall allow any such application, when such terms and conditions are satisfied. Such terms and conditions may be added to or varied by the Local Government from time to time as may be necessary, and the Local Government may withdraw its allowance of the application if it appears that the terms and conditions are not being complied with."

98. After section 158A of the said Act the following shall be inserted, namely:— Insertion of new sections 158AA and 158AAA.

"158AA. The provisions of this chapter applicable to recovery of arrears of rent, shall, so far as may be and subject to the conditions specified in sub-sections (1), (2) and (3) of section 158 A, apply to the recovery of dues in respect of any rights of pasturage, forest rights, rights over fisheries and the like.

Recovery of arrears under the certificate procedure in certain other cases.

[Ben. Act IV

(Sections 99-102.)

158AAA. Where a tenure or holding is sold in execution of a certificate for arrears of rent signed under the Bengal Public Demands Recovery Act, 1913, the tenure or holding shall, subject to the provisions of section 22, pass to the purchaser if such certificate was signed on the requisition of or in favour of a sole landlord or the entire body of landlords, and the provisions of Chapter XIV shall, so far as may be, apply." Ben. Act III of 1913.

Repeal of section 158B.

99. Section 158B of the said Act is repealed.

Amendment of section 159.

100. Section 159 of the said Act shall be re-numbered as sub-section (1) of section 159 and after that sub-section as re-numbered the following sub-section shall be inserted, namely :—

“(2) Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the date of confirmation of the sale;” Act V of 1908

Amendment of section 160.

101. After clause (f) of section 160 of the said Act, the following clause shall be inserted, namely :—

“(ff) the right of a *raiyat* at fixed rates to hold at the fixed rent or rate of rent ; and ”

Amendment of section 163.

102. In section 163 of the said Act—

(a) for sub-section (1) the following shall be substituted, namely :—

“(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when the decree-holder makes the application mentioned in section 162, the Court, if it admits the application under rule 17 of Order XXI in Schedule I to the said Code and orders execution of the decree as applied for, shall issue a combined order of attachment and proclamation in the prescribed form ; ”

(b) in sub-section (2) for the words and figures “section 287 of the said Code” the words and figures “rule 66 of Order XXI in Schedule I to the said Code ” shall be substituted, and after the words “occupancy holding” the words “not held at fixed rates” shall be inserted ;

of 1928.]

(Sections 103-104.)

(c) for sub-section (3) the following sub-section shall be substituted, namely:—

“(3) Notwithstanding anything contained in sub-rules (1) and (2) of rule 67 of Order XXI in Schedule I to the said Code, the proclamation shall be published in the following manner—

(a) by beat of drum at some place on or adjacent to the land comprised in the tenure or holding ordered to be sold and by fixing up a copy thereof in a conspicuous place on such land,

(b) by affixing a copy thereof in a conspicuous place at the court-house of the issuing Court,

(c) by sending in the prescribed form by registered post to the judgment-debtor a concise statement of the order of attachment and proclamation at the time of the issue of the proclamation, and

(d) in such other manner as may be prescribed;” and

(d) in sub-section (4) for the words and figures “section 290 of the said Code” the words and figures “rule 68 of Order XXI in Schedule I to the said Code” shall be substituted.

103. In section 166 of the said Act after the words “occupancy-holding” the words “not held at fixed rates” shall be inserted and for the words “the next following section” the word and figures “section 167” shall be substituted. Amendment of section 166.

104. In section 167 of the said Act—

Amendment of section 167.

(a) in sub-section (1) after the words “within one year from the date of the” the words “confirmation of the” shall be inserted, and for the word “Collector” the words “Court which passed the decree or the Revenue-officer who made the order, as the case may be, for sale of the property” shall be substituted, and

(b) in sub-section (3) for the words “to the Collector in manner prescribed by this section, he” the words “in manner provided by this section, the Court or Revenue-officer, as the case may be,” shall be substituted.

[Ben. Act IV

(Sections 105-108.)

Amendment of section 169.

105. In sub-section (1) of section 169 of the said Act—

- (a) after the words "under this chapter" the words "other than a sale in execution of a decree in a suit instituted under sub-section (1) of section 148A" shall be inserted;
- (b) in clause (c) after the word "therefrom" the words "the costs of the application under this section and" shall be inserted;
- (c) to clause (d) the following words shall be added, namely :—
"unless the Court for reasons to be recorded in writing otherwise directs;" and
- (d) the proviso shall be omitted.

Amendment of section 170.

106. (1) Section 170 of the said Act, as modified by section 54 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted for section 170 of the said Act, as modified by section 54 of the Bengal Tenancy (Amendment) Act, 1907.

E. B. & A.
Act I of
1908.
Ben. Act I
of 1907.

(2) In sub-section (3) of the section so substituted for the words "having in the tenure or holding any interest voidable on the sale" the words "whose interests are affected by the sale" shall be substituted.

(3) In sub-section (4) of the section so substituted for the words and figures "section 310A of the Code of Civil Procedure" the word and figures "this section or section 174" shall be substituted.

Amendment of section 171.

107. In sub-section (1) of section 171 of the said Act, for the words beginning with "when any person having" and ending with the words "an interest which would be voidable upon the sale" the following shall be substituted, namely :—

"When any person whose interests are affected by the sale of a tenure or holding advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bengal Public Demands Recovery Act, 1913."

Ben. Act III
of 1913.

Substitution of new section for section 172.

108. For section 172 of the said Act the following section shall be substituted, namely :—

"172. When a tenure or holding is advertised for sale—

Inferior tenant paying into Court may deduct from rent.

- (a) under this Chapter, in execution of a decree against a superior tenant defaulting; or

of 1928.]

(Section 109.)

(b) in execution of a certificate, signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting,

or when such sale is set aside under section 174—

and an inferior tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached."

109. For section 174 of the said Act the following section shall be substituted, namely :—

Substitution of new section for section 174.

"174. (1) Rules 89 and 90 of Order XXI in Schedule I to the Code of Civil

Act V of 1908.

Applications to set aside sale. Procedure, 1908, shall not apply in cases where a

tenure or holding has been sold for arrears of rent due thereon, but in such cases the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Court to set aside the sale, on his depositing—

- (a) for payment to the decree-holder, the amount recoverable under the decree up to the date when the deposit is made, with costs;
- (b) for payment to the auction-purchaser, as penalty a sum equal to five *per cent.* of the purchase-money, but not less than one rupee.

(2) Where a person makes an application under subsection (3) for setting aside the sale of his tenure or holding he shall not, unless he withdraws that application, be entitled to make or prosecute an application made under subsection (1).

(3) Where a tenure or holding has been sold for arrears of rent due thereon, the decree-holder, the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within six months from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale :

(Section 110.)

Provided as follows :—

- (a) no sale shall be set aside on any such ground unless the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud; and
 - (b) no application made by a judgment-debtor or any person whose interests are affected by the sale under this subsection shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court, for reasons to be recorded by it in writing, that no such deposit is necessary.
- (4) Rule 91 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to any sale under this Chapter. Act V of 1908.
 - (5) An appeal shall lie against an order setting aside or refusing to set aside a sale :

Provided that where the Court has refused to set aside the sale on the application of the judgment-debtor or any person whose interests are affected by the sale and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the appellant deposits such amount in Court."

Insertion of new section 174A.

110. After section 174 of the said Act the following section shall be inserted, namely :—

"174A. (1) Where no application is made under section 174 or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.

Sale when to become absolute or be set aside, and return of purchase money in certain cases.

(2) Where such application is made and allowed, and where in the case of an application under sub-section (1) of section 174, the deposit required by that sub-section is made within thirty days from the date of sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its repayment with or without interest as the Court may direct.

of 1928.]

(Sections 111-113.)

(4) No suit to set aside an order made under this section shall be brought by any person against whom such order is made."

111. In section 175 of the said Act, for the figures "1877" the figures "1908" shall be substituted. Amendment of section 175.

112. In section 178 of the said Act— Amendment of section 178.
(a) after clause (d) of sub-section (1) the following clauses shall be inserted, namely :—

" or

(e) shall entitle a landlord to recover as rent, from a tenant whose rent is a share, as opposed to a fixed quantity of produce, produce in excess of half the gross produce of the holding for the year for which the rent is claimed, or

(f) shall take away or limit the rights of an under-*raiyat* as against his immediate landlord, as set forth in Chapter VII, or

(g) shall take away or limit the right of an occupancy-*raiyat* to transfer his holding or any share or portion thereof in accordance with the provisions of sections 26B to 26J, or

(h) shall take away or limit the rights of occupancy-*raiyats* in trees on their holdings, as provided in section 23A, or

(i) shall affect the provisions of section 67 relating to interest payable on arrears of rent," and

(b) in sub-section (3)—

(i) clauses (d), (g) and (h) shall be omitted.

(ii) clauses (e) and (f) shall be re-numbered as clauses (d) and (e) respectively.

113. To section 179 of the said Act the following proviso shall be added, namely :— Amendment of section 179.

" Provided that such proprietor or holder shall not be entitled to recover interest at a rate exceeding that set forth in section 67 or anything that is an *abwab* or the recovery of which is illegal under the provisions of section 74 or sub-section (3) of section 77."

[Ben. Act IV

(Sections 114-119.)

Substitution of new section for section 182.

114. For section 182 of the said Act the following section shall be substituted, namely :—

“182. When a *raiyat* or an under-*raiyat* holds his homestead otherwise than as part of his holding within the same village or any village contiguous to that village, his status in respect of his homestead shall be that of a *raiyat* or an under-*raiyat* according to the status of the landlord of the homestead, and the incidents of his tenancy of such homestead shall be governed by the provisions of this Act applicable to *raiya*ts or under-*raiya*ts, as the case may be.”

Amendment of section 183.

115. The illustrations to section 183 of the said Act shall be omitted.

Substitution of new section for section 185.

116. For section 185 of the said Act the following section shall be substituted, namely :—

“185. Sections 6, 7, 8 and 9 and sub-section (2) of section 29 of the Indian Limitation Act, 1908, shall not and, subject to the provisions of this Chapter, the remaining provisions of that Act, shall apply to all suits, appeals and applications specified in Schedule III annexed to this Act.” IX of 1908.

Amendment of section 186.

117. Clause (b) of sub-section (1) of section 186 of the said Act shall be omitted.

Amendment of section 186A.

118. In sub-section (2) of section 186A of the said Act the words and figures and letter “subject to the provisions of section 158B” shall be omitted.

Substitution of new section for section 188.

119. For section 188 of the said Act the following section shall be substituted, namely :—

“188. (1) Subject to the provisions of section 148A, where two or more persons are co-sharer landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together or by an agent authorized to act on behalf of both or all of them :

Action to be taken collectively by co-sharer landlords or by their common agents except in certain cases.

of 1928.]

(Section 119.)

Provided that one or more co-sharer landlords, if all the other co-sharer landlords are made parties defendant to the suit or proceeding in manner provided in sub-sections (1) and (2) of section 148A and are given the opportunity of joining in the suit or proceeding as co-plaintiffs or co-applicants, may—

- (i) file an application under sub-section (1) of section 26F or under section 26J,
 - (ii) bring a suit for enhancement of the rent of a tenure under section 7 or of a holding under section 30, or for alteration of rent on account of alteration in area under section 52,
 - (iii) bring a suit for ejection of a tenant on the grounds specified in section 10, clause (b) of section 18, section 25, or clause (a), clause (b), or clause (c) of section 44, or in accordance with the provisions of section 49 or section 66,
 - (iv) make applications as regards improvements under sections 78, 80 and 81,
 - (v) apply for measurement under sections 90 and 91,
 - (vi) file an application under section 105,
 - (vii) bring a suit under section 106,
 - (viii) apply for record of private lands under section 118,
 - (ix) apply for the determination of the incidents of a tenancy under section 158,
 - (x) apply to the Collector for a declaration under sub-section (3) of section 180.
- (2) Any decree passed or order made in a suit or proceeding in which the conditions set forth in sub-section (1) of this section have been complied with, shall have the effect of a decree passed or order made, on the application of the sole landlord or the whole body of landlords, and shall take effect as regards the whole tenure or holding, as the case may be :

[**Ben. Act IV**

(Sections 120, 121.)

Provided that where a suit is brought under section 7 or section 30 for enhancement of rent, or under section 52 for alteration of rent, or where an application is made under section 105 by a co-sharer landlord for settlement of rent, the Court or Revenue-officer, as the case may be, when the rent has been fixed or settled, shall distribute any amount by which the rent has been increased or reduced between the co-sharer landlords of the tenancy in proportion to their respective shares in such tenancy whether they have or whether they have not joined as plaintiffs or applicants, and such distribution shall be binding on all the co-sharer landlords as if they had all sued or applied for the same, and for the purposes of any appeal, application or suit in regard to such distribution they shall be deemed to have sued or applied under sub-section (1) of this section together with co-sharer plaintiff or applicant."

Repeal of section 188A.

120. Section 188A of the said Act, as inserted by the Bengal Tenancy (Amendment) Act, 1907, and the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, is repealed.

Ben. Act of 1907. E. B. & A. Act I of 1908.

Amendment of section 189.

121. In section 189 of the said Act—

- (1) in clause (2) for the words "prescribed by" the words "provided in" shall be substituted;
- (2) in clause (3) for the words "landlord's fees" the words "the landlord's fee or the landlord's transfer fee" shall be substituted;
- (3) in clause (4) for the words and figures and letter and brackets "and 18, clause (a)" the words and figures and letters and brackets "18, clause (a), 26C, 26E and 48H" shall be substituted; and
- (4) after clause (4) the following clause shall be inserted, namely—

"(5) to provide for all or any of the following matters, namely—

- (a) the manner of publication of—
 - (i) notifications under sub-section (3) of section 1;
 - (ii) price lists under sub-section (3) of section 39;
 - (iii) notices under sub-section (2) of section 87;
 - (iv) the draft record-of-rights under sub-section (1) of section 103A;

of 1928.]

(Section 121.)

- (v) the record-of-rights under sub-section (2) of section 103A ;
 - (vi) tables of rates under sub-section (2) of section 104B ;
 - (vii) the draft settlement rent-roll under sub-section (1) of section 104E ;
 - (viii) proclamation under clause (d) of sub-section (2) of section 163 ; and
 - (ix) the rules made by authorities other than the Local Government or the High Court under sub-section (2) of section 190 ;
- (b) the manner of payment of the landlord's fee under sub-section (4) of section 12 and of the landlord's transfer fee and cost of transmission under sub-section (7) of section 26C ;
- (c) the amount of the fee—
- (i) for process referred to in sub-section (2) of section 12 ;
 - (ii) for process referred to in clause (b) of sub-section (2) of section 26C ;
 - (iii) for process referred to in sub-section (4) of section 26C ;
 - (iv) for process referred to in sub-section (1) of section 26E ;
 - (v) for process referred to in sub-section (2) of section 26E ;
 - (vi) for service of notice referred to in sub-section (1) of section 13 ;
 - (vii) referred to in sub-section (2) of section 61 ;
- (d) the amount of the cost of transmission of fees or other monies ;
- (e) the manner of payment or tender of rent by postal money order ;
- (f) the manner of verification of applications under sub-section (2) of section 80 ;
- (g) the information to be contained in the applications referred to in sub-section (2) of section 80 ;
- (h) the form of the register referred to in clause (a) of sub-section (2) of section 99A and the particulars to be therein entered ;

[**Ben. Act IV**

(*Section 122.*)

- (i) the manner of making a survey and preparing a record-of-rights under sub-section (4) of section 101 ;
- (j) the particulars referred to in the proviso to clause (j) of section 102 ;
- (k) the period of publication of the draft record-of-rights under sub-section (1) of section 103A and of the draft settlement rent-roll under sub-section (1) of section 104E ;
- (l) the manner in which objections shall be considered and disposed of under sub-section (2) of section 103A ;
- (m) the empowering of the "confirming authority" referred to in sub-section (4) of section 104E ;
- (n) the superior Revenue authority referred to in section 104G ;
- (o) the stamp to be borne by applications under sub-section (1) or sub-section (2) of section 105 ;
- (p) the restrictions and modifications referred to in sub-section (7) of section 158A ;
- (q) any other matter required or permitted under this Act to be prescribed."

Substitution of
new section for
sections 191 and
192.

122. For sections 191 and 192 of the said Act, the following section shall be substituted, namely :—

"191. Where the area comprised in a tenure or holding is situate in an estate not subject to a subsisting permanent settlement and when,

Settlement of rent of land held in a district not permanently settled.

(a) land revenue is for the first time made payable in respect of the land or,

(b) land revenue having been previously payable in respect of it, a fresh settlement of land revenue is made,

of 1928.]

(Sections 123-125.)

nothing in this Act or in any lease or contract made after the passing of the Bengal Tenancy Act, 1885, shall entitle any tenant to hold his tenancy free of rent or at a particular rent, unless in the case of a fresh settlement made under clause (b) the right so to hold beyond the term of the previous settlement has been expressly recognised at the previous settlement by a Revenue authority empowered by Government to make definitively or confirm settlements, and the Revenue Officer may, notwithstanding anything in the contract between the parties by order, on the application of the landlord or of the tenant or of his own motion fix a fair and equitable rent for all grades of tenants in accordance with the principles laid down in sections 6, 7, 8, 9, 27 to 36, 38, 39, 43, 50 to 52 and 180 :

Provided that, notwithstanding anything contained in sub-section (3) of section 7 he may divide the minimum profit of ten *per centum* provided for in that sub-section among two or more grades of tenure-holders if such exist."

123. To section 194 of the said Act the following proviso shall be added, namely :— Amendment of section 194.

"Provided that this section shall not apply to a *raiyat* or an under-*raiyat* doing any act in exercise of the rights conferred by this Act upon *raiyats* or under-*raiyats*, as the case may be."

124. For clause (e) of section 195 of the said Act, the following clause shall be substituted, namely :— Amendment of section 195.

"(e) any enactment relating to patni-tenures in so far as it relates to those tenures, except that the expression '*khudkast raiyat* or resident and hereditary cultivator' in sub-section (3) of section 11 of the Bengal Patni Taluqs Regulation, 1819, shall be deemed to include all *raiyats* having a right of occupancy, or"

Reg. VIII
of 1819.

125. The heading to section 196 and section 196 of the said Act are repealed. Repeal of section 196 and heading.

(Section 126.)

Formal
amendments.

126. For the references to foregoing sections, or sub-sections as set forth in the third column of the table annexed to this section where they occur in the sections set forth as items in the second column, the words and figures set forth in the fourth column against those items shall be substituted—

TABLE.

Item No.	Section in which the change is to be made.	Words to be deleted.	Words and figures to be substituted.
1	Section 13 ...	"the last foregoing section."	"section 12."
2	" 17 ...	"the foregoing sections."	"sections 12 to 16A."
3	" 21, sub-sections (1) and (2).	"the last foregoing section."	"section 20."
4	Section 35 ...	"the foregoing sections."	"sections 30 to 34."
5	" 59 ...	"the foregoing sections."	"sections 56 to 58."
6	" 62, sub-sections (1) and (2).	"the last foregoing section."	"section 61."
7	Section 64 ...	"the foregoing sections."	"section 62."
8	" 83 ...	"the last foregoing section."	"section 82."
9	" 86 ...	"the last foregoing sub-section."	"sub-section (6)."
10	" 91 ...	"the last foregoing section."	"section 90."

The Bengal Tenancy (Amendment) Act, 1928. 71

of 1928.]

(Section 126.)

Item No.	Section in which the change is to be made.	Words to be deleted.	Words and figures to be substituted.
11	Section 94 ...	"the last foregoing section."	"section 93."
12	" 95 ...	"the last foregoing section."	"section 94."
13	" 96 ...	"the last foregoing section."	"section 95."
14	" 117 ...	"the last foregoing section."	"section 116."
15	" 119 ...	"either of the two last foregoing sections."	"section 117 or 118."
16	" 151 ...	"either of the two last foregoing sections."	"section 149 or 150."
17	" 161 ...	"the last foregoing section."	"section 160."
18	" 164 ...	"the last foregoing section."	"section 163."
19	" 165 ...	"the last foregoing section."	"section 164."
20	" 167 ...	"any of the foregoing sections."	"sections 164, 165 or 166."
21	" 168 ...	"the foregoing sections."	"sections 159 to 167."

(Section 127.)

Formal
Amendments.

127. For the words set forth in the third column of the table annexed to this section, wherever they occur in the sections and sub-sections of the said Act as hereinbefore amended set forth as items in the second column the words set forth in the fourth column shall be substituted,—

TABLE.

Item No.	Section or sub-section in which the change is to be made.	Words to be deleted.	Words to be substituted.
1	Section 13, sub-section (1).	"fee prescribed"	"fee required."
2	Section 15 ...	"fee prescribed"	"fee required."
3	Section 58, sub-section (1).	"prescribed"	"required."
4	Section 58, sub-section (2).	"prescribed" ...	"required."
5	Section 61, sub-section (2).	"prescribed in" ...	"provided in."
6	Section 74, sub-section (2), clause (a).	"prescribed" ...	"fixed."
7	Section 74, sub-section (2), clause (b).	"prescribed" ...	"required."
8	Section 103A, sub-section (2).	"prescribe" ...	"make."
9	Section 103B, sub-section (1).	"prescribe" ...	"require."
10	Section 104E, sub-section (1).	"prescribe"	"make."
11	Section 106	"prescribe"	"make."
12	Section 158A, sub-section (1).	"prescribed"	"provided."

of 1928.]

(Section 128.)

Item No.	Section or sub-section in which the change is to be made.	Words to be deleted.	Words to be substituted.
13	Section 158A, sub-section (4).	"prescribed "	"provided."
14	Section 158A, sub-section (5).	"prescribe "	"make."
15	Section 180A, sub-section (14).	"prescribing "	"to provide for."
16	Section 184, sub-section (1).	"prescribed "	"provided."

128. For the references in the said Act to the Code of Civil Procedure set forth in the third column of the table annexed to this section, where they occur in the sections of the said Act set forth as items in the second column of the same table, the words, letters and figures set forth in the fourth column thereof shall be substituted,—

Reference to the Code of Civil Procedure.

TABLE.

Item No.	Section of the Bengal Tenancy Act, 1885, in which the change is to be made.	Reference to the Code of Civil Procedure which is to be deleted.	Reference to the Code of Civil Procedure, 1908, or the Bengal Tenancy Act, 1885, which is to be substituted.
1	Section 13, sub-section (1).	"section 312 of the Code of Civil Procedure."	"rule 92 of Order XXI in Schedule I to the Code of Civil Procedure, 1908."
2	Section 31, clause (b).	"chapter XXV of the Code of Civil Procedure."	"Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908."
3	Section 31, clause (b).	"section 392 of the said Code."	"rule 9 of Order XXVI in Schedule I to the said Code."
4	Section 37, sub-section (2).	"section 373 of the Code of Civil Procedure."	"rule 1 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908."
5	Section 58, sub-section (8).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."

(Section 128.)

Item No.	Section of the Bengal Tenancy Act, 1885, in which the change is to be made.	Reference to the Code of Civil Procedure which is to be deleted.	Reference to the Code of Civil Procedure, 1908, or the Bengal Tenancy Act, 1885, which is to be substituted.
6	Section 61, sub-section (2).	"section 52 of the Code of Civil Procedure."	"sub-rules (2) and (3) of rule 15 of Order VI in Schedule I to the Code of Civil Procedure, 1908."
7	Section 107, sub-section (1).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
8	Section 109A, sub-section (2).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
9	Section 109A, sub-section (3).	"chapter XLII of the Code of Civil Procedure."	"sections 100 to 103, section 107, section 108 and section 144 of, and Order XLII in Schedule I to the Code of Civil Procedure, 1908."
10	Section 109A, sub-section (3).	"the first section of that chapter."	"section 100 of that Code."
11	Section 143, sub-sections (1) and (2).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
12	Section 144, sub-section (1).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
13	Section 145 ...	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
14	Section 146 ...	(a) "referred to in section 58 of the Code of Civil Procedure." (b) "that section"	"mentioned in rule 1 of Order VII in Schedule I to the Code of Civil Procedure, 1908." "rule 2 of Order IV in Schedule I to the said Code."
15	Section 147 ...	"section 373 of the Code of Civil Procedure."	"rule 1 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908."
16	Section 153A	"section 108 of the Code of Civil Procedure."	"rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908."

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of 1928.]

(Section 129.)

Item No.	Section of the Bengal Tenancy Act, 1885, in which the change is to be made.	Reference to the Code of Civil Procedure which is to be deleted.	Reference to the Code of Civil Procedure, 1908, or the Bengal Tenancy Act, 1885, which is to be substituted.
17	Section 153A	"section 623 of the said Code."	"section 114 and rule 1 of Order XLVII in Schedule I to the said Code."
18	Section 158, sub-section (2).	"chapter XXV of the Code of Civil Procedure."	"Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908."
19	Section 158, sub-section (2).	"section 392 of the said Code."	"rule 9 of Order XXVI in Schedule I to the said Code."
20	Section 162 ...	"section 235 of the Code of Civil Procedure."	"rule 11(2) of Order XXI in Schedule I to the Code of Civil Procedure, 1908."
21	Section 165, sub-section (1).	"under section 289 of the Code of Civil Procedure."	"in accordance with the procedure provided in sub-section (3) of section 163."
22	Section 169, sub-section (1).	"prescribed by section 295 of the Code of Civil Procedure."	"contained in section 73 of the Code of Civil Procedure, 1908."
23	Section 170, sub-section (1).	"sections 278 to 283 (both inclusive) of the Code of Civil Procedure."	"rules 58 to 63 (both inclusive) of Order XXI in Schedule I to the Code of Civil Procedure, 1908."
24	Section 173, sub-section (1).	"section 294 of the Code of Civil Procedure."	"rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908."

129. The definitions set forth in section 3 of the said Act as hereby amended shall be re-arranged in alphabetical order and shall be re-numbered accordingly and the clauses of section 148 of the said Act as hereby amended shall be alphabetically lettered from (a) onwards, and the necessary amendments consequential to such re-arrangement and re-lettering shall be made throughout the said Act.

Re-arrangement of definitions in section 3 and re-lettering of section 148.

(Section 130.)

Substitution of new
schedule for
Schedule II.

130. For Schedule II to the said Act, the following schedule shall be substituted, namely :—

"Schedule II.

PARTICULARS OF RECEIPT AND ACCOUNT.

(See sections 56 and 57.)

Particulars of receipt (Landlord's portion).	Particulars of receipt (Tenant's portion).
1. Serial number of receipt.	1. Serial number of receipt.
2. Name of village, pargana, thana.	2. Name of village, pargana, thana.
3. (a) Name of the estate and <i>tauzi</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.	3. (a) Name of the estate and <i>tauzi</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.	4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenants' name.	5. Tenants' name.
6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar, Bankar and Phalkar.</i>	6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar, Bankar and Phalkar.</i>
7. Amount paid, specifying for which of the items (c), (d) and (e) and for which year and <i>kist</i> .	7. Amount paid, specifying for which of the items (c), (d) and (e) and for which year and <i>kist</i> .
8. Date of payment.	8. Date of payment.
9. Signature of landlord or his authorized agent.	9. Signature of landlord or his authorized agent.

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of 1928.]

(Section 130.)

Particulars of account (Landlord's portion).	Particulars of account (Tenant's portion).
1. Serial number of receipt.	1. Serial number of receipt.
2. Name of village, pargana, thana.	2. Name of village, pargana, thana.
3. (a) Name of the estate and <i>tasvi</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.	3. (a) Name of the estate and <i>tasvi</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.	4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.	5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlord's rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar, Bankar and Phalkar.</i>	6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlord's rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar, Bankar and Phalkar.</i>
7. Amounts due at the beginning of the year— (a) under each of the items (c), (d) and (e) and for which years; and (b) as interest on above.	7. Amounts due at the beginning of the year— (a) under each of the items (c), (d) and (e) and for which years; and (b) as interest on above.

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[**Ben. Act IV of 1928.**]

(Sections 131, 132.)

Particulars of account (Landlord's portion).	Particulars of account (Tenant's portion).
8. Amounts paid during the year against each of the above dues, with dates of payment and serial number of the rent-receipt granted.	8. Amounts paid during the year against each of the above dues, with dates of payment and serial number of the rent-receipt granted.
9. Amounts remaining due at the end of the year.	9. Amounts remaining due at the end of the year.
10. Date of the statement of account.	10. Date of the statement of account.
11. Signature of landlord or his authorized agent.	11. Signature of landlord or his authorized agent."

Amendment of Article 2 in Part I of Schedule III.

131. In Article 2 in Part I of Schedule III to the said Act in sub-clause (a) in the first column for the word "holding" the words "tenure or holding" shall be substituted, and in the third column after the word "deposit" the words "or presentation of the postal money-order, as the case may be," shall be inserted.

Amendment of Article 6 in Part III of Schedule III.

132. (1) In Article 6 in the first column in Part III of Schedule III of the said Act for the figures "1877" the figures "1908" shall be substituted.

(2) To Article 6 as so amended in the said column the following proviso shall be added, namely :—

"Provided that, where a sale in execution of arrears of rent is set aside on application, the proceedings in execution shall continue and the time between the date of such sale and the date of the order setting it aside shall be excluded from the period of limitation provided by this Article."

Bengal Act II of 1930.

THE BENGAL TENANCY (AMENDMENT) ACT, 1930.

[Published in the *Calcutta Gazette* of the 8th May, 1930.]

An Act further to amend the Bengal Tenancy Act, 1885.

Preamble.

WHEREAS it is expedient further to amend the Bengal Tenancy Act, 1885, in the manner hereinafter appearing;

AND WHEREAS the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Tenancy (Amendment) Act, 1930.

Amendment of section 1 of Act VIII of 1885.

2. In clause (iii) of sub-section (3) of section 1 of the Bengal Tenancy Act, 1885 (hereinafter referred to as the said Act)—

(a) the words “lands other than agricultural lands situated within” shall be omitted; and

(b) after the words “the Local Government” the following proviso shall be inserted, namely:—

“Provided that a notification under this clause shall be no bar to the operation of this Act in respect of agricultural lands situated within the area specified in such notification.”

Amendment of section 12.

3. In section 12 of the said Act—

(a) in sub-section (2) for the words “shall not register” the words “shall not accept for registration” shall be substituted; and

(b) in sub-section (3) for the words “When the registration of any such instrument is complete” the words “When any such instrument is admitted to registration” and for the words “a notice of the transfer and registration” the words “the notice of the transfer” shall be substituted.

Amendment of section 26C.

4. In section 26C of the said Act—

(a) in sub-section (2) for the words “shall not register” the words “shall not accept for registration” shall be substituted; and

Price—Indian, 1 anna; English, 1d.

VIII
of 1885.

5 & 6
Geo. V.
c. 61;
6 & 7
Geo. V.
c. 37;
9 & 10
Geo. V.
c. 101.

*The Bengal Tenancy (Amendment) Act, 1930.**(Sections 5-11.)*

- (b) in sub-section (3) for the words "When the registration of any such instrument is complete" the words "When any such instrument is admitted to registration" shall be substituted.
- Amendment of section 26D.**
- 5.** In section 26D of the said Act—
- (a) in clause (ii) of the second proviso after the words "amongst other purposes for" the words "the purpose of" shall be omitted; and
- (b) in the third proviso after the words "within three degrees of the donor" the words "or any dedication for religious or charitable purposes not included in clause (iii) of the second proviso" shall be inserted, and for the words "in this section" the words "in clause (d) and clause (e) of this section" shall be substituted.
- Amendment of section 49D.**
- 6.** In section 49D of the said Act, for the figures "85" the figures and letter "48H" shall be substituted.
- Amendment of section 49J.**
- 7.** In sub-section (1) of section 49J of the said Act, for the words and figures "sections 86 and 87" the words and figures "sections 86, 86A and 87" shall be substituted.
- Amendment of section 99A.**
- 8.** In clause (a) of sub-section (1) of section 99A of the said Act, for the word, figures and letter "and 26F" the figures, letters and word "26F and 48H" shall be substituted.
- Amendment of section 104.**
- 9.** In clause (b) of section 104 of the said Act, for the word and figures "section 192" the word and figures "section 191" shall be substituted.
- Amendment of section 146A.**
- 10.** In clause (iii) of sub-section (3) of section 146A of the said Act, for the words, figures and letters "section 26E or section 26F" the words, figures and letters "section 26C or section 26E" shall be substituted.
- Amendment of section 160.**
- 11.** In section 160 of the said Act—
- (1) the word "and" at the end of clause (f) shall be omitted; and
- (2) in clause (ff) for the words "the fixed rent or rate of rent" the words "a fixed rent or rate of rent which has not been changed during twenty years" shall be substituted.

of 1930.]

The Bengal Tenancy (Amendment) Act, 1930.

(Sections 12-15.)

Amendment
section
A.

12. In section 174A of the said Act—

(a) in sub-section (1) for the word and figures “section 174” the words and figures “sub-section (1) of section 174 within thirty days from the date of sale” shall be substituted; and

(b) after sub-section (4) the following shall be inserted, namely:—

“(5) Notwithstanding anything contained in this section, an application may be made under sub-section (3) of section 174 to set aside the sale, and where such application is allowed the order made under sub-section (1) confirming the sale shall be deemed to be cancelled.”

Real
section

13. Section 175 of the said Act is hereby repealed.

Amendment
section

14. In clause (iii) of the proviso to sub-section (1) of section 188 of the said Act, for the word and figures “section 49” the word, figures and letter “section 48C” shall be substituted.

Insertion of
section
A.

15. After section 195 of the said Act, the following section shall be inserted, namely:—

“Protection for certain acts.

Protection
in certain
cases for acts
done.

195A. No suit or other proceeding shall be instituted against the Secretary of State for India in Council or against any officer of the Government in respect of anything done by the registering officer, the Collector or the Court in regard to the receiving, distribution or payment of the landlord's fee or the landlord's transfer fee:

Provided that nothing in this section shall prevent any person entitled to receive the amount of any such landlord's fee or landlord's transfer fee or any portion thereof from recovering the same from a person to whom it has been paid by the Collector or the Court.”

*The Bengal Tenancy (Amendment) Act, 1930.**(Sections 16, 17.)*

Amendment
of Schedule II.

16. In Schedule II to the said Act—

- (a) in the main heading for the word "Account" the words "of Statement of Account" shall be substituted; and
- (b) in both sub-headings before the second form for the words "Particulars of account" the words "Particulars of statement of account" shall be substituted.

Amendment
of Articles
1 and 1 (a) in
Part I of
Schedule III.

17. In Part I of Schedule III to the said Act—

- (1) in the first column of Article 1, for the words "or *raiyat*" the words "*raiyat* or under-*raiyat*" shall be substituted; and
- (2) in the first column of Article 1 (a), after the words "non-occupancy-*raiyat*" the words "or under-*raiyat*" shall be inserted.



Government of Bengal

Legislative Department

Bengal Act VI of 1938

The
Bengal Tenancy (Amendment)
Act, 1938

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Bengal Act VI of 1938.

THE BENGAL TENANCY (AMENDMENT) ACT, 1938.

[Passed by the Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette*
of the 18th August 1938.]

An Act further to amend the Bengal Tenancy Act, 1885.

VIII of
1885.

WHEREAS it is expedient further to amend the Bengal Tenancy Act, 1885, in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Tenancy (Amendment) Act, 1938. Short title.

2. To clause (5) of section 3 of the Bengal Tenancy Act, 1885 (hereinafter referred to as the said Act), the following shall be added, namely:— Amendment of section 3 of Act VIII of 1885.

“whether the *raiyyat* or under-*raiyyat* has held the land before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928;”.

Ben.
Act
IV of
1928,

3. Section 26A of the said Act is hereby repealed. Repeal of section 26A.

4. For section 26C of the said Act the following section shall be substituted, namely:— Substitution of new section for section 26C.

“26C. (1) Every transfer shall be made by registered instrument, except in the cases of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913; and a registering officer shall not accept for registration any such instrument unless the sale price, or where there is no sale price, the value of the holding or portion or share thereof transferred is stated therein, and unless it is accompanied by—

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1913.

- (i) a notice giving particulars of the transfer in the prescribed form, together with the process fee prescribed for the service thereof on the landlord or landlords or their common agent, if any, who is or are not party or parties to the transfer, and
- (ii) such notices and process fees as may be required by sub-section (4).

(Section 4.)

(2) In the case of a bequest of such a holding or portion or share thereof, no Court shall grant probate or letters of administration until the applicant files a notice and deposits a process fee similar to those referred to in clause (i) of sub-section (1).

(3) A Court or Revenue-officer shall not confirm the sale of such a holding or portion or share thereof put to sale in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, and no Court shall make a decree or order absolute for foreclosure of a mortgage of such a holding or portion or share thereof, until the purchaser or the mortgagee, as the case may be, files a notice or notices and deposits a process fee or fees similar to those referred to in sub-section (1). Ben. Act
III of
1913.

(4) If the transfer of a portion or share of such a holding be one to which the provisions of sub-section (1) of section 26F apply, there shall be filed notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all the co-sharer tenants of the said holding who are not parties to the transfer.

(5) The Court, Revenue-officer or registering officer, as the case may be, shall serve the notices provided in this section by registered post, and after receipt of such notice, the landlord or landlord's agent, as the case may be, shall not refuse to recognise the transferee as the tenant in respect of the holding or portion or share thereof transferred nor omit to enter the transferee's name in the landlord's rent-roll in place of that of the transferor or where only a share or a portion of the transferor's interest has been transferred, along with the name of the transferor :

Provided that such recognition shall not operate as an admission of the amount of rent or the area or any incident of such occupancy holding other than the existence of a right of occupancy therein or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof :

Provided further that if a transfer is subsequently set aside or modified by a competent authority, the party in whose favour such order has been made shall, unless such order has been passed in a suit, appeal or other proceedings to which the landlord was a party, deposit with the authority before whom the appropriate suit or proceeding was first initiated the prescribed fee for a notice on the landlord or his common agent, if any, describing the modifications made by such order, on receipt of which notice the landlord shall cause his rent-roll to be corrected accordingly.

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(Sections 5, 6.)

(6) In this section—

- (a) 'transferee,' 'purchaser' and 'mortgagee' include their successors in interest,
- (b) 'transfer' does not include partition or a lease, or, until a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale, and
- (c) 'transferor' includes a person whose interest in a holding or portion or share thereof has terminated in the circumstances mentioned in sub-section (2) or sub-section (3)."

5. Sections 26D and 26E of the said Act are hereby repealed.

Repeal of sections 26D and 26E.

6. For section 26F of the said Act the following section shall be substituted, namely :—

Substitution of new section for section 26F

"26F. (1) Except in the case of—

- (a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or
Power of co-sharer of transferor to purchase.
- (b) a transfer by exchange, lease, or partition; or
- (c) a transfer by bequest, or gift (including *heba* but excluding *heba-bil-ewaz* for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or
- (d) a *wakf* in accordance with the provisions of the Muhammadan Law, or
- (e) a dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual—

one or more co-sharer tenants of the holding, a portion or share of which is transferred, may within four months of the service of the notice under section 26C, apply to the Court for the said portion or share to be transferred to himself or themselves.

Explanation.—A relation by consanguinity shall, for the purposes of this section, include a son adopted under the Hindu Law.

(Section 6.)

(2) The application shall be dismissed unless the applicant or applicants at the time of making it, deposit in Court the amount of the consideration money or the value of the transferred portion or share of the holding, as stated in the said notice, together with compensation at the rate of ten *per centum* of such amount.

(3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as it may fix and to state what other sums he has paid in respect of rent or in annulling incumbrances on the property since the date of the transfer. The Court shall then direct the applicants [including any person whose application under sub-section (4) has been granted] to deposit within such period as the Court thinks reasonable, such amount as the transferee has paid on such account, together with interest at the rate of six and a quarter *per centum per annum* with effect from the date on which the transferee made such payments.

(4) (a) When an application has been made under sub-section (1), any of the remaining co-sharer tenants, including the transferee, if one of them, may within the period referred to in that sub-section or within one month of the date of the application, whichever is later, apply to join in the said application; any co-sharer tenant who has not applied under either sub-section (1) or this sub-section shall not have any further power of purchase under this section.

(b) Such application to join as a co-applicant shall be dismissed unless within such period as the Court may fix, not extending beyond the period referred to in clause (a), the applicant deposits in Court for payment to the applicant or applicants under sub-section (1), such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section (2). If such deposit is made, the Court shall grant the application to join, and thereafter such applicant shall be deemed to be an applicant under sub-section (1).

(5) The Court shall thereafter make an order allowing the applications under sub-section (1) of such applicants [whether they applied under sub-section (1) or sub-section (4)] who have made the deposits required by this section and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such other persons as the Court thinks equitable.

(6) In making an order under sub-section (5) in favour of more than one co-sharer tenant, the Court may apportion the property comprised in the portion or share transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration; the Court shall so apportion the said property or portion thereof on the request of any applicant, and in this case may require the applicant who makes such request to make, within such period as the

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(Section 7.)

Court may fix, such further deposit as the Court considers necessary for equitable distribution among the remaining applicants :

Provided that no apportionment ordered under this sub-section shall operate as a division of the holding.

(7) From the date of the making of the order under sub-section (5)—

- (a) the right, title, and interest in the portion or share of the holding, accruing to the transferee from the transfer shall, subject to the provisions of section 22 and to any orders passed under sub-section (6), be deemed to have vested, jointly and free from all incumbrances which have been annulled or created after the date of the transfer, in the co-sharer tenants, whose applications to purchase have been allowed under this section,
- (b) the liability of the transferee for the rent due from him on account of the transfer shall cease, and
- (c) the Court on further application of such applicant or applicants may place him or them, as the case may be, in possession of the property vested in them.

(8) When a transferee is divested of his right, title and interest under the provisions of sub-section (7), he shall for the purposes of clauses (a), (c) and (d) of section 156 be deemed to be a *raiyyat* ejected from his holding by proceedings for his ejection commencing on the date on which the application under sub-section (1) was made.

(9) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhammadan Law.

(10) An appeal shall lie to the ordinary Civil Appellate Court from any order of a Court under this section.

(11) In this section 'transfer' does not include simple or usufructuary mortgage or mortgage by conditional sale until a decree or order absolute for foreclosure is made."

7. In section 26G of the said Act—

Amendment of section 26G.

(1) at the end of sub-section (1) the following shall be inserted, namely :—

"and notwithstanding anything contained in this Act or in any other law or in any contract, no other form of usufructuary mortgage so entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928, shall have any force or effect"

[Ben. Act VI

(Section 7.)

(2) after sub-section (1) the following sub-section shall be inserted, namely :—

“(1a) Notwithstanding anything contained in this Act or in any other law or in any contract, every usufructuary mortgage subsisting on or after the first day of August 1937, which was so entered into before the commencement of the Bengal Tenancy (Amendment) Act, 1928, shall be deemed to have taken effect as a complete usufructuary mortgage for the period mentioned in the instrument or for fifteen years, whichever is less.”

Ben. Act
IV of 1928.

(3) in sub-section (2)—

(a) for the words “such mortgage” the words, figures, letter and brackets “entered into before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928, such a complete usufructuary mortgage, or a mortgage referred to in sub-section (1a)”, and

(b) for the words “said period” the words, figures, letter and brackets “periods referred to in sub-section (1) or sub-section (1a)”

shall be substituted ;

(4) in sub-section (3) for the word “mortgage,” the words, figures and brackets “complete usufructuary mortgage entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928,” shall be substituted ;

(5) in sub-section (4)—

(a) the words “no other form of usufructuary mortgage entered into by an occupancy-*raiyat* in respect of his holding or portion or share thereof shall have any force or effect, and” shall be omitted ; and

(b) the following proviso shall be inserted, namely :—

“Provided that such a document executed before the commencement of the Bengal Tenancy (Amendment) Act, 1928, may be so received in evidence or so acted upon as a complete usufructuary mortgage for the period mentioned therein or for fifteen years, whichever is less.” ; and

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(6) after sub-section (4) the following sub-section shall be inserted, namely :—

“(5) Notwithstanding anything contained in this Act or in any other law or in any contract, the consideration (with all interest thereon) for a complete usufructuary mortgage or for another form of usufructuary mortgage deemed under sub-section (1a) to have taken effect as a complete usufructuary mortgage, entered into by an occupant-*raiyat* in respect of his holding or a portion or share thereof, shall be deemed to have been extinguished on the expiry of the period (a) mentioned in the instrument of the mortgage, or (b) of fifteen years, whichever is less, from the date of the registration of the instrument, or where there is no registered instrument, from the date of the mortgagee's entry into possession, and the mortgagor shall thereupon become entitled to possession of the mortgaged holding, and he may, if he is not forthwith given possession, apply to the Court or to a Revenue-officer to be restored thereto :

Provided that, if in the case of such a mortgage subsisting on or after the first day of August 1937, the said period has, on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1938, already expired, the mortgagor shall, immediately on the commencement of the said Act, become entitled to possession of the mortgaged holding, but he shall not be entitled to, nor shall the mortgagee be liable for, any compensation in respect of the mortgagee's possession from the date of the expiry of the said period to the date of the commencement of the said Act.

Ben. Act
VI of 1938.

(6) An application under sub-section (5) shall be accompanied by a process fee of the prescribed amount for service of notice on the mortgagee, and the Court or Revenue-officer to whom such an application is made, may, after service of such notice, award to the mortgagor such compensation as appears equitable in respect of the period during which the mortgagee retained possession after the date on which the mortgagor became entitled to be restored to possession and may pass an order restoring the possession of the land mortgaged to the mortgagor and such order shall have the effect of a decree of a civil court.”

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(Sections 8—17.)

Repeal of sections 26H, 26I and 26J.

8. Sections 26H, 26I and 26J of the said Act are hereby repealed.

Insertion of new section 47A.

9. In Chapter VII of the said Act after the heading "Under-*raiyats*" the following section shall be inserted, namely :—

"47A. The provisions of this Chapter shall apply to all under-*raiyats* whether their tenancies were created before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928."

Ben. Act IV of 1928,

Amendment of section 48A.

10. In section 48A of the said Act for the words, figures and letters "section 48B or section 48D" the words, figures and letters "sections 48B or 48D or section 48G, as the case may be" shall be substituted.

Amendment of section 48B.

11. In clause (i) of the proviso to sub-section (1) of section 48B of the said Act for the words "the *raiyat*" the words "his landlord" shall be substituted.

Amendment of section 48E.

12. In section 48E of the said Act for the word "*raiyat*" the word "landlord" shall be substituted.

Amendment of section 48F.

13. In section 48F of the said Act after the word "but" the words, figures, letter and brackets "subject to the provisions of sub-section (2) of section 48G," shall be inserted.

Amendment of section 48G.

14. In sub-section (2) of section 48G of the said Act—
(1) in clause (i) for the word, figures and letters "22, 26A to 26J" the word and figure "and 22" shall be substituted; and
(2) in clause (ii) the figure "86" shall be omitted.

Repeal of section 48H.

15. Section 48H of the said Act is hereby repealed.

Amendment of section 49A.

16. In sub-section (2) of section 49A of the said Act—
(a) after the word "Bhumijes," the word "Dalus",
and
(b) after the word "Mundas" the word "Mundais"
shall be inserted.

Amendment of section 49D.

17. In section 49D of the said Act the words, figure, and letter "Subject to the provisions of section 48H" shall be omitted.

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(Sections 18—21.)

18. In sub-section (4) of section 54 of the said Act Amendment of the words, figures and letters "or that he has waived his section 54. rights under sections 26D, 26E, 26F or 26J" shall be omitted.

19. In section 67 of the said Act for the words "twelve Amendment of and-a-half" the words "six and a quarter" shall be substituted. section 67.

20. After section 74 of the said Act the following section shall be inserted, namely :— Insertion of new section 74A.

"74A. (1) If a landlord or his agent realises from a tenant any imposition declared under sub-section (1) of section 74 to be illegal, such landlord or agent, as the case may be, shall be liable to the same fine, to be imposed in the same manner, as in sub-section (3) of section 58, and the provisions of sub-sections (4), (7) and (8) of the said section relating to inquiry, fine and procedure shall, *mutatis mutandis* and so far as may be, apply to proceedings under this section.

(2) An appeal shall lie to the District Judge against an order imposing a fine under this section, and the order passed by the District Judge on such appeal shall be final.

(3) The imposition of a fine on a landlord or landlord's agent under this section shall not operate as a bar to the institution of a suit under section 75."

21. After section 75 of the said Act the following sub-heading and section shall be inserted, namely :— Insertion of new section 75A.

"*Suspension of provisions relating to enhancement of rent.*

75A. (1) All the provisions of this Act relating to enhancement of rent are hereby suspended for a period of ten years with effect from the twenty-seventh day of August 1937.

(2) (a) All decrees and orders enhancing rent passed under any of the provisions of this Act on or after the twenty-seventh day of August 1937 and before the date of the commencement of the Bengal Tenancy (Amendment) Act, 1938, are hereby declared to be inoperative from the date of such decree or order until the expiry of the ten years referred to in sub-section (1).

(b) Any provision providing for enhancement of rent contained in any contract entered into between a landlord and a tenant during the period of ten years referred to in sub-section (1) is hereby declared to be inoperative during the said period.

(Sections 22—24.)

(3) Notwithstanding anything contained in this Act or any other law, the period during which a decree, order or contract is rendered inoperative under this section shall not be taken into account in computing any period under the law of limitation nor in construing the terms of a contract."

Insertion of new section 85A.

22. In Chapter IX of the said Act after the sub-heading "*Surrender and abandonment*" the following section shall be inserted, namely :—

"85A. (1) A tenure-holder may apply to the Court for Surrender by tenure-holders. permission to surrender a tenure.

(2) An application under sub-section (1) shall be in the prescribed form, shall give particulars, *inter alia*, of under-tenure-holders and *raiyats*, if any, holding directly under the tenure sought to be surrendered, and of any incumbrances upon the said tenure, and shall be accompanied by the process fee prescribed for service of notices upon the landlord or his common agent, if any, under-tenure-holders and *raiyats*, if any, referred to above and incumbrancers, if any.

(3) If the Court, after hearing the parties, grants permission for the surrender of the tenure, it shall impose such equitable conditions as it may think proper.

(4) An appeal shall lie to the ordinary Civil Appellate Court from any order of a court under this section."

Amendment of section 86.

23. In section 86 of the said Act after the word "*raiyat*" in all places in which it occurs, the words "*or under-raiyat*" shall be inserted.

Substitution of new section for section 86A.

24. For section 86A of the said Act the following section shall be substituted, namely :—

"86A. (1) If the lands of a tenure or holding or a portion of such lands are lost by diluvion, the rent of the tenure or holding shall be abated by an amount which bears the same proportion to the rent of the whole tenancy, as the area lost bears to that of the whole tenancy.

Abatement of rent on account of diluvion and re-entry into lands which reappear.

(2) (a) Notwithstanding anything contained in this Act or any other law or any contract to the contrary, the right, title and interest of the tenant or his successors-in-interest shall subsist in such lands or portion thereof during the period of loss by diluvion not exceeding twenty years and the tenant or his successors-in-interest shall have right to immediate possession on the reappearance of such lands

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or portion thereof within twenty years of the loss by the diluvion, and the landlord shall have right to the arrears of rent without interest or damage in respect of the land which has reappeared for the period during which it was lost or for four years whichever is less.

(b) The rent of the lands which have reappeared, shall for the purposes of the payment both of the arrears of rent under this sub-section and of the rent due thereafter (until such rent is modified in accordance with the provisions of this Act) be calculated on the rent of the remainder of the tenancy existing when possession of the lost lands is resumed, and shall bear the proportion to that rent which the area of the lands which have reappeared bears to that of the remainder of the tenancy :

Provided that in cases where the entire tenure or holding has been lost by diluvion, the rent of the portion thereof which reappears shall be calculated in like manner on the rent existing when the entire tenancy was lost.

(3) Nothing shall prevent the accrual of rights under the operation of any other enactment in any portion of the lands of a tenure or holding which have been lost by diluvion, if such lands thereafter reappear as an accretion thereto."

25. For section 88 of the said Act the following section shall be substituted, namely :—

Substitution of
new section for
section 88.

"88. (1) Save as provided elsewhere in this section, a division of a tenure or holding or a distribution of the rent payable in respect thereof shall not be valid unless such division or distribution has been expressly consented to in writing by both—

(a) the landlord or the entire body of landlords or their agents duly authorised in that behalf, and

(b) all the co-sharer tenants :

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

(2) The Civil Court, on application made to it by one or more co-sharer tenants for a division of a tenure or holding or for a distribution of the rent payable in respect thereof, or for the annulment or modification of a previous division or distribution other than one made

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under this sub-section or under an agreement made between all the landlords and co-sharer tenants in conformance with the provisions of sub-section (1), may, by order in writing, direct such division of the tenure or holding or such distribution of rent as the Court considers fair and equitable, or annul or modify a division or distribution previously made other than one of the nature referred to above if the Court considers it unfair and inequitable :

Provided that—

- (a) no such order shall be passed without notice to the landlord or the entire body of landlords or their common agent, if any, and to the remaining co-sharer tenants, the prescribed process-fee for which shall accompany the application ;
- (b) no order for division or distribution shall be made which would result in bringing the rent for any portion below two rupees in the case of tenures or one rupee in the case of holdings ; and
- (c) nothing contained in this sub-section shall be deemed to authorise a Court on an application for division or distribution to direct a division or distribution in respect of the share of any tenant other than an applicant under this sub-section or a co-sharer tenant who has been joined as a co-applicant under sub-section (3).

(3) On receipt of notice of an application for division or distribution under sub-section (2) a co-sharer tenant may apply to be joined as a co-applicant, and upon such application the Court shall join the said co-sharer tenant as a co-applicant without further notice to the landlord or landlords and the remaining co-sharer tenants.

(4) Every order of a Court under sub-section (2) directing division of a tenure or holding or a distribution of the rent thereof shall also direct payment to the landlord of one rupee as mutation fee by each applicant or each body of applicants including co-applicants, if any, joined under sub-section (3).

(5) Every order referred to in sub-section (4) shall state the date from which the division or distribution shall have effect and the joint and several liability of each co-sharer tenant for arrear of rent, if any, up to that date, shall subsist in all the lands of the entire tenure or holding.

(6) An appeal shall lie to the ordinary Civil Appellate Court from an order of a Court under this section, provided that it is presented within thirty days from the date of such order and is accompanied by the prescribed fee."

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(Sections 26—30.)

26. In sub-section (7) of section 98 of the said Act the words, figure and letter “or section 158A” shall be omitted. Amendment of section 98.

27. In sub-section (1) of section 99A of the said Act— Amendment of section 99A.

(1) in clause (a) for the word, figures and letters “26C, 26F and 48H” the word, figure and letter “and 26C” shall be substituted ;

(2) in clause (b) for the word, “or the landlord’s transfer fee payable under those sections, and” the words and figures “payable under sections 12, 13, 15, 17 and 18,” shall be substituted ;

(3) at the end of clause (c) the word “and” shall be inserted, and

(4) after clause (c) the following clause shall be inserted, namely :—

“(d) the notices referred to in sub-section (2) of section 85A and in sub-section (2) of section 88.”

28. In the proviso to section 110 of the said Act for the words and figures “sections 191 and 192,” the word and figure “section 191 ” shall be substituted. Amendment of section 110.

29. In clause (iii) of sub-section (3) of section 146A of the said Act the words, figure and letter “or section 26E” shall be omitted. Amendment of section 146A.

30. (1) Section 147 of the said Act shall be renumbered as sub-section (1) of section 147, and in the said section so renumbered— Amendment of section 147.

(a) for the word “three,” the word “nine” shall be substituted ; and

(b) the proviso shall be omitted.

(2) To the said section as renumbered and amended the following sub-sections shall be added, namely :—

“(2) Nothing in sub-section (1) nor in rule 2 of Order II in Schedule I to the Code of Civil Procedure, 1908, shall be deemed to prevent a landlord instituting a suit for a portion of the arrears of rent in respect of a holding, provided that—

(a) the claim in such suit shall be for the rent or the balance of the rent due for a complete agricultural year or years ; and

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(b) the plaint shall contain in addition to the particulars specified in clause (b) of section 148, the total claim which might have been made on the date of the institution of the suit, and the period to which the said total claim relates.

(3) Where a subsequent suit for rent is instituted by a co-sharer landlord and has been consolidated with a previous suit for rent under the provisions of sub-section (4) of section 148A, the date of the institution of the subsequent suit shall, for the purposes of this section, be deemed to be the date of the suit which was first instituted and with which it was consolidated."

Amendment of section 148.

31. In section 148 of the said Act—

(1) in clause (b) for the words "identification and the plaint," the words "identification. The plaint" shall be substituted; and

(2) in clause (k)—

(a) after sub-clause (i) the following sub-clause shall be inserted, namely :—

"(ia) service of the special summons referred to in sub-clause (i) shall ordinarily be effected by forwarding the summons by post in a letter with acknowledgment due addressed to the defendant and registered under Chapter VI of the Indian Post Office Act, 1898; and when a summons is so forwarded, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served. ";

(b) in sub-clause (ii) for the words, figure and brackets "has been issued under sub-clause (i)," the words, figure and brackets "referred to in sub-clause (i) has been served" shall be substituted;

(c) at the end of sub-clause (iii) the following shall be inserted, namely :—

"and no action in execution of a decree shall be taken until a period of sixty days has elapsed since the date of the decree ;"

(d) after sub-clause (iii) as so amended, the following sub-clause shall be inserted, namely—

"(iii a) notwithstanding anything contained in section 34 of the Code of Civil Procedure, 1908, no interest shall be payable from the

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date of the decree on the aggregate sum decreed, if such aggregate sum is paid in full by the judgment-debtor within sixty days from date of the decree.”; and

- (e) in sub-clause (iv) the words “upon his depositing one half of the amount recoverable under the decree” shall be omitted.

32. In clause (b) of section 153 of the said Act for the words “Provincial Government,” the words “High Court” shall be substituted. Amendment of section 153.

33. The whole of Chapter XIII A of the said Act is hereby repealed. Repeal of Chapter XIII A.

34. In section 178 of the said Act—

- (1) in clause (g) of sub-section (1) for the figure and letter “26J” the figure and letter “26G” shall be substituted; and Amendment of section 178.

- (2) in clause (c) of sub-section (3) after the word “*raiyat*” the words “or under-*raiyat*” shall be inserted.

35. In sub-section (3) of section 180 of the said Act after the words “the Civil Court,” the words “or, after hearing both landlord and tenant, of his own motion” shall be inserted. Amendment of section 180.

36. For sub-section (14) of section 180A of the said Act the following sub-section shall be substituted, namely:— Amendment of section 180A.

“(14) The premium or any instalment thereof shall be recoverable as rent, and interest shall not be payable on any instalment in respect of, which default has not been made”.

37. In the proviso to sub-section (1) of section 188 of the said Act clause (i) shall be omitted. Amendment of section 188.

38. In section 189 of the said Act—

(1) in clause (3)—

- (a) the words “or the landlord’s transfer fee”, and
(b) the word “and”

Amendment of section 189.

shall be omitted.

(2) (a) in clause (4) for the words, figures, letters and brackets “18, clause (a), 26C, 26E and 48H” the word and figure “and 18” shall be substituted, and

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(b) at the end of the said clause the word "and" shall be inserted ; and

(3) in clause (5)—

(a) in sub-clause (b) the words, figures, letter and brackets "and of the landlord's transfer fee and costs of transmission under sub-section (7) of section 26C" shall be omitted ;

(b) for sub-clause (c), the following sub-clause shall be substituted, namely :—

"(c) the amount of fees—

(i) for processes referred to in sub-section (2) of section 12, in sub-sections (1), (2), (3), (4) and (5) of section 26C, in sub-section (6) of section 26G, in sub-section (2) of section 35A and in sub-section (2) of section 88 ;

(ii) for service of notice referred to in sub-section (1) of section 13 ; and

(iii) referred to in sub-section (2) of section 61 and in sub-section (6) of section 88", and

(c) sub-clause (p) shall be omitted.

Amendment of
section 195.

39. For clause (e) of section 195 of the said Act the following clause shall be substituted, namely :—

"(e) any enactment relating to *patni*-tenures in so far as it relates to those tenures, except that—

(i) the provisions of section 67 and of clause (i) of sub-section (1) of section 178 shall apply to all *patni*-tenures, and

(ii) the expression '*khudkasi raiyat* or resident and hereditary cultivator' in sub-section (3) of section 11 of the Bengal *Patni Taluks Regulation, 1819*, shall be deemed to include all *rai-yats* having a right of occupancy ; or".

Reg. VIII
of 1819.

GOVERNMENT OF BENGAL. G.P.

LEGISLATIVE DEPARTMENT.

Bengal Ordinance No. I of 1938.

The Bengal Tenancy Ordinance, 1938.

[Published in the Calcutta Gazette, Extraordinary, of
the 3rd June 1938.]

WHEREAS the Legislature of the Province is not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action;

26 Geo. V,
Ch. 2

AND WHEREAS the instructions of the Governor-General under sub-section (1) of section 88 of the Government of India Act, 1935, have been obtained:

The Governor is pleased to make and promulgate the following Ordinance, namely:—

1. (1) This Ordinance may be called the Bengal Tenancy Ordinance, 1938.

(2) It shall be deemed to have come into force on the 31st May 1938.

VIII of
1885.

2. Notwithstanding anything contained in any other law, the period during which this Ordinance remains in force shall not, in relation to the registration of instruments of transfer to which the provisions of sub-section (2) of section 26C of the Bengal Tenancy Act, 1885 (hereinafter referred to as the said Act) apply, be taken into consideration in computing any period prescribed by or under any law within which a document shall be presented for registration.

3. Notwithstanding anything contained in any other law, during the period during which this Ordinance remains in force—

(a) a Court shall not, on the ground of the failure to deposit the landlord's transfer fee and the prescribed cost of transmission thereof, dismiss an application for probate or letters of administration to which the provisions of sub-section (4) of section 26C of the said Act apply;

(b) a Court or Revenue-officer shall not, in a matter to which the provisions of section 26E of the said Act apply, make an order under sub-section (3) of the said section.

Price—Indian, anna 1; English, 2d.

B. G. Press—1938-39—4200A—1,500

Bengal Act II of 1939.

THE BENGAL TENANCY (AMENDMENT) ACT, 1939.

[Passed by the Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette*,
Extraordinary, of the 6th April 1939.]

*An Act further to amend section 68 of the Bengal Tenancy
Act, 1885.*

WHEREAS it is expedient to reduce the maximum rate of damages which may be awarded under the provisions of section 68 of the Bengal Tenancy Act, 1885, and for that purpose further to amend the said section in the manner hereinafter provided ;

VIII of
1885.

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bengal Tenancy (Amendment) Act, 1939.

Amendment of
section 68 of
Act VIII of
1885.

2. In section 68 of the Bengal Tenancy Act, 1885, for the word "twenty-five" in both places in which it occurs the words "twelve and a half" shall be substituted.

X9(J): (2262)

Price—Indian, anna 1 ; English, 2d.

B. G. Press—1941-42—5808A—1,000.



17

Government of Bengal

Legislative Department

Bengal Act XVIII of 1940

The Bengal Tenancy (Amendment)

Act, 1940

Xg (D) : (2262)

H0

Superintendent, Government Printing
Bengal Government Press, Alipore, Bengal
1942

Price—Indian, anna 1; English, 2d.

Bengal Act XVIII of 1940.

THE BENGAL TENANCY (AMENDMENT) ACT, 1940.

[Passed by the Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette* of the 9th January 1941.]

An Act further to amend the Bengal Tenancy Act, 1885, and the Bengal Tenancy (Second Amendment) Act, 1939.

VIII of
1885.
Ben. Act
XIII of
1939.

WHEREAS it is expedient further to amend the Bengal Tenancy Act, 1885, and the Bengal Tenancy (Second Amendment) Act, 1939, for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Tenancy (Amendment) Act, 1940. Short title.

2. In sub-section (5) of section 26C of the Bengal Tenancy Act, 1885 (hereinafter referred to as the said Act), for the words "shall serve the notices provided in this section by registered post" the words "shall, in the prescribed manner, serve the notices for which this section provides" shall be substituted. Amendment of section 26C of Act VIII of 1885.

3. In section 26G of the said Act—

(1) for sub-section (1a) the following sub-section shall be substituted, namely:—

Amendment of section 26G.

“(1a) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, every mortgage (including a mortgage by conditional sale) entered into by an occupancy-*raiyat* in respect of his holding or of a portion or share thereof in which possession of land is delivered to the mortgagee—

(a) which was so entered into before the commencement of the Bengal Tenancy (Amendment) Act, 1928, and was subsisting on or after the first day of August, 1937, or

(b) which, being other than a usufructuary mortgage having under sub-section (1) no force or effect, was so entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928, and before the commencement of the Bengal Tenancy (Amendment) Act, 1940, and was subsisting on or after the commencement of the

Ben. Act
V of
1928.

(Section 3.)

Bengal Tenancy (Amendment) Act, 1940, shall be deemed to have taken effect as a complete usufructuary mortgage for the period mentioned in the instrument or for fifteen years, whichever is less."

(2) after sub-section (1a) the following sub-section shall be inserted, namely:—

"(1b) Notwithstanding anything contained elsewhere in this Act or in any other law or in any contract, no mortgage (other than a complete usufructuary mortgage) entered into by an occupancy-*raiyat* in respect of his holding or of a portion or share thereof after the commencement of the Bengal Tenancy (Amendment) Act, 1940, in which possession of land is delivered to the mortgagee, shall have any force or effect.";

(3) in sub-section (4)—

(a) in clause (b) after the words "complete usufructuary mortgage" the word "or" shall be inserted;

(b) after clause (b) the following clause shall be inserted, namely:—

"(c) a mortgage of such holding, portion or share [other than a complete usufructuary mortgage or a usufructuary mortgage referred to in clause (b)] in which possession of land is delivered to the mortgagee," and

(c) for the proviso the following shall be substituted, namely:—

"Provided that—

(i) a document referred to in clauses (a) or (b) which was executed before the commencement of the Bengal Tenancy (Amendment) Act, 1928, or

(ii) a document referred to in clause (c) which was executed before the commencement of the Bengal Tenancy (Amendment) Act, 1940,

Ben. Act
IV of
1928.

may be so received in evidence or so acted upon as a complete usufructuary mortgage for the period mentioned therein or for fifteen years, whichever is less.";

The Bengal Tenancy (Amendment) Act, 1940.

of 1940.]

(Section 3.)

(4) in sub-section (5)—

(a) for the words beginning with “to possession of” and ending with “restored thereto” the following words shall be substituted, namely:—

“to possession of the mortgaged property, and he may, if he is not forthwith given possession, apply to the Court to be restored to possession thereof and to be awarded such compensation as may appear to the Court to be equitable in respect of the period during which the mortgagee retained possession after the date on which the mortgagor became entitled to be restored to possession”, and

(b) in the proviso, for the word “holding” the word “property” shall be substituted;

(5) in sub-section (6)—

(a) for the words “or Revenue-officer to whom” the words “to which” shall be substituted, and

(b) for the words beginning with “in respect of the period” and ending with “decree of a Civil Court” the words “and may pass an order restoring possession of the mortgaged property to the mortgagor” shall be substituted; and

(6) after sub-section (6), the following sub-sections shall be inserted, namely:—

“(7) Any order made by a Court under sub-section (6) shall have the effect of a decree of a Civil Court and shall be subject to the provisions of the Code of Civil Procedure, 1908, in respect of appeal, revision or review:

Act V of
1908.

Provided that, notwithstanding anything contained in this or any other Act for the time being in force, a memorandum of appeal or application for review or revision under this sub-section shall be chargeable with a fee of twelve annas only.

(8) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract, in respect of a mortgage by conditional sale subsisting on the date of the commencement of the Bengal

(Section 3.)

Tenancy (Amendment) Act, 1940, in which possession of land has been delivered to the mortgagee—

- (a) the mortgagor may at any time institute a suit for a declaration that the original principal, together with all interest due thereon, has been extinguished by the profits arising from the land in respect of which; and subsequent to the date on which, possession was so delivered, and for recovery of possession of the mortgaged property, and
- (b) the mortgagee may, at any time after the expiry of fifteen years from the date of the instrument creating the mortgage, institute a suit for a declaration that the original principal, together with all interest due thereon, has not been extinguished by the profits arising from the land in respect of which, and subsequent to the date on which, possession was so delivered.
- (9) In any suit instituted under sub-section (8) the Court may, if it thinks fit, re-open any transaction relating to the mortgage for the purpose of ascertaining whether the mortgagee in possession has derived from the mortgaged property profits sufficient to extinguish the original principal, together with simple interest thereon calculated at the rate of eight *per centum per annum*.
- (10) In any suit instituted under sub-section (8), if the Court is satisfied that the original principal, together with all interest due thereon, has been extinguished by the profits arising from the mortgaged property or by any other means, it shall make a declaration to this effect and shall pass a decree restoring possession of the mortgaged property to the mortgagor.
- (11) In any suit instituted under sub-section (8), if the Court is satisfied that the original principal, together with all interest due thereon, has not been extinguished by the profits arising from the mortgaged property or by any other means, it shall make a declaration to this effect, and may fix any sum, not exceeding the original principal, on payment of which the mortgagor shall be entitled to redeem the mortgaged property and may pass a decree accordingly, allowing the mortgagor a reasonable period within which to make such payment; and in any such decree the Court may further direct

[1940.]

(Sections 4, 5.)

that, if such payment is not made within the period so fixed, the mortgages shall retain possession of the mortgaged property for such period as may be specified in the decree and that, after the expiry of that period the original principal, together with all interest due thereon, shall be deemed to be extinguished and possession of the mortgaged property shall be restored to the mortgagor.

(12) Subject to the provisions of sub-section (13), the decision of the Court under sub-section (10) or sub-section (11) shall be final.

Act V of 1908.

(13) The provisions of the Code of Civil Procedure, 1908, relating to appeals, shall apply to all decrees or orders made under sub-sections (10) and (11), but notwithstanding anything contained in the Indian Limitation Act, 1908, or in this Act, the period of limitation for an appeal to the Court of a District Judge against any such decree or order shall be ninety days from the date of the decree or order appealed from.

IX of 1908.

4. In sub-section (1B) of section 52 of the said Act after the words "on account of increase of area" the words "unless an equivalent reduction of rent on account of reduction of area has been granted in respect of one or more of the contiguous tenures or holdings" shall be added.

Amendment of section 52.

5. After section 168 of the said Act the following section shall be inserted, namely:—

Insertion of new section 168A.

168A. (1) Notwithstanding anything contained in this Act, or in any other law, or in any contract thereon, and liability of purchasers thereof.

(a) a decree for arrears of rent due in respect of a tenure or holding, whether having the effect of a rent decree or money decree, or a certificate for such arrears signed under the Bengal Public Demands Recovery Act, 1913, shall not be executed by the attachment and sale of any movable or immovable property other than the entire tenure or holding to which the decree or certificate relates:

Ben. Act III of 1913.

Provided that the provisions of this clause shall not apply if, in any manner other than by surrender of the tenure or holding, the term of the tenancy expires before an application is made for the execution of such a decree or certificate;

[Ben. Act XVIII of 1940.]

(Section 6.)

(b) the purchaser at a sale referred to in clause (a) shall be liable to pay to the decree-holder or certificate-holder the deficiency, if any, between the purchase price and the amount due under the decree or certificate together with the costs incurred in bringing the tenure or holding to sale and any rent which may have become payable to the decree-holder between the date of the institution of the suit and the date of the confirmation of the sale.

(2) In any proceeding pending on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1940, in execution of a decree or certificate to which the provisions of sub-section (1) apply, if there has been attached any immovable property of the judgment-debtor other than the entire tenure or holding to which the decree or certificate relates, and if the property so attached has not been sold, the Court or Certificate-officer as the case may be shall, on the application of the judgment-debtor, direct that, on payment by the judgment-debtor of the costs of the attachment, the property so attached shall be released.

(3) A sale referred to in clause (a) of sub-section (1) shall not be confirmed until the purchaser has deposited with the Court or Certificate-officer, as the case may be, the sum referred to in clause (b) of that sub-section."

Amendment of
section 3 of
Bengal Act
XIII of 1939.

6. In clause (b) of sub-section (1) of section 3 of the Bengal Tenancy (Second Amendment) Act, 1939, for the words and figure "if a decree has been passed before the commencement of this Act in a suit under the said clause instituted on or after the twenty-seventh day of August, 1937" the words and figure "if a decree has been passed on or after the twenty-seventh day of August, 1937, and before the commencement of this Act in a suit under the said clause" shall be substituted.

Ben. Act
XIII of
1939.

Bengal Act IX of 1940.

THE BENGAL NON-AGRICULTURAL TENANCY (TEMPORARY PROVISIONS) ACT, 1940.

[Passed by the Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette* of the 30th May 1940.]

An Act to provide for the temporary stay of certain suits and proceedings for ejection of certain non-agricultural tenants.

WHEREAS it is expedient, pending the enactment of further legislation, to provide for the temporary stay of certain suits and proceedings for ejection of certain non-agricultural tenants ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940.

Short title, extent and duration.

Ben. Act III of 1923.
Ben. Act II of 1866.

(2) It extends to the whole of Bengal, excluding Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal Act, 1923, and such suburbs of Calcutta as may have been or may hereafter be notified under section 1 of the Calcutta Suburban Police Act, 1866.

(3) It shall continue in force for two years from the date of its commencement.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definition of a non-agricultural tenant.

“non-agricultural tenant” means a tenant who holds under another person, and is liable to pay rent to such person for, non-agricultural land which, under the terms of any agreement, such tenant is entitled to use for any homestead or residential purpose or for the conduct thereon of any commercial or industrial enterprise or any trade or business, but does not include a tenant who so holds non-agricultural land together with any structure thereon erected or owned by the person under whom such tenant holds or by the superior or predecessor in interest of such person.

3. Notwithstanding anything contained in any other law for the time being in force, every suit and proceeding in any Court for ejection of a non-agricultural tenant, other than a suit or proceeding for ejection on account of the non-payment of rent by such tenant, shall be stayed for the period during which this Act continues in force :

Stay of suits and proceedings for ejection of non-agricultural tenants.

Provided that every proceeding for delivery of possession in execution of a decree for ejection on account of the

2 *The Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940.*

[Ben. Act IX

(Sections 4, 5.)

non-payment of rent by such tenant shall be stayed if, within thirty days from the date of the decree, such tenant deposits into Court the amount of the decree together with the costs of the proceeding.

Setting aside of certain orders for delivery of possession.

4. Notwithstanding anything contained in any other law for the time being in force, a non-agricultural tenant or a person who, but for his ejection in execution of a decree for ejection, would have been deemed to be a non-agricultural tenant for the purposes of this Act, if he has been ejected between the thirtieth day of January, 1940, and the date of the commencement of this Act in execution of a decree for ejection to which the provisions of section 3 are applicable may, within three months from the date of the commencement of this Act and without payment of any fee under the Court-fees Act, 1870, apply to the Court which made the order for delivery of possession to have such order set aside; and such Court, if satisfied that the order was made between the dates aforesaid and in any proceeding in execution of a decree for ejection to which the provisions of section 3 are applicable, shall set aside the order and shall direct that the applicant be restored to possession of the land to which the order relates.

VII of 1870.

Right to realize rent and compensation in certain cases.

5. Notwithstanding anything contained in any other law for the time being in force—

(1) the holder of a decree for ejection to which the provisions of section 3 are applicable shall be entitled—

(a) after the thirtieth day of January, 1940, and for the period during which this Act continues in force, to realize from the judgment-debtor rent at the rate at which the judgment-debtor was paying rent when notice to quit was served upon him, and

(b) between the thirtieth day of January, 1940, and the date of the commencement of this Act, in respect of compensation awarded under such decree, to realize from the judgment-debtor compensation calculated on the basis of the rate at which the judgment-debtor was paying rent when notice to quit was served upon him; and

The Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940.

of 1940.]

(Sections 6—8.)

(2) the realization of rent under sub-clause (a), or of compensation under sub-clause (b), of clause (1) shall not be deemed to estop the decree-holder from executing the decree for ejection when such decree becomes executable.

6. Subject to the provisions of sections 4 and 5, every suit and proceeding to which the provisions of section 3 are applicable, which is pending at the date of the commencement of this Act, shall be stayed for the period during which this Act continues in force.

Stay of all suits and proceedings for ejection pending at the date of the commencement of this Act.

7. In computing the period provided by any law for the time being in force for the execution of a decree for ejection to which the provisions of section 3 are applicable, or for the institution of a suit for the ejection of a non-agricultural tenant, the period during which this Act continues in force shall be excluded.

Saving of limitation.

8. Nothing in this Act shall apply to any tenant who holds non-agricultural land under the Central or Provincial Government or under a local authority.

Exemption of certain tenants.

Bengal Act III of 1939.

THE BENGAL RATES OF INTEREST ACT, 1939 ;

[Passed by the Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette*,
Extraordinary, of the 6th April 1939.]

An Act to reduce the rates of interest payable on certain dues.

WHEREAS it is expedient to reduce the rates of interest payable on certain dues and for that purpose to amend certain Bengal Acts in the manner hereinafter specified ;

It is hereby enacted as follows :—

title.

1. This Act may be called the Bengal Rates of Interest Act, 1939.

Amendment of
in Bengal

2. The Bengal Acts mentioned in the Schedule are hereby amended to the extent and in the manner specified in the fourth column thereof.

The Bengal Rates of Interest Act, 1939.

[Ben. Act III of 1939.]

THE SCHEDULE.

(See section 2.)

Year.	No.	Short title.	Provisions amended.
1	2	3	4
1862 ..	VI ..	The Bengal Rent Act, 1862.	(1) In the second paragraph of section 2, for the word "twelve" the words "six and a quarter" shall be substituted. (2) In section 3, for the word "twelve" the words "six and a quarter" shall be substituted.
1880 ..	IX ..	The Cess Act, 1880.	(1) In section 45, (a) in sub-section (2), for the words "twelve and a half" the words "six and a quarter" shall be substituted; and (b) the proviso to sub-section (2) shall be omitted. (2) In sections 47, 58, 62 and 70, for the words "twelve and a half" the words "six and a quarter" shall be substituted.
1913 ..	III ..	The Bengal Public Demands Recovery Act, 1913.	In clause (a) of sub-section (1) of section 22, for the words "twelve and a half" the words "six and a quarter" shall be substituted.
1935 ..	XVII	The Bengal Land Revenue (Interest) Act, 1935.	In clause (b) of sub-section (2) of section 2, for the words "seven and a half" the words "six and a quarter" shall be substituted.

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