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# THE PUNJAB TENANCY ACT

THE  
**PUNJAB TENANCY ACT**

(AS AMENDED UP-TO-DATE)

BY  
RAM LAL ANAND,  
*Advocate.*

(SECOND 1936 EDITION).



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## PREFACE

Though there are several commentaries on the Punjab Tenancy Act, none of them is primarily meant for the use of students and it need hardly be said that the requirements of the students are not identical with those of a busy practitioner. This book is intended to meet such a want. If the author succeeds even partially to lighten the burden of the hard worked law students he will feel amply rewarded for his labours. The book though primarily meant for students, it is hoped, will prove useful also to a busy practitioner.

RAM LAL ANAND

# THE PUNJAB TENANCY ACT, 1887

(ACT XVI OF 1887)

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## INTRODUCTION.

“The tenure of land in India” to quote Mr. Field “is considered to be a subject of considerable difficulty.” In fact on occasions more than one in the earlier days of English rule in India it proved to be a veritable hot bed of bitter controversies and not unoften was the discussion conducted by the parties holding the opposite views characterised by asperity and rancour. One view, of which Mr. Grant was the chief exponent, was that proprietorship in the soil vested in the sovereign who was in right and in fact the real acting landlord, entitled to, and receiving from, the ryots or husbandmen a certain portion of the gross yearly returns in money or in kind. This view recognised no intermediate holder of the soil between the sovereign and the cultivating peasant. Sir John Shore led the other view that the Zamindar was the real owner of the land who owed nothing to the sovereign but a portion of the produce.

Mr. Field, in his learned treatise on “Landholding and the Relation of Landlord and Tenant,” traces this difference of opinion and much of the difficulty attending the subject to the fact that diverse circumstances of different parts of the country have not been given their due weight. “Institutions” he proceeds, “which in some places were originally complete in all their parts and the subsequent development of which became perfect, were in other places originally incomplete or were afterwards but imperfectly developed. Their growth was hindered at different stages, in different localities, by circumstances of external violence connected with those waves of invasions and conquest which swept with varying violence over the country. When these disturbing elements had passed away and amid the peace of British rule, the relics of former institutions came to be examined, it is not surprising that they suggested various ideas as to the nature of perfect original.” Speculative discussions, however ingenious, can lead to no tangible conclusion. A historical survey of the subject is calculated to yield better results. Moreover in such a treatment of the subject it is easier to steer clear of the political considerations that so often influenced the discussions referred to above.

Beginning with Hindu period let us go as back as the days of Manu. It is true that the great Code of Manu does not lay down in so many words as to whom the property in soil belonged. He is anything but explicit. In fact it has been argued with some show of plausibility that the phrase “Lord paramount of the soil” with which the king is referred to in the Code lends colour to the view that the ownership in the land vested in the king.

But the opposite view that the property in the soil was with the community and not the king, commands the weight of authority and is more in keeping with the internal evidence in the Code. The text "land is the property of him who cuts away the wood" or in the words of the commentator "who tilled and cleared it" cannot be lightly explained away. This text is susceptible of only one meaning and vests the ownership of the soil in the cultivator. To this it may be added that the king's interest in the soil was normally restricted to one sixth share of the produce. The person, therefore, who is entitled to the remaining five-sixth of the share should be styled the proprietor of the land. Few will, however, now seem inclined to deny that ownership as was within the conception of the people of those days was with the community which existed long before the kings and sovereigns.

During the Mahomedan rule, also private ownership in the soil was recognised in theory as well as in practice. As to theory one need only refer casually to Mahomedan jurists to be convinced on the point. "Tributary land" to quote the well known Khazanat-ul-revayah, "is held in full property by its owner and so is tithed land. A sale, a gift, a charitable devise of it is lawful and it will be inherited like any other property." Muhammad, the famous Mahomedan jurist, remarks in his book *Almuheet*, "Lands are held in full property by them. They shall inherit those lands and shall pay the tribute out of them. The sovereign has a right of property in the tribute or rent. A town or district annexed to it shall not be sold by the sovereign, if it pay the tribute to the crown, nor shall it be given, nor inherited, nor shall it belong to the royal dominions for inheritance as annexed to property and he who has the tribute from the land, has no property in the land, hence it is known that the king has no right to grant the land which pays tribute but that he may grant the tribute arising from it." Thus so far as theory is concerned, the recognition of private property in land could not be put in more explicit terms. As to practice we must ignore the state of affairs in pre-Akbar days. Before Akbar the Mahomedan rule had not yet been well settled; at any rate, no coherent system of land administration had been yet evolved. "Before him" to quote Mr. Madan Gopal "the Government being despotic in its principle and arbitrary and irregular in its practice, it was almost difficult to distinguish or discriminate between power and principle, fact and right." In times of Akbar the practice was to divide the produce of the soil between the sovereign and the cultivator in various proportions; sovereign's share, sometimes, being one-third and sometimes, one-fourth as the situation and quality of the soil and the labour and expense attending its cultivation demanded. Todar Mal, the well known Finance Minister of Akbar, who was entrusted by Akbar to arrange the revenues of his empire recognised the ownership of the husbandman in soil. The management of the land was entirely left with

the zamindars with whom he concluded a settlement for 10 years. The lands were transmissible by inheritance and the tenant looked up to the zamindar as his master. The proverbial expression that "the land belongs to the zamindar and the revenue to the king" is another piece of evidence establishing recognition of private ownership in the soil. The farming system introduced by Farrukhseer whereby villages were leased to contractors called farmers who made their own arrangement with the occupier of the land had the effect of transferring the ownership to the farmer and reducing the real owner to the status of a tenant for during chaotic periods that followed the downfall of the Moghul Empire; these farmers assumed the role of zamindars on account of their long connection with the soil. Nevertheless, the private ownership in the soil was as much in evidence under this system as in pre-Farrukhseer era.

The British on their advent recognised the right of the zamindar in the soil as it had the sanction of practice and usage. Later on as mentioned before a controversy raged round the subject which was, however, partly the result of a misapprehension arising from the double role played by some of the zamindars. In this connection the following passage culled from Mr. Madan Gopal's Tenancy Act may be perused with advantage. "It appears to the writer" says the illustrious author "that the principal reason of this contention was a misunderstanding as to the correct meaning of the word Zamindar as used in Sanads granted by Moghuls. Certain Zamindars, *i e.*, owners of the soil, had also conferred upon them the power of collecting revenues—which was an office conferred on an individual, not an office hereditary as of right—and as a Zamindari was expressly called a service in the Sanad, this led to the misapprehension that it was an office and that the lands were not their property. In Akbar's time there were numerous rich and powerful Zamindars. They were not of his creation. The new invaders who claimed the revenue from motives of policy and humanity, very probably employed the ancient possessors of the land as their agents for the collection of the taxes of the State. The Zamindar was thus looked at from double point of view as hereditary possessor of the soil and as the servant of the State and this led to the misapprehension."

**Growth of Tenant rights.**—Mr Field traces the growth of the Tenant rights from the days of simple village communities in a very admirable manner and one may, therefore, be excused for quoting him on this point in *extenso* "The internal administration of the country" says he "was conducted by a chain of civil officers consisting of lords of single townships or, villages, lords of 10 towns, lords of 100 towns and lords of 1,000 towns. It was their duty to collect the revenue and they were remunerated by small fees in kind or by a portion of the king's share of the produce. In later times and especially after the Muhammadan conquest, many of the links of the system which connected the township or village with the governing power became wanting and other modes of connection

were substituted as the policy, or the necessity of the rulers, dictated. But whatever were the means of connection, the village community possessed an inherent vitality in itself which preserved it amid the revolutions of power and the changes of dynasties. This community was a little republic having its own territory and its own municipal government under a headman formerly the king's agent and removable at his pleasure but whose office afterwards became hereditary according to the tendency of all Hindu institutions. He settled with Government the revenue to be paid for the year and apportioned the amount amongst the villagers. For the payment to Government he was held personally responsible and was punished in cases of default. The territory was the common property of the original inhabitants, the members of the original patriarchal family. In some villages the cultivated lands only were divided, periodical interchanges of the portions being occasionally usual or the division being once for all final and complete. In both cases, however, the waste land remained common for pasturage, until an increased population necessitated an extension of cultivation. In other villages the division included the waste as well as the cultivated land. A compact portion of land was not given to each individual, but a share of each description of soil, suitable for the produce of each different crop, was assigned to every member of the community. All the members were liable for the dues of Government and other public burdens in proportion to their respective shares. While the village community remained in its infancy, this simple state of things presented no conflict of rights, no difficult social problems which could not be solved by the headman assisted by assessors of his own choice or by arbitrators named by the parties. But as the patriarchal family became developed, as the original stock became more ramified, as the shares of the original members became divided and sub-divided by the operation of a law of inheritance which did not acknowledge primogeniture, and as transfer of share was first allowed and then became usual—a very much complex state of affairs arose, new rights sprang into existence, and the idea was created of individual interest at variance with ownership. Even if the lands had remained in the possession of the descendants of the original members of the patriarchal family, considerable complexity would have been brought about by the operation of the law of succession, but the introduction of the strangers was the great cause of intricacy. This introduction was effected in two ways: First, a member of the community might sell or mortgage his right to a stranger. This was not, however, frequent in the early history of township, though it became common in later times, secondly, the original settlers finding that they had more good land than they themselves could cultivate, would endeavour to make a profit of it through the labours of others. No method came easier than to assign it to a person who would engage to pay the government share of the produce with an additional share to the community. While land was plenty and many villages were in progress of formation, no man would undertake to clear a spot, unless he was to enjoy to

for ever, and hence *Permanent Tenants* would be created. When a share of the common rights passed into the hands of females or of persons whose caste prevented them from personally performing the manual labour of cultivation, a similar practice would be adopted as to land already brought under tillage which would thus be made over to some one who would undertake to cultivate it, to discharge the government dues, and give a share of the produce to those on whose behalf he cultivated. Temporary tenants would thus come into existence. The love of ease so natural to the native of India, the desire to escape manual labour and to be supported by the labour of an inferior would bring about the same result in respect of other portions of land.....The true state of things seems to have been this. When there was plenty of un-occupied land and population was sparse, the competition was not among tenants for lands, but among Zamindars for raiyats. Tenants once induced to settle in the village were fostered; and where the son was able to step into father's place, the arrangement suited both parties too well for any doubt to be raised as to the course which would be pursued upon the death of a tenant. Non-fulfilment of the conditions on which the land was cultivated, non-discharge of the government dues or non-delivery of the proprietor's share of the produce was the only ground which rendered it necessary to remove a tenant. Some land-holders indeed conceived themselves to possess the power of ousting these tenants in favour of other persons who were willing to give a higher rent; but in a state of society in which rents were regulated by custom, and not by competition, such new tenants did not often present themselves and so the practical exercise of the powers was not frequent. Thus notwithstanding, occasional instances of ouster, it gradually became usual, in the language of later stage of development, not to evict *khudkasht raiyats* (permanent tenants) so long as they paid their rent. It has been well observed that mankind's notions of right are founded on prescription; and under a government of absolute discretion destitute of appliances for legislation, custom was really the sole legislative power. The temporary tenants were generally re-idents of another or neighbouring village who could not obtain in their own as much land as they were able to cultivate; and these were called *paikasht raiyats* or *raiayats* cultivating land near their own village. These have been held by all authorities to have no rights and to be mere tenants-at-will. They generally made more favourable terms and paid lower rates than the *khudkasht raiyats*. Not having their habitations in the village they were not amenable to pressure, and could at any time abandon the land, to which they had no particular attachment. Among both these classes of *raiayats*, there were variations in the rates due to several causes, one of the most important of which was that more favourable terms were given to high caste cultivators such as Brahmans, Kashattriyas and Kayasthas. The amount of this consideration varied and was sometimes sufficient to enable the favoured individual, if above manual labour to keep a servant to do the work of cultivation. Thus we get a

class of labourers who were sometimes slaves when servitude was customary and legal.”

To the causes detailed above such an extension in cultivation, or, the proprietorship of soil passing into hands of those who either on account of age, infirmity, love of ease or disdain of manual labour, born of high birth or sex, did not like to cultivate the soil with their own hands, which brought into vogue the institution of tenancy may be added the farming system of the days of Farrukhseer which as mentioned before raised the farmers or, contractors of revenue into a class of landlords and reduced the real owners to the status of tenants.

After the grant of *Diwani* in 1765 to East India Company, with a view to make proper and effective arrangement for the collection of revenue, it became necessary for the said Company to make a thorough enquiry as to relations then existing between the Zamindars and their tenants and to legislate if necessary, defining their rights and obligations *inter se* and prescribing the Zamindar's power of taxation and fixing his emoluments. This question of necessity or otherwise of the Government interposition led to a bitter controversy. As the term of the quinquennial settlement of 1772 approached completion, the course which should be adopted in forming a new settlement became the subject of anxious consideration. Mr. Warren Hastings was for affording protection and security to the raiyat. But he was of opinion that further and more exact information was required before Government could make an accurate valuation of lands and take steps to afford any protection to the raiyat. He, therefore, proposed that a temporary office be constituted under the conduct of one or two covenanted servants assisted by a native Diwan and other officers for the purpose of collecting and compiling the necessary information. Mr. Francis opposed the proposal vehemently. He did not consider that the raiyat was the proprietor nor did he consider it necessary that he should be so either for his own benefit or that of the State. The scheme of every regular Government, according to him required that the mass of the people should labour and that the few should be supported by the labours of the many who receive their reward in peace, protection and security which are concomitants of just authority and regular subordination. He urged that though apparently it was given out that it was proposed to secure to the raiyats the perpetual and undisturbed possession of their lands, the real object was only to give a colour to acts of violence and injustice against the Zamindars and other superior ranks of Indians. He advocated *Laisser-faire* policy and said that if left to themselves, they will soon come to an agreement which each will find to his advantage and that the intervention of the Government between them should be confined to the enforcement of their respective engagements. Mr. Hastings while admitting the soundness of the above proposition under normal

circumstances, controverted it and maintained the necessity of Government interposition on the ground that majority of the Zamindars of both Bengal and Behar were incapable of judging or acting for themselves, being either minors or men of weak understanding or absolute idiots. He also maintained that one result of leaving the parties free to contract would be that the ancient and industrious raiyats who had built themselves substantial houses on their tenancies and had thus acquired a stake would be obliged to submit to undue exactions while the vagarant raiyats would be in a position to enjoy better terms which would operate as an encouragement to desertion and to the depopulation of the country. Mr. Shore also strongly advocated the necessity of Government interposition on the following grounds:—

1. That the things were then in a singularly confused state.
2. That the relation of a Zamindar to Government as also of a raiyat to a Zamindar was neither that of a proprietor nor of a vassal but a compound of both.

3. He did not consider the Zamindars fit for the responsible rights of property. Added to all these, "The rent of the land" he remarked "through whatever channels it passes into the public treasury, is paid originally by the raiyats or the immediate cultivators of the soil. Their situation not only on this account but as; being the most helpless and exposed to oppression, ought naturally to attract the attention and engage the interest of the ruling power." Lord Cornwallis agreed with Sir John Shore in the necessity of some interference on the part of the Government for effecting an adjustment of the demands of the Zamindars upon the raiyats. But unlike Sir Shore he did not think that imposition of any limitations on the taxing power of the landlords meant any interference with their proprietary rights. In fact, he stoutly denied the Zamindar's right to impose *abwabs*. He went to the length of maintaining that in many parts of Bengal the Zamindars were not entitled to evict their tenants as long as they paid rent nor was this in any way inconsistent with proprietary rights. But he was of opinion, and rightly so, that prohibition of imposition of *abwabs* by the landlord did not imply prohibition to raise rent. The directors expressed their views as to what should be done for the raiyats in the following terms:—"We, therefore, wish to have it distinctly understood that, while we confirm to the landlords the possession of the districts which they now hold, and subject only to the revenue now settled, and while we disclaim any interference with respect to the situation of the raiyats, or the sums paid by them with any view to an addition of revenue to ourselves, we expressly reserve the right which clearly belongs to us as sovereign of interposing our authority in making from time to time all such regulations as may be necessary to prevent the raiyat being

disturbed in their possession or loaded with unwarrantable exactions. A power exercised for purposes we have mentioned and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders, and instead of diminishing, will ultimately enhance the value of their proprietary rights. Our interposition, when it is necessary, seems also to be clearly consistent with the practice of the Moghul Government, under which it appeared to be a general maxim that the immediate cultivators of the soil duly paying his rent should not be dispossessed of the land he occupied. This necessity supposes that there were some measures and the limit by which the rent should be defined, and that it was not left to the arbitrary determination of the Zamindar, for otherwise such a rule should be nugatory and in point of fact the original amount seems to have been annually ascertained and fixed by the Act of the Sovereign." This discussion as to the status of the Zamindar culminated in the well known Permanent Settlement of 1793. The proclamation was embodied in Regulation No. 1 of 1793. One of the articles of the Regulation containing the pledge of protection to the raiyats ran as follows:—

"It being the duty of the ruling power to protect all classes of people and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent talukdars, raiyats and other cultivators of the soil, and no Zamindar, independent talukdar or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment, which they have respectively agreed to pay."

The authority of the Government to interpose between the Zamindar and the tenant having been settled, several rules and regulations were framed by Government with the object of defining and regulating their respective rights and obligations. Later on several Acts of legislature also were enacted for the same end.

Now turning to our own province we find that on the eve of its annexation to the British territory, the relation between landlords and tenants were in an extremely vague and unsettled condition. In fact they were in the melting pot. The landlord seemed to possess no such thing as absolute rights. Soon after the annexation of the province, a dispute arose as to the advisability or otherwise of bestowing proprietary rights on the landholder. The revenue system of the Sikhs did not allow any rights in land except those of the cultivator. It did not recognise such *tertium quid* as the proprietor between the State and the cultivator. "Before our Government" says Sir John Strachey "was established, there was no such thing in possession of the individuals as



proprietary right in land according to our ideas of what property is." The controversy, here as in Bengal, ended in the recognition of proprietary rights of the landholder. "As territory after territory was absorbed" says Mr. Thorburn, "we blindly divested ourselves of the immediate ownership of the soil and conferred it upon actual occupants, or when it suited us, upon local chiefs or useful middlemen." This controversy having been set at rest, settlement work was commenced in every district of the Punjab. Section 1 of Regulation VII, of 1822 required the Settlement Officer to direct his principal efforts to the "ascertainment, settling and recording the rights, interests and properties of all persons and classes occupying or cultivating the land," while section 9 enjoined that in making or revising a settlement of land revenue, Collectors and other Settlement Officers were "to ascertain and record the fullest possible information in regard to landed tenures, the rights, interests and privileges of the various classes of the agricultural community". The rights of the cultivator thus became the subject of much official controversy. The early administrators of the Punjab, as most of them came from the United Provinces of Agra and Oudh, were imbued with ideas learnt and imbibed there and following in the wake of the sister province created rights of occupancy. This led to a furious controversy. One set of officials argued that inasmuch as the burden of Government revenue through whatever channel it came to Government treasury fell ultimately on the cultivator and as he was often in a helpless and trodden down condition, he deserved special consideration. It was, therefore, urged that in case of a tenant of a long duration his possession should be made permanent, heritable and alienable. It was also claimed on his behalf that there should be a check on the capricious enhancement of rent. But it was conceded, nevertheless, that the proprietor in case of an alienation by the tenant of his land should have a right of choice of tenant. It was, therefore, proposed to give him a right of certain kind of pre-emption. But the second school was opposed to recognition of occupancy rights. Those belonging to this set argued that conditions of the two provinces were essentially different. Mr. (afterwards Sir Richard) Temple in para 207 of his Settlement Report of the Jullundur District stated that "the rights of occupancy apart from proprietary rights were unknown. . . . . The Government may have partially recognised it, but the people did not; however long a patch of land may have been occupied the proprietor would at his pleasure resume it without ceremony and the cultivator would resign it without demur." Again in para 298 he writes "It was not attempted to fix any term of occupancy which should *per se* entitle a cultivator to rank as hereditary, but it will be found that cultivators who have been in possession of the same field for 12 years and upwards have at the present settlement generally been vested with hereditary rights." Further in para 302 of the same report, he observes "The distinction between hereditary and non-hereditary cultivator is not indige-

nous to this part of the country. It has been introduced by the Settlement." Mr. Cust, Settlement Officer, Gurdaspur, also observed to the same effect. Similarly Mr. (afterwards Sir Robert) Egerton remarked:—"The rights of the hereditary cultivator have been entirely created under our rule. Under the Sikhs the proprietor had always the right of ousting a tenant whenever he chose" Mr. Prinsep, Commissioner of settlement in the Amritsar Division, opposed occupancy rights on various grounds. He contended that at the time of first settlement there was neither landlord nor tenant in the ordinary meaning of the terms. He also pointed out that no enquiry into the mutual relations of landlords and tenants had been made at the first settlement and 12 years' occupancy had been accepted as the only test and that local usages and customs had been entirely ignored. He further remarked that this creation of occupancy rights was opposed to the usage of the country and destructive of proprietary rights. A mere term of occupancy was no good test of a right of occupancy and that it was the nature quite as much as the length of occupancy which entitles a tenant to the privilege. He pointed out from statistics compiled by him that a large number of tenants entered as *maurusi* when confronted with their landlords admitted that they were tenants-at-will. He also drew attention to a very significant fact that out of 10,000 holdings more than one-third had actually been entered as having rights of occupancy, the meaning of which was that occupiers of these holding could not be ejected so long as they paid rent, yet no rent had either been fixed at the last settlement of those holdings nor had any been paid since that day. But the committees appointed by the Government were of opinion that it would not be advisable to reopen the question as they feared lest an alteration in the status of hereditary tenants might be construed as a breach of faith on the part of the Government and be the cause of dissatisfaction. The rule of granting hereditary rights on 12 years' occupation did not find acceptance and it was found necessary to introduce a Bill in the Legislative Council. Accordingly on the 17th January 1868, the Hon'ble Mr. E. L. Brandrath introduced a bill to define and amend the law relating to the tenancy of land in the Punjab. After a heated debate the measure was considered premature and was dropped. But at a subsequent stage, the measure after various alterations, having been pressed by Sir Richard Temple was carried and passed into law as Act XXVIII of 1868 on 21st October 1868. The effect of the passing of the Act was that force of Mr. Prinsep's objection against granting occupancy rights on a tenant of 12 years' standing was admitted and provision was enacted that mere lapse of time did not confer rights of occupancy. But it was thought advisable to protect the rights already conferred on the score of 12 years' possession rule and section 6 was enacted with that end in view. Section 5 was created to confer occupancy rights who were not paying any rents, or who had helped in the foundation of the village, or who

were owners of the land but had ceased to be owners thereof or who were *jagirdars* in the village in which they occupied land. To cover unforeseen and miscellaneous cases for grant of occupancy S. 8 was brought into being. The Act was divided into 7 chapters. (1) Preliminary mostly dealing with agreements between landlords and tenants. (2) Rights of occupancy, (3) Rent, (4) Ejectment, (5) Relinquishment, leases, alienations and succession, (6) Compensation for tenants' improvements and (7) Procedure.

Within only a few years from the date of enactment, proposals were in the air to amend the Act. But the Government did not express its agreement with a proposal to place another Act on the legislative anvil. During the revision of settlements in some districts of the Punjab particularly Hoshiarpur and Sirsa facts came to light which showed the necessity of an immediate change in law. Moreover the Famine Commissioner had made various suggestions for the improvement of the relations between landlords and tenants, several of which had been given effect to in the shape of Rent Acts in other provinces. These suggestions had yet to be availed of in the Punjab and hence the necessity of an alteration in law could not be denied. Accordingly Col. Davies, the then Financial Commissioner, Punjab, obtained leave to introduce a Bill on the subject. The Bill was referred to a Select Committee on the 7th July 1886. It was re-considered and passed by the Council on the 22nd September, 1887 and received the assent of the Governor-General in Council on the 23rd September 1887. The following are the changes effected by the present Act in the old law :—

1. The omission of the word '*heretofore*' from s. 5 (5) and thus conferring right of occupancy on thousands of non-occupancy tenants.
2. Addition of the provision embodied in section 5. clause (2). Clause (1) of s. 5 corresponding to s. 5 (1)(a) of the present Act laid down a very hard rule of substantive law, the fulfilment of which entailed a good deal of hardship. The Legislature has given a practical relaxation to a very rigid rule of substantive law by adopting an elastic rule of evidence which the courts will apply according to the circumstances of the case.
3. The word tenant has been so defined as to include the predecessor and representative in interest of a tenant. Its result is that successor-in-interest is now in as good a position as the original settler or *jagirdar* or the owner who had ceased to be owner thereof.
4. Section 6 has been amended in such a way as to take away the power of the landlord to disprove the right of a tenant recorded as an occupancy tenant in the earlier settlements.

5. Section 10 of the old Act instead of enacting that joint owners of the common lands of a village shall not acquire occupancy rights in such lands, provided that no right of occupancy shall be acquired in the common lands of a village. This has been set right.

6. Rent has been made the first charge on the produce.

7. Power has been given to Settlement Officers to fix the rents of occupancy tenants at the time of the assessment of land revenue.

8. The scale fixed for the enhancement or reduction of the rents of occupancy tenants, has been adjusted with reference to the land revenue.

9. In chapter on relinquishment and ejectment, the provision enabling the landlord to buy out the lowest classes of tenants has been omitted.

10. Widow's right to succeed to occupancy rights has been recognised.

11. Landlord has been given a right to effect improvements on the land held by an occupancy tenant, and demand an increased rent in consequence.

12. A provision has been made for compensation for disturbance of clearing tenants.

13. Provisions relating to jurisdiction have been added whereby a good deal of judicial work from the hands of ordinary civil courts has been taken away.

THE  
PUNJAB TENANCY ACT, 1887.

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(ACT XVI OF 1887)

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[23rd September 1887].

An Act to amend the law relating to the tenancy of land in the Punjab.

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WHEREAS it is expedient to amend the law relating to the tenancy of land in the Punjab ; it is hereby enacted as follows.—

CHAPTER I.

PRELIMINARY.

*Title, extent and commencement.*

S. 1. (1) This Act may be called the Punjab Tenancy Act, 1887 ;

(2) It extends to the whole of the territories (including the "pargana" of Spiti) for the time being administered by the Lieutenant Governor of the Punjab, except the Hazara district ; and

(3) It shall come into force on such day as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification, appoint in this behalf :

NOTES.

**Scope and object of the Act.**—The Punjab Tenancy Act is intended merely to control the relationship between landlord and tenant and has nothing to do with the powers of alienation possessed by a widow or the control of such alienation by rever-

sioners.<sup>1</sup> The Act is not exhaustive even of the law of landlord and tenant except with regard to the matters dealt with therein expressly or by necessary implication. With regard to matters which are not specifically provided for in the Act, the general principles of the landlord and tenant are applicable.<sup>2</sup> It is no part of the intention of the Act to deprive tenants of occupancy rights already vested in them on the date of enactment. On the contrary the tendency is to enlarge the opportunities of proving such rights when the present came into force.<sup>3</sup> A decision in a claim for occupancy rights under the Tenancy Act of 1868 will not operate as *resjudicata* when a claim is made for occupancy under the present Act, XVI of 1887, for the simple reason that the question, whether a tenant was entitled to occupancy rights under the previous Tenancy Act and whether he is so entitled under the present Act is not the same. Thus when a tenant claims to be entitled to occupancy rights under S. 5 (1) (c) of the present Act, it is no answer to him to say that in a settlement proceeding in 1863, or even for the matter of that in a judicial proceeding, he was found to be a tenant-at-will.<sup>4</sup> Similarly tenants who were declared to be *panahi* or protected for a term of years, before the enactment of the first Tenancy Act of 1868, are not debarred from establishing occupancy rights under the present Tenancy Act.<sup>5</sup>

S. 2. [*Power to make rules in anticipation of commencement.*]

*Repealed by the Repealing and Amending Act, 1891 (XII of 1891), section 2 (1).*

S. 3. [*Rep.*] *Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*

*Definition.*

S. 4. In this Act, unless there is something repugnant in the subject or context, —

(1) "land" means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land :

#### NOTES.

"Land."—Whether a site of a building or structure or other piece of land would be land or not, within the meaning of Punjab Tenancy

1. 130 I. C. 517=1930 Lah 942.  
2. 11 Lah. 427 at p. 433.  
3. 1 P. R. 1897 Rev.

4. 2 P. R. 1891 Rev.  
5. 73 P. R. 1915.

Act depends upon whether it is being used or not for agricultural purposes or for purposes subservient to agriculture or for pasture. The words "agricultural purposes" must be construed in their ordinary sense: they refer to tilling and cultivation for purposes of crops. In their widest sense the words may include grazing but it is by no means necessary that all land held for grazing purposes is land held for agricultural purposes.<sup>1</sup> Anyhow land used for purposes of pasture though it may not be land used for agricultural purposes is land within the meaning of this Act. According to the test set forth above, the land on which a well is sunk for the purposes of irrigating agricultural land, is used for purposes subservient to agriculture and the well itself is a structure on such land. Therefore such a well is land as defined in this section.<sup>2</sup> On the same reasoning a water course used for agricultural purposes is land.<sup>3</sup> But a right to the use of water of a canal for irrigating land independently 'of a share in the land occupied by the canal is not land.'<sup>4</sup> A part of a public road on which a wall is built as a boundary to an agricultural field is not a structure on land and is, therefore, not land.<sup>5</sup> The site of a water mill is not land as defined in this section because it cannot be considered as occupied for agricultural purposes or for purposes subservient to agriculture.<sup>6</sup> A tank used for watering cattle and excavating earth to prepare bricks is not land as these are neither agricultural purposes nor are they purposes subservient to agriculture.<sup>7</sup> Similarly a village tank over which the landlord gives a right to grow water nuts (*singhara*) is not land.<sup>8</sup> *Ghair mumkin* land outside the *abadi* and attached to a well upon which *khurlis* are built and *bhusa* is stacked is land because the purposes for which it is used are subservient to agriculture.<sup>9</sup> So also is *ghair-mumkin* land which is not included in *abadi deh* and is not also burdened with any share of the land revenue assessed upon the village. <sup>10</sup> Land occupied as a fruit garden unless it be the courtyard or compound of a house is land within this definition. <sup>11</sup> Trees apart from land though they are immovable property are not land within the meaning of this Act. <sup>12</sup> But when a man has rights of occupancy in land he must be regarded as having a right of occupancy not only in the actual soil itself but also in everything, not excepting the trees which is so attached to the soil as to be regarded a part and parcel of it. <sup>13</sup> Land held as a grove whether on payment of rent or not, is not land. <sup>14</sup> Land reserved as a graveyard cannot be styled land within the meaning of this Act. <sup>15</sup> Land

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| 1. 15 I. C. 743                                    | 10. C. A. 1190 of 1906, Punjab Chief Court.   |
| 2. 62 P. R. 1891; 40 P. R. 1893                    | 11. 111 P. R. 1890.                           |
| 3. 1 P. R. 1892 F. B.                              | 12. 15 P. R. 1892 F. B.; 46 P. B. 189.        |
| 4. Ibid.   | 13. 52 P. R. 1906 (15 P. R. 1892 F. B. dist.) |
| 5. 42 P. R. 1900                                   | 14. 35 A. 280.                                |
| 6. 41 P. R. 1892; 77 P. R. 1904; 89 P. L. R. 1912. | 15. 20 P. R. 1892.                            |
| 7. 48 P. R. 1898                                   |   |
| 8. 28 I. C. 869, 31 I. C. 294.                     |   |
| 9. 12 P. R. 1907.                                  |   |

employed for manufacturing saltpetre is certainly not land employed for agricultural purposes or purposes subservient to agriculture.<sup>1</sup>

**Time for application of test.**—There is a conflict of authority as to the time at which a particular piece of land should satisfy the test laid down in this section to make it land within the meaning of this section. According to one view in applying the definition to a land suit, the time to be looked at is the time when the suit is instituted.<sup>2</sup> But the weight of authority is for the opposite view that the true principle in determining whether a piece of land is or is not land within the meaning of this Act is to have regard to the character and the use of the land at the time immediately before the cause of action arose.<sup>3</sup>

(2) “pay,” with its grammatical variations and cognate expressions, includes, when used with reference to rent “deliver” and “render,” with their grammatical variations and cognate expressions :

(3) “rent” means whatever is payable to a landlord in money, kind or service by a tenant on account of the use or occupation of land held by him :

#### NOTES.

**Rent.**—Money due for the use of masonry outlet or *moga* has been held to be rent.<sup>4</sup> A number of mangoes to be supplied yearly for the use of land is rent.<sup>5</sup> But a share of the produce of land payable by custom by the tenant of an inferior proprietor to the superior proprietor for the use of water from a canal owned by the latter proprietor is not rent.<sup>6</sup> It is not necessary that the payment in money, kind or service must be made to the landlord himself. Thus it has been held judicially that a sum of money agreed to be paid to a third person on behalf of the landlord is rent.<sup>7</sup>

(4) “arrear of rent” means rent which remains unpaid after the date on which it becomes payable ;

(5) “tenant” means a person who holds land under another person, and is, or but for a special cont-

1. 83 I.C. 171  
2. 20 P.R. 1894, 129 P.W.R. 1908.  
3. 81 P.R. 1901 83 I.C. 171 ;  
78 P.W.R. 1910.

4. 164 P.R. 1888.  
5. 11 C.W.N. 7.  
6. 103 P.R. 1887.  
7. 1 C.W.N. 455, 27 C. 67.



ract would be, liable to pay rent for that land to that other person ; but it does not include—

- (a) an inferior land-owner, or
- (b) a mortgagee of the rights of a landowner, or
- (c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land Revenue Act, 1887, for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear: or
- (d) a person who takes from the Government a lease of unoccupied land for the purpose of sub-letting it :

#### NOTES.

'Tenant' meaning of.—With a view to be a tenant, a man must fulfil two requisities; (1) he must hold land under another person and (2) also be liable to pay rent to him.<sup>1</sup> Tenancy involves (1) a right to enter upon and possess land and (2) an entry into possession. Upon entry and not before, the person having the right becomes a tenant and holds land under the landlord.<sup>2</sup> It is difficult if not impossible to conceive that one person should hold land under another unless at some time or other he has in some way possession of the land he holds. If a person has had no possession at any time, he does not hold and is not a tenant.<sup>3</sup> But if a tenant has once taken possession, mere loss of possession does not necessarily deprive him of the legal character of tenant (Section 50). A person who is in possession of land occupied without the consent of landlord is not literally a tenant, but a person once in possession who has been dispossessed, continues to hold the land. But if he was dispossessed more than one year before the suit, he is no more a tenant.<sup>4</sup> Continuance of possession is necessary for continuance of relationship except in the case provided for by S. 50 of the Act.<sup>5</sup> It should be noted, however, that to constitute or maintain a tenancy, according to the definition given in this section, it is not essential that the rent should actually be paid. It is enough that the tenant is liable to pay rent though he may not pay it or is exempt from payment under some contract made with his landlord.<sup>6</sup> The relation of landlord and tenant is not necessarily determined by mere non-payment of the dues, nor

1. See the definition.

2. 44 P.R. 1891 F.B.

3. Ibid.

4. Ibid.

5. See 70 P.R. 1893.

6. See definition; also 9 C. 408; 1896 Rev. 1 P. R. 101 P. R. 1901, p. 318.

even by a mere repudiation of the title of the landlord, unless this is done under circumstances which show that the landlord acquiesced in the act of repudiation.<sup>1</sup> On the contrary the possession of a tenant cultivating under a landlord, is presumed to continue in the same character; and in the absence of any agreement between landlord and the tenant or of some unequivocal act of acquiescence on the part of the landlord in an adverse title asserted by the tenant to be clothed with the same incidents of tenure as previously existed. It is not open to the tenant by any unilateral act on his part to alter the character of his original title as tenant.<sup>2</sup>

**Tenants, instances of.**—A person upon whom a notice of ejectment is served and who sues to contest it as a tenant, whatever status he may claim, is a tenant as defined by this clause.<sup>3</sup> But a person suing after ejectment under the last clause of Section 45 to recover possession as an occupancy tenant is no longer a tenant.<sup>4</sup> Whatever be the meaning of the term tenant elsewhere in section 50 of the Punjab Tenancy Act, it means a person who having been a tenant, has been dispossessed from the tenancy.<sup>5</sup>

**Muqarridar.**—A muqarridar in the Attock district is a tenant and not an inferior proprietor.<sup>6</sup>

**Ala Lambardar.**—*Ala Lambardar*, Where the Government in order to endow the office of *Ala Lambardar*, has arranged with the proprietary body that such officer shall take over part of the village common rent free and retain possession thereof during the term of the settlement and the proprietary body has given its consent to the agreement, that officer in taking possession of such land becomes the tenant of the proprietary body. The reason for this rule of law is that an *Ala Lambardar* fulfils both the requisites that a tenant ought to fulfil i. e. (1) he must hold land under the proprietary body and (2) that he must be liable to pay rent for the land but for a special contract. As to the second condition it is plain that the agreement to forego rent must be held to be between *Ala Lambardar* and the proprietary body and the Government in getting the proprietors to allow the *Ala Lambardar* to hold rent free are only in the position of an intermediary. As to the first condition the arrangement made by the consent of the proprietary body is a transfer to the *Ala Lambardar* of a rent free cultivating right for a fixed term and in such a case the rights of the proprietary body cannot be held to be wholly in abeyance, all that the proprietary body relinquished being the right to take rent or resume possession for the fixed term of settlement.<sup>7</sup>

1. 18 P.R. 1883.

2. 186 P.R. 1888. See also 18 B. 256; 20 M. 6

3. 3 P. R. 1895

4. 70 P.R. 1893.

5. 93 I.C. 876.

6. 1923 Lah. 295

7. 101 P.R. 1901, F.B. (105. P.R. 1894. and 23 P.R. 1895 overruled).

**Mortgagee and mortgagor.**—Clause 5 (b) only means that a mortgagee cannot be the tenant of his mortgagor.<sup>1</sup> A proprietor mortgagor agreeing to give over possession in case of default in payment of rent is a tenant of the mortgagee.<sup>2</sup> Where proprietary possession has been given by the mortgagor to the mortgagee and the latter lets to the mortgagor, the mortgagor is a tenant of the mortgagee, but if the possession though agreed to be given, has not as a matter of fact been given, the mortgagor is not a tenant of the mortgagee.<sup>3</sup> An occupancy tenant who mortgages or sells his tenancy with possession, ceases to be a tenant.<sup>4</sup> A mortgagee of a part of a holding cultivating land as a mortgagee is not a tenant under the mortgagee of another part of the same holding.<sup>5</sup>

(6) “landlord” means a person under whom a tenant holds land, and to whom the tenant is, or but for a special contract would be, liable to pay rent for that land :

## NOTES.

**Landlord.**—The word “landlord” is not synonymous with the word “proprietor.” Neither all proprietors are necessarily landlords, nor are all landlords necessarily proprietors. An owner of an estate who cultivates himself or by servants and has no tenants, is not a landlord though he is a proprietor all the same. On the other hand a tenant who collects rents from an undertenant, is a landlord but not a proprietor. Again a mortgagee or a *thekadar* in possession of the rights of a proprietor who has let the land to another person (whether proprietor or not) stands in the position of a landlord.<sup>6</sup> Accordingly it has been held that there is no right of pre-emption in respect of a sale by an occupancy tenant of his occupancy rights to a mortgagee in possession under whatever section he holds the tenancy as it is a sale by a tenant to his landlord.<sup>7</sup> It is not necessary that there should be an agreement ‘express’ or ‘implied’ between the parties. A person immediately entitled to the use and occupation of the land is landlord in relation to the person occupying it without his consent.<sup>8</sup>

(7) “tenant” and “landlord” include the predecessors and successors-in-interest of a tenant and landlord, respectively :

1. 10 PR 1905 Rev.

2. 19 P.R. 1893.

3. 86 P. R. 1887; 41 P.R. 1893; 46 P. R. 1894.

4. 1 PR 1911 Rev. p. 5.

5. 112 P.R. 1893.

6. 39 P. R. 1837 68 P. R. 1891, 19 P. R. 1891, 46 P. R. 1894; 6 P. R.

1897 Rev., 149 P.W.R. 1918; 30 P. R. 1919.

7. 30 P.R. 1919.

8. 82 P.R. 1894.

## NOTES.

**Change.**—This provision is new and did not occur in the Tenancy Act of 1868. The intention of the Legislature by enacting this clause is to treat for purposes of this Act, the heir or transferee and the successor or alienor as the case may be, a single person.<sup>1</sup> The reason for this change was that under the Old Act the Chief Court had held that only the original holder and not his representative in interest could acquire occupancy rights. This unduly restricted the acquisition of occupancy rights.

**Predecessor and successor-in-interest.**—With reference to the definition of tenant, it appears that the successor-in-interest of a tenant must be the actual successor and not a person merely claiming to succeed to the interest of a tenant.<sup>2</sup> When a son succeeds his father in the *Ala lambardarship* in the *muafi* and in cultivating occupancy, the father is the predecessor in interest of the son within the meaning of this clause.<sup>3</sup> Members of a tenant's joint family who held the land jointly with him are his predecessors in interest as contemplated by the clause.<sup>4</sup> Where a mortgagor executes another mortgage subsequent to the first mortgage, the subsequent mortgagee is the successor-in-interest of the mortgagor so far as the prior mortgagee is concerned.<sup>5</sup> Entry into possession by the successor-in-interest of a deceased tenant is necessary to constitute him a tenant.<sup>6</sup>

(8) "tenancy" means a parcel of land held by a tenant of a landlord under one lease or one set of conditions :

(9) "estate," "land-owner" and "holding" have the meaning respectively assigned to those words in the Punjab Land Revenue Act, 1887 :

## NOTES.

The terms "estate," "landowner" and "holding" have been defined in S. 3 (1) (2) (3) of the Punjab Land Revenue Act.

(10) "land revenue" means land revenue assessed under any law for the time being in force or assessable under the Punjab Land Revenue Act, 1887, and includes—

(a) any rate imposed in respect of the increased value of land due to irrigation, and

1. 28 P.B. 1879; 136 P.R. 1883;

7 P.R. 1913 Rev.

2. 44 P.R. 1891.

3. 1 P.R. 1897.

4. 5 P.R. 1896 Rev,

5. 10 P.R. 1905 Rev.

6. 43 P.R. 1901.

- (b) any sum payable in respect of land, by way of quit-rent or of commutation for service, to the Government or to a person to whom the Government has assigned the right to receive the payment :

## NOTES.

According to Sir James Lyall, the word "law" as used here is not equivalent to Act. There was no Act or Regulation for the assessment of the land revenue, strictly speaking, in force in the Punjab before 1871, but officers were guided by the Customary Law of the Land. The word as used here covers Customary Law and it is probably this law that the preamble of the Punjab Land Revenue Act, XXXIII of 1877 referred to.

It has been held that the 'water advantage rate' levied in the Montgomery District which is fluctuating canal advantage land revenue rate, is a rate imposed in respect of the increased value of land due to irrigation within the meaning of clause (10) (a).1

(11) "rates and cesses" means rates and cesses which are primarily payable by land-owners, and includes—

- (a) Repealed by Act XII 1891
- (b) the local rate, if any, payable under the Punjab District Boards Act, 1883, and any fee leviable under section 33 of that Act from land-owners for the use of or benefits derived from such works as are referred to in section 20, clauses (i) and (j) of that Act ;
- (c) any annual rate chargeable on owners of lands under section 59 of the Northern India Canal and Drainage Act, 1873 ;
- (d) the *Zaildair* and village officer's cesses ; and
- (e) sums payable on account of village expenses ;

## NOTES.

**Rates and cesses:**—Cesses may be arranged under three heads:—

- (a) Cesses imposed on landowners by authority of Government—
- (b) The *malba* cess imposed by landowners on themselves in order to meet common village expenses.
- (c) Cesses paid to the landowners by other residents in the village.

The first two classes are described in the Land Revenue, and Punjab Tenancy Acts as rates and cesses, and are broadly distinguished from the third class (called village cess) by being primarily payable by landowners though they often form part of the rent taken from occupancy tenant.<sup>1</sup>

(12) "village cess" includes any cess, contribution or due which is customarily leviable within an estate and is neither a payment for the use of private property or for personal service, nor imposed by or under an enactment for the time being in force :

## NOTES.

**Village Cesses.**—Cesses which the landowners realise from other residents in the village or from particular classes of residents or from persons making use of the village lands are termed village cesses. They are really in their origin seigniorial dues such as are found in primitive societies in which certain persons or classes are dependent on other persons or classes for protection.<sup>2</sup>

Customary dues levied by the proprietary body of a village from the non-proprietary residents thereof fall within the definition of village cess<sup>3</sup> The Governor-General-in-Council may, on reference from the local Government, declare whether any cess, contribution or due levied in an estate is or is not a village cess and that such a declaration shall not be liable to be questioned in any court.<sup>4</sup>

The following have been held to be village cesses:—

- (1) *Kamiana* leviable from non-agriculturist residents of a village. *Kamiana* leviable in the village under

1. Punjab Settlement Manual, para 87.

2. Punjab Settlement Manual, para 91.

3. 49 P.R. 1891.

4. Punjab Section 145 (4), (5) of the Land Revenue Act.

the terms of the *wajib-ul-arz*, from *kamins* of the classes specified, is not a payment for the use of private property or for personal service, not imposed by any enactment. It is, therefore, a village cess as defined in this section. 1

- (2) *Haq buha* (door cess). 2
- (3) *Haq tora*, dues payable by non-proprietary residents in a village to the proprietors, by reason of their being owners of the village site on specified occasions of uncertain occurrence (such as betrothal and marriage, etc.) but not periodically nor in respect of the occupation of any definite holding or plot of land 3
- (4) *Atrafi* dues, levied annually by the village proprietors from the *kamins*. 4
- (5) *Haq bakri* or *puch bakri* and *thana patti* (payable on marriages.) 5
- (6) *Rayatana* or *Kudu*, dues payable by occupiers of houses to the owners of the land on which they have built houses in recognition of their proprietary title. 6
- (7) *Khudi* or *kuri kamini*, house or ground rent levied from non-proprietary residents of the village such as shop-keepers. 7
- (8) *Haq Sardari*. 8

The following have been held not to be village cesses:—

- (1) *Dharat*, a certain amount allowed on sale of grain to an outsider. 9
- (2) *Arhat*, a sum realised as a percentage on all articles sold in the village 10

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1. 49 P.R. 1891, 36 P.R. 1876; 65 P.R. 1873; 118 P.E. 1879; 144 P.R. 1882; 4 P.E. 1888 Rev.  
 2. 11 P.R. 1890 Rev. (Vol. 95 P.R. 1907), 83 P.R. 1908 F. B.=171 P.L.R. 1908=83 P. W. R. 1908; 44 P.W.R. 1917=40 I.C. 487.  
 3. 33 P.R. 1887; 80 P.R. 1890.  
 4. 103 P.R. 1887; 81 P.R. 1888; 49 and 75 P.R. 1879. 126 P.R. 1882.  
 5. 42 and 55 P.R. 1893; 30 P.R. 1888; 20 P.R. 1884 149 P.E. 1883; 40 and 136 P. R. 1879; 44 P.W.R. 1917 =40 I.C. 487.  
 6. 14 P.R. 1879; C.A. 1542 of '88'.  
 7. 74 P.R. 1879; 95 P.R. 1907 (49 P.R. 1891 and 11 P.R. 1890 Rev. followed) See also 21 P.E. 1883 and C.A. 1542 of 1882  
 8. 116 of 1885 unreported; Rattigan's Digest of Customary Law, para 243.  
 9. 29 P.R. 1899; 28 P.E. 1894 (F.I. 120 P.R. 1912=18 I.C. 532.)  
 10. 204 P.R. 1889; 10 P. R. 1911=9 I. C. 579.

(3) *Haq Sagga*, dues payable by the proprietary body of the village to a *sagga* or water-carrier for personal services. 1

(13) "village officer" means a chief headman, headman or patwari :

## NOTES.

When an *Ala Lambardar*, to whom a grant of *muafi* had been made in remuneration of his services, continues after resumption of such *muafi* to hold on as cultivator, he is a tenant holding under proprietors, and is also a village officer within the meaning of this clause and also a *jagirdar* under clause (15).2

(14) "Revenue Officer" or "Revenue Court," in any provision of this Act, means a Revenue Officer or Revenue Court having authority under this Act to discharge the functions of a Revenue Officer or Revenue Court, as the case may be, under that provision :

## NOTES.

**Revenue Court**—A Revenue Court is simply a Revenue Officer sitting in a judicial instead of an executive capacity.3

(15) "jagirdar" includes any person, other than a village servant, to whom the land revenue of any land has been assigned in whole or in part by the Government or by any officer of the Government :

## NOTES.

The term "Government" as employed in this clause means, according to the circumstances of the case, either the *Sikh* Government or some other predecessor of the British Government or the British Government itself.4 Therefore where a *muafi* grant originally made by *Moghal* emperors was sanctioned in 1858 in the name of H. and though the plaintiff's branch of family appeared to be a share-holder, and they held the *muafi* jointly with descendants of H, they were not recorded as *muafidars* or *Jagirdars*, it was held that the plaintiff's branch of the family having originally a share in the *muafi* granted by a predecessor of the British Government were *jagirdars* as defined in this clause.5

1. 44 P.W.R. 1917=40 I.C. 487=74 P. R. 1917.

2. 1 P.R. 1897 Rev.

3. Land Administration Manual para 789.

4. 2 P. R. 1897 Rev See also 2 P.R.

1892 where it was held that the holder of a jagir granted by an officer of the Sikh Government was a jagirdar within the Act

5. 2 P. R. 1897, Rev.



**Jagirdar.**—The definition of a *jagirdar* in this clause clearly includes a *muafidar*.<sup>1</sup> Under the provisions of old Tenancy Act of 1868 it had been held that the term *jagirdar* did not include the representatives of a *jagirdar*.<sup>2</sup> But having regard to the definition of the term 'tenant' as given in clause (7) of the present section, it has now been held that '*jagirdar*' includes a successor or descendant of a *jagirdar* or ex-*jagirdar*.<sup>3</sup>

The following have been held to be *jagirdars* :—

1. An *Ala Lambardar* to whom land revenue is assigned in whole or in part.<sup>4</sup>
2. A *muafidar*.<sup>5</sup>

But the *muafi* granted by the *zamindars* of the village for the services of a *khangah* brings the persons responsible for such service within the category of "village servants" and excludes them from being *jagiraars* for the purposes of the Act.<sup>6</sup> Where, however, a *muafi* was originally granted to the ancestor of the applicants as *haq murshadi* (the right of spiritual leadership) and the subsequent records give this as its purpose, *madad muash* (aid to subsistence) and contain no reference to the service of the shrine or to the expenditure upon a fair held there, the *muafidars* are not village servants but *jagirdars*.<sup>7</sup> The words "other than a village servant" were inserted with the express purpose of excluding small assignments often made to priests and menials in consideration of village service.<sup>8</sup>

(16) "legal practitioner" means any legal practitioner within the meaning of the Legal Practitioners Act, 1879, except a *mukhtar* :

#### NOTES.

Legal practitioner means an Advocate, *Vakil* or Attorney, of any High Court, a pleader, *mukhtar* or Revenue Agent.<sup>9</sup>

As to a *mukhtar* being a recognised agent see Section 86 *infra* and the rules thereunder.

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1. 8 P. R. 1896 Rev See also 1 P. R. 4. 1 P. R. 1897 Rev  
1897 Rev. 5. 8 P. R. 1896 Rev.  
2. 83 P. R. 1882; 67 P. R. 1885; 143 . 6. 4 P. R. 1915 Rev. =5 P. W. R., 1915  
P. R. 1288 Rev.=13 I. C. 233  
3. 7 P. R. 1912 Rev.=178 P. L. R. 7. 2 P. R. 1920,  
1913=18 I. C. 56 (2 P. R. 1897 Rev. Ref.) 8. Ibid.  
9. Section 3, Legal Practitioners Act, 1879

(17) "agricultural year" means the year commencing on the sixteenth day of June, or on such other date as the Local Government may by notification appoint for any local area :

(18) "notification" means a notification published by authority of the Local Government in the official gazette: and

(19) "improvement" means with reference to a tenancy, any work which is suitable to the tenancy and consistent with the conditions on which it is held, by which the value of the tenancy has been and continues to be increased, and which, if not executed on the tenancy, is either executed directly for its benefit, or is, after execution, made directly beneficial to it :

*Explanation I.*—It includes among other things—

- (a) the construction of wells and other works for the storage or supply of water for agricultural purposes ;
- (b) the construction of works for drainage and for protection against floods ;
- (c) the planting of trees, the reclaiming, enclosing, levelling and terracing of land for agricultural purposes and other works of a like nature ;
- (d) the erection of buildings required for the more convenient or profitable cultivation of a tenancy ; and
- (e) the renewal or reconstruction of any of the foregoing works or such alteration therein, or additions thereto, as are not of the nature of mere repairs and as durably increase their value ;

But it does not include such clearances, embankments, levellings, enclosures, temporary wells and water channels as are made by tenants in the ordinary course of cultivation and without any special expenditure, or any other benefit accruing to land from the ordinary operations of husbandry :

*Explanation II.*—A work which benefits several tenancies may be deemed to be, with respect to each of them, an improvement :

*Explanation III.*—A work executed by a tenant is not an improvement if it substantially diminishes the value of any other part of his landlord's property.

## NOTES.

**Suitable to the tenancy.**—These words were added to avoid the danger of the landlords being saddled with compensation for improvements of a nature too expensive with regard to the conditions of a tenancy.

**Improvement.**—The term improvement does not embrace every operation which increases for a time the value of the holding, but only such as are outside the everyday course of husbandry, and possess a greater or less degree of permanency.<sup>1</sup> The present definition too like one given in the older Act is not exhaustive.<sup>2</sup> It is suggestive rather than exhaustive. The word "improvement" means works by which the annual letting value of the land has been and at the time of demanding compensation continues to be increased ; and there is no reason for restricting the meaning of the words 'of a like nature' to works similar or approaching in similarity to those enunciated in the clause, the only requisite being that the works must be real improvement in that, and that the letting value has been and continues to be increased.<sup>3</sup> A work to be an improvement, is required to fulfil only three conditions suggested by the wording of the clause :—

- (1) It should be suitable to the tenancy ;
- (2) It should be consistent with the conditions of tenancy ;  
and
- (3) the annual letting value of the tenancy should have been increased and should continue to have been increased.

In case a work is executed outside the tenancy, it must fulfil either of the two conditions, namely :—

- (1) It should have been executed directly for the benefit of the tenancy ; or
- (2) It should have been made directly beneficial to the tenancy after its execution.

1. Land Administration Manual,  
para 70.

2. 30 P.R. 1874.  
3. Ibid.

Merely bringing the pasture land under cultivation is not an improvement.<sup>1</sup> But reclaiming and clearing of waste land is an improvement, if the annual letting value of the land has been and at the time of demanding compensation continues to be increased. It is a fair presumption not of law but of fact that a tenant who clears waste land, and brings it under cultivation improves it within the meaning of this definition.<sup>2</sup> Similarly reclaiming of waste land and making of a *jhalar* has been held to be an improvement.<sup>3</sup> In a comparatively recent ruling it has been held that the planting of trees by a tenant is an improvement within the meaning of this definition,<sup>4</sup> though planting of trees here and there and nourishing those of spontaneous growth was held not to be an improvement in an earlier ruling of the Punjab Chief Court.<sup>5</sup> A fruit garden, however, may be an improvement contemplated by this clause.<sup>6</sup> Construction of a well has been held to be an improvement.<sup>7</sup> Likewise the construction of a Persian wheel whereby the letting value of the land is increased, was held to be an improvement under the older Act<sup>8</sup> and would satisfy the requirements of the present definition too. The making of a *kacha* well in stiffish soil, which involves a good deal of labour and lasts for several years is an improvement covered by the definition.<sup>9</sup> But the digging of a shallow *kacha* well of the ordinary type which waters a few *bighas* of crops in the *Kubi* and falls in the rainy season cannot be termed an improvement.<sup>10</sup> The sinking of a masonry well, however, to irrigate a field dependent on the rainfall is certainly an improvement.<sup>11</sup> Building of houses for the occupation of agricultural tenants, if the annual letting value of the land was thereby increased, was held to be an improvement under the older Act,<sup>12</sup> and it would more so now by virtue of enactment of Explanation 1(d)

(20) 'Muqarraridar' means any person who holds land in the Attock district and who, on the date of the commencement of the Punjab Tenancy (Amendment) Act, 1925, was recorded in the revenue records as muqarraridar in respect of such land or who, after the said date was so recorded with his consent and the consent of the proprietor of such land and includes the successor in interest of a *muqarraridar*.

1. 18 P.R. 1874. See also 92 P.R. 1876

2. 31 P.R. 1879

3. 18 P.R. 1874

4. 1 P.W.R. 1916 Rev=34 I.C. 248

5. 18 P.R. 1874

6. 30 P.R. 1876

7. 3 P.R. 1896 Rev.

8. 56 P.R. 1880

9. Land Administration Manual, para 70

10. Ibid.

11. Ibid.

12. 56 P.R. 1880, 122 P.R. 1883

## CHAPTER II.

### RIGHT OF OCCUPANCY.

#### *Tenants having rights of occupancy.*

#### S. 5. (1) A tenant -

- (a) who, at the commencement of this Act, has for more than two generations in the male line of descent through a grandfather or grand-uncle and for a period of not less than twenty years, been occupying land, paying no rent therefor beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon, or
- (b) who, having owned land, and having ceased to be landowner thereof otherwise than by forfeiture to the Government or than by any voluntary act, has, since he ceased to be landowner, continuously occupied the land, or
- (c) who, in a village or estate in which he settled along with or was settled by, the founder thereof as a cultivator therein, occupied land on the twentyfirst day of October, 1868, and has continuously occupied the land since that date, or
- (d) who, being jagirdar of the estate or any part of the estate in which the land occupied by him is situate, has continuously occupied the land for not less than twenty years, or, having been such jagirdar, occupied the land while he was jagirdar and has continuously occupied it for not less than twenty years,

has a right of occupancy in the land so occupied, unless, in the case of a tenant belonging to the class specified in clause (c), the landlord proves that the tenant was settled on land previously cleared and brought under cultivation by, or at the expense of, the founder.

(2) If a tenant proves that he has continuously occupied land for thirty years and paid no rent therefor

beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of sub-section (1).

(3) The words in that clause denoting natural relationship denote also relationship by adoption, including therein the customary appointment of an heir, and relationship by the usage of a religious community.

#### GENERAL NOTES ON OCCUPANCY RIGHTS.

##### Occupancy rights, nature of

The occupancy tenant is more than a mere tenant, he is an individual who in many cases would have been the landlord and he enjoys permanent tenancy subject to certain conditions at a concession rent.<sup>1</sup> The occupancy rights can only be extinguished by statute, *i. e.* under Sections 36, 38, 39 and 53 of the Act.<sup>2</sup>

**Occupancy rights and court's power to declare.**—A court has no power to create a status which is not known to the law.<sup>3</sup> In a suit for occupancy rights the plaintiffs must be taken to admit that they are tenants of the defendants and have to show that they have acquired occupancy rights. Such rights cannot be decreed merely because the court thinks that the plaintiffs' true position is that of proprietors.<sup>4</sup> In cases of discrepancies between the area entered in the Settlement record and the area actually possessed, the entry in the record is by no means conclusive evidence of the extent of the tenancy. The tenant is entitled to the fields actually held by him at the time the entry was made.<sup>5</sup> Where there is a variance between the area recorded at the old and new settlement, the entry in the record of the Regular Settlement must be understood primarily as evidencing the tenant's right to hold certain fields, the entry of the area of those fields being merely descriptive. In cases in which the previous measurement record is known to be perfect and accurate the fact that a tenant entitled under that record is found to hold a larger area than that shown against his name, may be taken with other facts, support a contention that he has encroached on adjacent lands. But where the old measurements were rough and inaccurate while the later were more accurate, then no decision should be based on the former.<sup>6</sup> In suits to establish proprietary rights in immoveable property, the courts should always consider that the claim to proprietary title is a claim to a permanent title or status of some kind in the land, and

1. 32 P.R. 1918

2. 52 P.L.R. 1911

3. 3 P.R. 1870. See also 33 P.R. 1868; 26 and 102 P.R. 1868

4. 56 P.R. 1884

5. 5 P.R. 1888 B.

6. 5 P.R. 1887 R.

includes a claim to occupancy rights and if the evidence shows that the plaintiff may have good title to occupancy rights though not to proprietary rights, the courts should go into that question and decide it.<sup>1</sup> Consequently where the plaintiffs who were the lessees of the lands in suit but whose lease had terminated in 1865 sued for declaration that they held the land as owners the court decreed occupancy rights.<sup>2</sup> Similarly where in a suit to contest a notice of ejection, the plaintiff, while laying claim to the status of proprietor, prayed that his cultivation possession might not be disturbed, it was held that there was no reason why the claim should not be treated as one both for ownership and occupancy rights and the plaintiff was entitled to a decision on both questions.<sup>3</sup> A court cannot confer a higher status than one sued for. Thus where the plaintiff sued for occupancy rights under S. 5 (1) (d) and the Commissioner in appeal gave him a decree under S. 5 (1) (a), it was held by the Financial Commissioner that it was a material irregularity on the part of the Commissioner to award the plaintiff a higher status than that for which he had sued.<sup>4</sup> But where occupancy rights are claimed of a higher status and the facts of the case entitle the plaintiff to an inferior status, the court should award a decree for the latter.<sup>5</sup> It is the duty of the court to consider whether with reference to the facts of a particular case plaintiff is entitled to occupancy rights of a class inferior to that specially set forth in the plaint.<sup>6</sup>

**Indivisibility of the right of occupancy.**—A right of occupancy in a holding is one and indivisible and therefore a tenant cannot be a tenant of one kind *qua* some of the landlords and of another kind *qua* the rest.<sup>7</sup> Thus where some of the defendants admitted the truth of the facts upon which the plaintiff relied, as establishing his title to be declared the occupancy tenant under S. 5, clause (3), (S. 5 (1)(c) of the present Act) in place of being recorded under S. 6, whereupon it was contended that plaintiff who had failed to establish that his predecessors in title settled in the village with the founders, was entitled to the declaration he sought at least against the defendants who confessed judgment, it was held that the contention was untenable.<sup>8</sup>

**Trees on occupancy holding: respective rights of landlord and tenant.**—Whether the proprietor or the occupancy tenant is entitled to trees on the land in the cultivating occupancy of the latter will depend on (1) whether they were planted by the proprietor or by the cultivator or whether they grew spontaneously during the latter's occupancy and (2) on the custom of the

1. 4 P.R. 1882 See also 5 P.R. 1868

2. 20 P.L.R. 1916

3. 105 P.R. 1884; See also 90 P.R. 1882

4. 1 P.R. 1892 R.

5. 3 P.R. 1898 R.

6. *Ibid.*

7. 84 P.R. 1881.

8. *Ibid.*

country in regard to tree so planted or grown.<sup>1</sup> But *prima facie* the trees belong to the person who is the proprietor of the land on which the trees grow and the burden of proving that trees belong to the tenant or that the tenant has an interest in the trees rests on the tenant.<sup>2</sup> The Calcutta and Patna High Courts have also held that the property in trees, growing on the land is by the general law vested in the proprietor of the land subject of course to any custom to the contrary.<sup>3</sup> But an occupancy tenant is entitled to use the trees growing on his holding with the leave of the proprietor for agricultural purposes such as roofing a dwelling house, making or repairing ploughs, well gear and the like but for no other purpose unless he can prove that he has the exceptional right of general use. He cannot, however, cut fruit bearing and other trees property of the landowner.<sup>4</sup> A hereditary tenant paying rent in cash, who plants a garden in his holding does not become liable in the absence of custom or an agreement to that effect to share the produce with the proprietor.<sup>5</sup> A proprietor has no right to cut down trees unless such right be secured to him by *wajib-ul-arz* or established by custom.<sup>6</sup> But this only means that the tenant is entitled to be safeguarded in the exercise of certain rights of user not that he can claim the price of a tree which the landlord has cut.<sup>7</sup> Where however the trees are under the care and consequently in the possession of the proprietor he can appropriate them to his own use without the consent of the tenant.<sup>8</sup> Where according to the terms of the *wajib-ul-arz* the tenants can with the consent of and after informing the landlords cut trees when required for agricultural implements and for repair of dwelling houses; the landlord cannot refuse to give consent without assigning any reason.<sup>9</sup>

**Tenants' right to graze cattle, etc.**—All the tenants have a right to graze agricultural cattle, but not pastoral on the common land, but they have no right to prevent proprietors from enclosing a certain portion of the common land for a grass preserve, so long as sufficient ground is left in the unenclosed portion, nor have they the right to take grass from or any profits of such preserve.<sup>10</sup> A tenant with occupancy rights has a prescriptive right to collect dry wood, and dry grass for agricultural purposes. But a tenant-at-will cannot do so without the express license of the owner.<sup>11</sup> When a large portion of the original

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1. 14 P.R. 1867 B

2. 112 P.R. 1883

3. 27 C. 742; 1 Pat. 368.

4. 13 P.R. 1877; 111 P.R. 1876; 79 P.R. 1874.

5. 14 P.R. 1884.

6. 5 P.R. 1917 R; 95 P.R. 1867; 4 P.R. 1875; See also 61 P.R. 1881

61 P.R. 1873; 9 P.R. 1904—45 P.

L.R. 1905

7. 5 P.R. 1917 R = 3 P.W.R. 1917 R. = 4 I.C. 907

8. 4 P.R. 1875.

9. 2 P.R. 1908 R.

10. 100 P.R. 1881; 119 P.R. 1839.

11. 100 P.R. 1884.



*shamilat* is after partition enclosed or reduced to cultivation and the non-proprietors' grazing rights are seriously threatened, they may jointly sue the proprietors to prevent any further interference with what remains open of the original *shamilat* or possibly have some portion of the enclosed or cultivated land thrown open, so as to secure to them the proper enjoyment of their grazing right.<sup>1</sup>

**Res Judicata.**—Where in a suit for enhancement of rent, the Settlement Collector declared the tenant to come under S. 6 and enhanced the rent accordingly, a subsequent suit by the tenants to establish a right of occupancy under S. 5 (1) (a) was held to be barred by the rule of *res judicata*.<sup>2</sup> When a proprietor successfully sues an occupancy tenant and his mortgagee for the possession of the land mortgaged on the ground of the transfer being invalid, a subsequent suit by the occupancy tenant against the proprietor to be restored to possession is not barred by the rule of *res judicata*, as the tenants title to possession accrues only after the former suit has been decided.<sup>3</sup>

## NOTES (S. 5)

**Clause (1) (a)**

To establish rights of occupancy under this clause, a tenant should prove three things :—(1) Non rendering of service by the tenant and non-payment of rent beyond the land revenue and village cesses chargeable on the land for the time being; (2) two preceding generations in the male line of descent through a grandfather or granduncle must have occupied the same land on the same terms; and (3) the period of such occupation must not be less than 20 years.

**Non-payment of rent.**—Non-payment of rent is a necessary condition which must be fulfilled by a tenant, otherwise he will not be entitled to the status of an occupancy tenant though he may have fulfilled all other conditions.<sup>4</sup> Rent as defined in this Act includes service for it has been defined to mean whatever is payable to a landlord in *money kind or service* by a tenant on account of the use or occupation of the land held by him.<sup>5</sup>

**Land Revenue.**—(See Section 4 (31))

**More than two generations in the male line of descent.**—The phrase "more than two" means at least 3. In accordance with the mode of computing degrees enunciated in 126 P. R. 1890, the tenant in occupation of land on the commencement of the

1. 19 P.R. 1889

2. 5 P.R. 1893 R.; See also 77 P.R. 1877

3. 54 P. R. 1884

4. 3 P.R. 1898 Rev.

5. S. 4 (3)

Act, *i. e.*, 1st November 1887 will be the first, his father the second and grandfather the third generation. The requirements of this clause as to continuous occupation of land by more than two generations in the male line concern only the tenant in occupation at the commencement of the Act.<sup>1</sup> If in respect of his occupation the conditions in question are satisfied then any subsequent successor-in-interest to the tenancy is entitled to the results accruing from the circumstance that these conditions were so satisfied by the occupant of the year 1887, even though such successor may not be related in male lineal descent to the occupant of that year.<sup>2</sup> Descent through an adoptive father or the head of a religious institution is by virtue of clause (3) descent through male line within the meaning of the section. But the provisions of law embodied in clause (3) refer only to the original acquisition of the right under the section and cannot be availed of in any other connection.<sup>3</sup>

**Twenty years, period of.**—The word *heretofore* in Section 5 (1) of the Old Act was ambiguous. It could be interpreted either as referring to the date of the passing of the Act or the date of the institution of the suit. The substitution of the words "at the commencement of the Act" for the word *heretofore* removes that ambiguity and it is now beyond doubt that the period of occupation must not be less than 20 years at the date of the commencement of the Act.<sup>4</sup>

**Occupation.**—The word occupation as used here includes both actual as well as constructive possession. Personal cultivation is not necessarily required under this section. If cultivation has been arranged, the person has been in occupation.<sup>5</sup> Nor does the occupation mean necessarily occupation of the whole of the original holding for it has been held that there is no ground whatever for the view that a tenant in order to succeed under Section 5 (1) (a) must show a continuous possession of the whole of his original holding and not a fraction thereof.<sup>6</sup>

**Clause (1) (a) and clause (2).**—Clause (1) (a) of this section lays down a very hard rule of substantive law the fulfilment of which entails a good deal of hardship. The Legislature has given a practical relaxation to a very rigid rule of substantive law by adopting an elastic rule of evidence which the courts will apply according to the circumstances of the case.<sup>7</sup> But before a tenant can claim the benefit of presumption which may be raised under clause (2), he must show that he was in occupation of the land to which his claim relates on 1st November 1887. His occupancy rights if any must have been acquired by that date and the effect of the clause (2) is to give him, in certain circumstances the benefit

1. 7 P.R. 1913 Rev=76 P.L.R. 1914  
=23 I.C. 552

2. *Ibid.*

3. 2 P.R. 1898

4. 121 P.E. 1831; 83 P.R. 1882.

5. 20 P.R. 1871; 22 P.R. 1876.

6. 5 P.R. 1891 Rev.

7. 3 P.R. 1911 Rev.=253 P.L.R.  
1911=5 P.W.R. 1911 R=13  
I.C. 412.

of the presumption in proving them.<sup>1</sup> For the purposes of clause (2), however, it is sufficient to prove that since 1887 the successors-in-interest of the occupant of that year have held continuously without paying any rent beyond revenue rates and cesses.<sup>2</sup> Therefore, where in 1863 beyond which records did not go, two brothers were shown in occupation of separate fields, it was held that clause (2) created the presumption that the tenants in occupation in 1863 did inherit from their father and the burden of proving that they did not, is not discharged by proof of the fact that they held possession of separate fields, and not jointly.<sup>3</sup> But the presumption can be carried back only to one generation and in no case has it been carried back for two generations from the last man whose occupation is proved.<sup>4</sup> Clause (2) embodies only a rule of evidence which establishes a presumption in favour of the lapse of the required number of generations prior to 1887, provided that a certain set of facts in the 30 years prior to the institution of the suit be proved by the tenants.<sup>5</sup> Looking at the history of legislation, it seems that the omission of the words "before the commencement of this Act" in Section 5 (2) was deliberately made. Accordingly it has been held that 30 years mentioned in the clause must be computed from the date of the institution of the suit.<sup>6</sup> The presumption under this clause is however a rebuttable presumption.<sup>7</sup> The clause only means that the court may either regard the facts which constitute the conditions as proved unless or until they are disproved or may call for proof of them.<sup>8</sup> Therefore where a tenant has at the date of suit been in continuous occupation at revenue rates for 30 years, the landlord may prove that on 1st November 1887, (1) the tenant had not held for more than two generations in the male line of descent through a grandfather or granduncle, or (2) that the tenant had held for a period of less than twenty years or (3) that before that date the tenant had paid rent beyond the amount of the land revenue rates and cesses chargeable on the land.<sup>9</sup> If the landlord fails to prove these points, and a tenant proves that he was occupying the land in suit on 1st November 1887, and has continuously occupied it at revenue rates for 30 years and no further evidence is given on either side a court is justified in decreeing occupancy rights under clause (1) (a) in virtue of the presumption arising under clause (2).<sup>10</sup>

1. 5 P.R. 1896.

2. 76 P.L.R. 1914=7 P.R. 1913 Rev.

See also 2 P.W.R. 1915 Rev

3. 7 P.R. 1913 Rev.=76 P.L.R. 1914.

For similar presumption see also. 18 P.R. 1876. 62 and 187 P.R. 1882, 86 and 154 P.R. 1863. 101 P.R. 1908 56 P.R. 1906.

4. 154 P.R. 1883.

5. 3 P.E. 1911 (Rev)=258 P.L.R. 1911=5 P.W.R. 1911 R=12 I.C. 442.

6. Ibid. See also 5 P.R. 1896

Rev and 4 P.R. 1897 R.

7. 5 P.R. 1896 Rev. 4 P.R. 1897 Rev.

8. 5 P.R. 1896.

9. Ibid

10. 5 P.R. 1896 Rev. See also 2 P.W.R. 1915 Rev. When it was held that when the presumption under Section 5 (2) is not rebutted the tenant is entitled to be declared an occupancy tenant.

## NOTES.

**Clause (1) (b). Necessary conditions.**—To establish a right of occupancy under this clause it is necessary to show (1) that the tenant once owned the land, (2) that he ceased to be the owner thereof otherwise than by forfeiture or voluntary act and (3) that he is continuously holding that land.<sup>1</sup> Where however only a part of the land has been continuously held occupancy rights would be acquired in that part.<sup>2</sup> The mere fact that the land is owned in common by the whole village and that some members of the proprietary body are the cultivators thereof will not confer on those cultivator's rights of occupancy.<sup>3</sup> The acquisition of occupancy rights under the clause is not limited to the actual person who involuntarily parted with his ownership but may also be acquired by the representative of such person for the term tenant denotes not only the tenant himself but his predecessors and successors-in-interest also.<sup>4</sup>

**Forfeiture or Voluntary Act.**—An owner who through inability to pay the revenue loses his ownership, ceases to be landlord or otherwise than by a voluntary Act within the meaning of this clause.<sup>5</sup> Similarly an owner who loses his proprietary rights by sale in execution of a decree for arrears of revenue, in the absence of any proof of collusion or wilful default loses his rights involuntarily.<sup>6</sup> But a proprietor who has mortgaged his land by conditional sale which has been converted into an absolute sale, cannot be said to have involuntarily parted with his rights.<sup>7</sup>

**Continuous occupation.**—It does not necessarily mean actual possession. It may be actual or constructive. If cultivation has been arranged for, the occupation would be regarded to be continuous.<sup>8</sup> Flight for a time from the village at the time of mutiny is not a break within the meaning of this clause.<sup>9</sup> A break in the continuity of occupation is fatal to the acquisition of occupancy rights.<sup>10</sup> But continuity of occupation need not be in respect to the whole of land. If the conditions are satisfied as to a part of the land, the occupancy rights would be acquired in that part.<sup>11</sup>

## CLAUSE 1 (c).

**Necessary Conditions.**—To sustain a claim for occupancy rights under this clause four things must be proved:—

(1) Settlement in the village or estate; (2) Settlement as a cultivator; (3) Settlement with or by the founder; (4) Con-

1. S. 5 (1) (b) and 3 P.R. 1908 Rev  
2. 5 P.R. 1871 Rev.  
3. 3 P.R. 1908 Rev.  
4. 6 P.R. 1875 Rev.  
5. 3 P.W.R. 1902 Rev=15 IO  
297.  
6. P.R. 1871.

7. 6 P.R. 1881.  
8. 21 P.R. 1871 22 P.R. 1876;  
4 P.R. 1881 Rev.  
9. 11 P.R. 1880. Rev.  
10. 58 P.R. 1876.  
11. 5 P.R. 1891 (Rev)

tinuous occupation.<sup>1</sup> A claim under the clause will not be decreed unless the tenant has his abode within the limits of the village or estate.<sup>2</sup> It is not however necessary that the representative of a person who settled along with the founder of the village should be in occupation of the very land cultivated by the settler.<sup>3</sup> He is entitled to occupancy rights in respect of all lands in which he was in possession otherwise than under special agreement on 21st October 1868.<sup>4</sup> The *onus* lies on the tenant to show the precise lands held by him in 1868. It is not sufficient to find that he was in possession of some land.<sup>5</sup> A decree declaring occupancy rights under this clause should specify the lands of which the tenant was in possession on the 21st October 1868, and in which he is found to have acquired occupancy rights.<sup>6</sup> The proviso to Section 5 (1) must be read in conjunction with this clause. Therefore if the landlord succeeds in proving that the tenant was settled on land previously cleared and brought under cultivation by or at the expense of the founder the tenant cannot acquire any rights of occupancy.

**Settled along with or was settled by the founder.**—The meaning of settlement 'along with the founder' is settlement contemporaneously with or in association with the original founder during the initial stages of foundation and development of the village. But the settlement 'by the founder' might take place after these stages had passed, and accordingly where a cultivator is shown to have commenced to reside, and to cultivate *shamilat* land in a village during the life time of a founder thereof, such founder being at the time *Lambardar* or otherwise directly concerned with the management of the *shamilat*, there is a fair presumption that the cultivator in question was settled in the village 'by founder thereof as a cultivator therein'.<sup>7</sup> The presumption is one of fact only and as such rebuttable by adequate proof of facts inconsistent with or contradicting such a presumption.<sup>8</sup> For the purposes of this section the court should look only to the latest foundation of any village and should disregard any plea on the part of landlord in bar of tenant's claim to the effect that there had been some previous foundation of the village.<sup>9</sup>

**Cultivator.**—A founder settling in the capacity of a proprietor in the village could not be said to have settled along with the founder as a cultivator within the meaning of the clause and could, not therefore acquire occupancy rights under it.<sup>10</sup>

1. 6 P.R. 1900. Rev.

2. *Ibid.*

3. 38 P.R. 1884. 176 P.R. 1883.

94 P.R. 1880. 1 P.R. 1874.

4. 94 P.R. 1880. 176 P.R. 1883. 38 P.R. 1884.

5. 6 P.R. 1891 Rev.

6. *Ibid.*

7. 3 P.R. 1916 Rev.

8. *Ibid.*

9. 3 P.R. 1900 Rev.

10. 1 P.R. 1907 Rev.

## NOTES.

**Necessary ingredients**—To constitute a valid claim for occupancy rights under this clause, the claimant must prove that (1) he is either a *jagirdar* or has been a *jagirdar* in the estate or in the part of the estate in which the land occupied by him is situate and (2) that he is holding land continuously for the last twenty years from the date of the suit.

**Jagirdar.**—The term *jagirdar* as defined in S. 4 (15) of the Act includes a *muafidar*.<sup>1</sup> Similarly it has been held that an *Ala Lambardar* is a *jagirdar* within the meaning of S. 4 (15) if the land revenue of the land in his occupation has been assigned to him in whole or in part by the Government or by an officer of the Government.<sup>2</sup> As by the term Government in S. 4 (15) of the Act, is meant, according to the circumstances of the case, either the *Sikh* Government or some other predecessor of the British Government or the British Government itself,<sup>3</sup> an assignee of land revenue created by an officer of the *Sikh* Government,<sup>4</sup> or by *Mughal* Emperors,<sup>5</sup> or by the British Government itself,<sup>6</sup> is a *jagirdar* as defined in the Act. But an assignee enjoying a *muafi* granted for the maintenance of a *Khangah* is not a *jagirdar* within the meaning of the Act.<sup>7</sup> Under the old Act it was held the term *jagirdar* did not include the representative of a *jagirdar*.<sup>8</sup> But this is no more good law because of change in the definition of the term tenant in S. 4 (7) of the Act. Therefore it has been held that the successor of a *jagirdar* or *ex-jagirdar* can maintain a claim to occupancy rights under this clause, if other conditions are fulfilled.<sup>9</sup>

**Occupation of land.**—The person claiming rights of occupancy under the present clause is not only required to show that he is a *jagirdar* but must also show that he is a tenant within the meaning of the Act. It is now settled law that where Government in order to endow the office of *Ala Lambardar* has arranged with the proprietary body of the village that such officer shall take over part of the village common rent free and retain possession thereof during the term of the settlement, and the proprietary body has given its consent to the arrangement, that officer taking possession of such land becomes the tenant of the proprietary body within the meaning of Section 4 (5) of the Act.<sup>10</sup> "Two things" observed Mr. Justice Harris, "are necessary to constitute the *Ala Lambardar* the tenant of the proprietary body, viz:—(1) he must hold land under the proprietary body; and (2) he must be liable to pay rent for land, but for a special contract. The

1. 8 P.R. 1896 Rev. 12 P.R. 1878 Rev. See also 13 P.R. 1896 Rev.

2. 1 P.R. 1897 Rev.

3. 2 P.R. 1897 Rev.

4. 2 P.R. 1892 Rev.

5. 2 P.R. 1857

6. 7 P.R. 1887. 1 P.R. 1857.

7. 4 P.R. 1915 Rev.=31 I.C. 238 (12 P.R. 1873 and 12 P.R. 1904 Dist.)

8. 83 P.R. 1892.

9. 7 P.E. 1912 Rev; See also 2 P.R. 1897 and 13 P.R. 1896.

10. 101 P.R. 1901; F.B. 1 P.R. 1896 Rev. 1 P.E. 1897 Rev.

second condition presents no difficulty, as the agreement to forego rent must be held to be between the *Ala Lambardar* and the proprietary body and the Government in getting the proprietors to allow the *Ala Lambardar* to hold rent free are only in the position of an intermediary.

That the arrangement made by the consent of the proprietary body is a transfer to the *Ala Lambardar* of a rent free cultivating right for a fixed term and in such a case the rights of the proprietary body cannot be held to be wholly in abeyance, all that the proprietary body relinquished being the right to take rent or resume possession for a fixed term of settlement. If the proprietary body themselves chose to put any person in possession of a plot of their village common rent free for the term of settlement such person would be holding under them and would be their tenant. The only difference here is that the Government appoints that person and the proprietary body agree that the person so appointed shall be put in occupation on the above terms."<sup>1</sup>

The clause does not limit the right of occupancy to land actually held rent free but gives that right to a person who is or has been a *muafidar* in the village in respect to any land situated in that village which he has continuously occupied for not less than 20 years.<sup>2</sup> It is a condition of the clause that the claimant should be or have been a *jagirdar* of the estate or any part of the estate in which the land occupied by him is situated.<sup>3</sup> It is not necessary that he should be, or have been, *jagirdar* of the particular land in the village in which the occupancy right is claimed.<sup>4</sup> The continuous occupation of 20 years may be partly occupation by *jagirdar* as such, and partly occupation by the same person or his representative as a tenant when he has ceased to be a *jagirdar*.<sup>5</sup> The period of 20 years does not mean twenty years before the passing of the Act.<sup>6</sup>

**Sub-section (3).**—This section refers only to the original acquisition of rights. It has therefore been held that a daughter's son of a deceased occupancy tenant, also his adopted son is not entitled to succeed to the occupancy rights under S. 5 left by the deceased tenant as against his male collaterals by virtue of this sub-section.<sup>7</sup> A *chela* of a deceased *fajir* cannot succeed to the

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1. 101 P. E. 1901. F.B.  
2. 7 P.R. 1887 Rev  
3. 2 P.E. 1897 Rev.  
4. Ibid.

5. 8 P R. 1896 Rev  
6. 83 R. 1882.  
7. 22 P.E. 1893

occupancy rights.<sup>1</sup> Nor will a mere customary adoption, or appointment of an heir, whether amongst Hindus or Muhammadans, give any right of succession to occupancy rights.<sup>2</sup>

*Rights of occupancy of other tenants recorded as having the right before passing of Punjab Tenancy Act, 1868.*

**S. 6.** A tenant recorded in a record-of-rights sanctioned by the Local Government, before the twenty-first day of October, 1868, as a tenant having a right of occupancy in land which he has continuously occupied from the time of the preparation of that record, shall be deemed to have a right of occupancy in that land unless the contrary has been established by a decree of a competent court in a suit instituted before the passing of this Act.

#### NOTES.

To establish a claim under this section a tenant has to prove (1) that he or his predecessor was entered as an occupancy tenant in a record of rights sanctioned by the Local Government before 31st day of October 1868 and (2) that he has been in continuous occupation of the land since the date of the preparation of that record.

**Record of rights.**—For a claim under the section it is not only necessary that a tenant should be shown as an occupancy tenant in a record of rights previous to 1868 but that record of rights should be sanctioned by the Local Government. Therefore even where the predecessor in interest of the plaintiffs was recorded as an occupancy tenant at the summary settlement but it was not shown that the record had received the sanction of the Local Government, it was held that the plaintiffs were not entitled to occupancy rights under the section.<sup>3</sup> A tenant can not be held to have been recorded in a settlement as an occupancy tenant unless the documents of that settlement taken together show clearly an intention to so record the tenant. Consequently where it appeared that plaintiff's father was entered in the *khasa* as hereditary cultivator of the land in question but in *munkhib* and *terij* documents of the same settlement he was entered as *ghair maurusi*, it was held that these contradictory entries did not satisfy the requirements of the present section.<sup>5</sup> An entry in the papers of *tarmim khawat* of 1855, not having been made in a record of rights sanctioned by the Local Government was held not to meet the requirements of the section and

1. 22 P.R. 1896; See also 2 P.B.  
1907 Rev.  
2. 43 P.R. 1895 F.B.

3. 8 P.R. 1895 Rev.  
4. 147 P.R. 1884.  
5. Ibid.



therefore did not confer any occupancy rights under the section.<sup>1</sup> Where however the settlement records had been destroyed, but the plaintiff appeared in *Patwari's* papers as a *maurusi* cultivator, it was held by the Financial Commissioner that the *Patwari's* papers were sufficient in the absence of the settlement record, to establish plaintiff's presumptive right under this section.<sup>2</sup> But the the Chief Court dissenting from the Financial Commissioner's ruling reported as 1 P. R. 1875 has laid down that an entry in *Patwari's* papers prepared after the destruction of the settlement record cannot give a presumptive right of occupancy under this section though such entry may go to show that the tenant was recorded in the original record as having rights of occupancy.<sup>3</sup> Where the settlement papers had been destroyed in the mutiny and the papers prepared to replace the settlement record showed defendant as an occupancy tenant, but *Patwari's* papers contained different entries, the defendant's plea of occupancy was rejected.<sup>4</sup> There is however nothing contradictory in Sections 6 and 111 of the Tenancy Act, 1887, and a tenant who fails to prove his claim under Section 6 may nevertheless have the benefit of Section 111 if he can prove the relevant facts.<sup>5</sup> Therefore where an entry in the papers of *tarmim khawat* of 1855, not having been made in a record of rights sanctioned by the Local Government was held not to confer occupancy rights under the section, it was held nevertheless that the said entry was an agreement recorded in a record of rights and *prima facie* operated to confer occupancy rights as provided in Section 111 of the Act which does not require that the record of rights to which it refers shall have been sanctioned by the Local Government.<sup>6</sup>

**Admissions by tenants.**—Before the passing of the present Tenancy Act (XVI of 1887) it was lawful for tenants to surrender their occupancy rights to the landlord.<sup>7</sup> Thus where in a case to contest a notice of ejection, it was proved that though at the regular settlement of 1858 the predecessors of the tenants were recorded as occupancy tenants, the tenants had during the revised settlement of 1880 entered into an agreement with the landlords admitting that they were mere tenants at will, it was held that the tenants had validly surrendered their rights by the agreement.<sup>8</sup> But a mere voluntary admission

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| <p>1. 4 P. R. 1896. Rev.<br/>         2. 1 P. R. 1875. See also 10 and 11 P. R. 1880 where it was held that settlement papers having been destroyed entry in annual papers was sufficient.<br/>         3. 6 P. R. 1881.<br/>         4. 17 P. R. 8<sup>th</sup> Rev.<br/>         5. 4 P. R. 1896 Rev.<br/>         6. <i>Ibid.</i></p> | <p>7. 10 P. R. 1901 Rev. Ref. 1 P. R. 1901 where in it was held that S. 110 could not be given a retrospective effect and until the present Act came into force, tenants might divest themselves of their occupancy rights by agreements with the landlord.<br/>         8. 10 P. R. 1901 Rev.</p> |
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by a tenant does not operate to deprive him of his right. Revenue Courts therefore before refusing to recognise an occupancy right on the ground that the tenant has voluntarily admitted himself to be a tenant at will should satisfy themselves that there has been an actual and valid agreement to relinquish the right.<sup>1</sup> But there is no provision in the present Act corresponding to Section 6 (2) of Punjab Tenancy Act 1868 whereby the voluntary admissions of a tenant that he had no right of occupancy would bar his claim thereto.<sup>2</sup>

**Continuous occupation.**—It is not necessarily the actual possession that is meant by this section. If a tenant absents himself but arranges for the cultivation, he would be deemed to be in occupation.<sup>3</sup> But where an occupancy tenant had relinquished his land for one year, and on his return the proprietor sued to eject him, the Chief Court decreed the plaintiff's claim, holding that there was a break in the continuous occupation.<sup>4</sup> A tenant who voluntarily allowed a break of continuity in his occupation was held not to be entitled to occupancy rights.<sup>5</sup> But a flight from the village in the mutiny was held not to be a breach of continuous occupation.<sup>6</sup> Where in case of a tenant recorded as a *maurusi* tenant, it is sought to establish that he lost his right by discontinuity, it lies upon those who allege he has lost his right by discontinuity to prove such discontinuity.<sup>7</sup>

*Right of occupancy in land taken in exchange.*

**S. 7.** If a tenant has voluntarily exchanged the land, or any portion of the land, formerly occupied by him for other land belonging to the same landlord, the land taken in exchange shall be held to be subject to the same right of occupancy as that to which the land given in exchange would have been subject if the exchange had not taken place.

NOTES.

**Exchange, nature of.**—The exchange contemplated by this section is the intentional and deliberate giving up of one plot in order to get, or on the understanding that the tenant will get another in lieu of it. Merely ceasing to cultivate some fields and tilling others, without an express intention to substitute the one

1. 10 P.R. 1901 Rev.

2. 4 P. R. 1896.

3. 20 P. R. 1871; 2½ P. R. 1876;

See also 38 P. R. 1871; 4 P. R. 1881. 68 P. R. 1876.

11 P.R. 1880.

4. 88 P. R. 1871.

5. 58 P.R. 1876.

6. 11 P.R. 1880

7. Ibid.

for the other, is not a sufficient exchange within the meaning of the section. **1** Continuity of possession is of the essence of occupancy rights. If the land held by the representatives of the original settlers is not that held by the original settlers, and, if it has come into the possession of their representatives by exchanges arbitrarily made by the landlords, more especially if the exchanges have been of different quantities of land, there the representatives fail being not entitled to rights of occupancy **2**

*Establishment of right of occupancy on grounds other than those expressly stated in the Act.*

**S. 8.** Nothing in the foregoing sections of this chapter shall preclude any person from establishing a right of occupancy on any ground other than the grounds specified in those sections.

#### NOTES.

**Scope and application.**—This section is a residuary section for occupancy rights and covers all cases which do not fall either under Section 5 or Section 6 of the Act. The grounds on which the right of occupancy may be claimed under this section must not be the grounds specified in the Act itself as those upon which the rights of occupancy may be established, and so this section may not be used to bolster up a claim which has failed under Section 5. Some of the grounds on which the rights of occupancy have been granted under the section are (1) custom, (2) agreement, (3) conduct of the parties. The section refers especially to the rights which by custom of particular parts of the country, persons effecting improvements or bringing waste under cultivation acquire. **3**

A claim to occupancy rights under the section may be decreed, (1) where the rights has been generally or customarily or by the act of proprietors, conceded to other tenants similarly circumstanced in the same village or neighbourhood, **4** or (2) where the recognition of the right would be in accordance with the custom of the country, **5** or (3) where there has been a promise never to eject, **6** or (4) where the right would exist but for a palpable error in the settlement record. **7** This enumeration of grounds is not exhaustive and as such does not cover the whole field. Cases may come to light which are beyond the purview of these grounds and the courts shall have to deal with each case on its own merits.

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|---|--|
| 1. 124 P. R. 1884.  | 5. 6 P. R.; 1900 R. 24 P. R. 1871; 12 P. R. 1880 R.; 110 P. R. 1885. |
| 2. 62 P. R. 1874 (Ref. 38 P. R. 1884. F. B.)                        | 6. 6 P. R. 1900 R. 2 P. R. 1874 R. 112 P. R. 1880. 23 P. R. 1881. *  |
| 3. Douie's Settlement Manual, para 211.                             | 7. 6 P. R. 1800 R. 9 P. R. 1896 R.                                   |
| 4. 6 P. R. 1200; 18 P. R. 1875 R. 4 P. R. 1876 R.; 17 P. R. 1882 R. |  |

## NOTES.

Ordinarily a case would fall under this section where the tenant could show that the right claimed had generally or customarily been conceded to other tenants similarly circumstanced.<sup>1</sup> A decree for occupancy rights under this section cannot be given unless the plaintiff can prove that similar rights have been conceded to other tenants, the incidents of whose tenancies resemble those of the plaintiffs.<sup>2</sup>

## AGREEMENT.

It is open to a landowner to create rights of occupancy in his ancestral holding.<sup>3</sup> A promise of rights of occupancy has been held to be a sufficient ground for a decree of rights under the section.<sup>4</sup> The Chief Court has decreed occupancy rights under the section on the basis of an oral agreement made before the passing of the Tenancy Act, 1868.<sup>5</sup> Occupancy rights may also be conferred under this section when the promise is not to eject the tenant.<sup>6</sup> A promise not to eject however does not mean a promise not to eject under all circumstances but '*ta gasur*,' i. e., till commission of a fault against the tenure.<sup>7</sup> A promise not to eject need not be expressed but may also be implied from the conduct of the parties.<sup>8</sup> Where in a suit to establish rights of occupancy the plaintiff based his claim upon an agreement made between himself and the proprietors, the terms of which were recorded in the *Patwaris'* diary and signed by one of the proprietors who was found to have been acting for and representing the remaining proprietors, it was held that the agreement furnished a ground on which a claim for rights of occupancy under Section 8 could be sustained.<sup>9</sup>

An entry in the *wajib-ul-arz* of a village signed by landlords and tenants to the effect that that tenants shall be entitled to occupancy rights under certain conditions is of the nature of a contract and is binding upon the signatories and their representatives for ever and its non repetition in a subsequent settlement does not amount to its cancellation.<sup>10</sup> An agreement recorded in a record of rights not sanctioned by the Government would confer rights under Section 8, though insufficient to meet the requirements of Section 6 of the Act.<sup>11</sup>

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| 1. 4 P. R. 1875 R. (App. 90. P. R. 1882).          | 1918 R.=46 I.C. 571.                                   |
| 2. 17 P. R. 1892 R.                                | 7. Ibid.   |
| 3. 16 P. R. 1906.                                  | 8. Ibid.   |
| 4. 2 P. R. 1874 R. 4 P. R. 1876 R. 112 P. R. 1880. | 9. 23 P. R. 1881.                                      |
| 5. 112 P. R. 1880.                                 | 10. 148 I. L. E. 1913=2 P. W. R. 1913 R.=18 I. O. t98. |
| 6. 5 P. R. 1918 R.=4 P. W. R.                      | 11. 4 P. R. 1596 R.                                    |

*Butamari per se* connotes no occupancy rights. As to whether it does or not, must turn on the question whether at the time when the land was first broken and occupied, the competition for land was such that the tenant could dictate his own terms or such that the landlord could do so.<sup>1</sup> Consequently the *wajib-ul-arz* of *Mauza* Rampura of *Tahsil* Sirsa prepared in 1862 and revised in 1882 was held not to imply that *butamari per se* conferred any occupancy rights. But as the village was *Barani* and the demand for tenants great upto 1882, land personally broken up in 1882 and cultivated by tenants was held to be occupancy tenure.<sup>2</sup>

## CONDUCT OF PARTIES.

Where in a suit to establish occupancy rights it appeared that the plaintiffs were the descendants of certain *Arains*, whom the farmer of a broken-down estate had invited from other localities to leave their homes and build houses and establish an hamlet on an old deserted site in the waste land of such estate, it was held that it must be presumed under the above circumstances that the farmer must have given the tenants to understand that they would keep the land they might reclaim as permanent tenants.<sup>3</sup> Similarly it has been held that a promise not to eject which is one of the grounds on which a claim to occupancy rights under S. 8 of the Act may properly be decreed, may also be implied and may be proved by facts indicative of the intention of the parties.<sup>4</sup> But the facts constituting evidence of the intentions of the parties in one tract may differ widely from those evidencing similar intention in another.<sup>5</sup> In *Dehra Tahsil* of Kangra District continuous cultivation by the tenants family for 3 generations and fifty-four years at a favourable cash rent, the family having originally provided its own implements for the cultivation and having settled on the land sometime after the commencement of the tenancy but not less than 26 years ago, was held to constitute a proof of such a promise.<sup>6</sup> Where exactly similar tenancies held by a single family in joint possession of very old standing, were recorded differently in the settlement papers, some members of the family being recorded as occupancy tenants, the rest being erroneously recorded as tenants-at-will, although on attestation one of the proprietors had admitted that the whole family was entitled to occupancy rights, it was held that the case was covered by S. 8 of the Act which gave the court power to correct the mistake and to award occupancy rights to other members.<sup>7</sup>

The following grounds have been held insufficient to confer rights of occupancy under the section:—

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| 1. 6 P. R. 1914 Rev.—230 P. L. R.<br>1915—27 L. C. 791. | 4. 5 P. R. 1918 Rev.—1 P. W. R.<br>1918 B.—46 I. C. 571. |
| 2. Ibid.  | 5. Ibid.   |
| 3. 12 P. R. 1880 Rev.                                   | 6. Ibid.   |
|   | 7. 9 P. R. 1896.   |

- (1) Long possession coupled with mortgage of his holding unobjected to by the landlord.<sup>1</sup>
- (2) The fact that a man had considered himself for a long time, though erroneously, to be a proprietor.<sup>2</sup>
- (3) Mere non-payment of rent by the plaintiff.<sup>3</sup>
- (4) Long possession of 40 years by the plaintiff.<sup>4</sup>
- (5) The fact that the village had long been held in *jagir* and that there was no difference between a tenant and the proprietor.<sup>5</sup>
- (6) That the plaintiff had been recorded tenant-at-will under a hereditary tenant and had been in possession since the *Sikh* rule paying on the same terms as hereditary tenant.<sup>6</sup>
- (7) Occupancy rights under S. 8 cannot be decreed merely because the court thinks that the plaintiff's true position is that of a proprietor.<sup>7</sup>

*Right of occupancy cannot to be acquired by mere lapse of time.*

S. 9. No tenant shall acquire a right of occupancy by mere lapse of time.

#### NOTES.

It is well established that *mere* length of time does not confer any right of occupancy.<sup>8</sup> Tenancy rights, however, can be acquired by prescription. Thus where the tenants in possession under an *inamdar* had been in possession of their lands for a very long time and there was evidence showing that they had dealt with lands as owning occupancy rights, had transferred their holdings, partitioned them and had received the compensation amounts in case of land acquisition, it was held by their Lordships of the Privy Council that the tenants had clearly acquired occupancy rights by prescription.<sup>9</sup> Though *mere* length of time is not in itself sufficient to confer any right of occupancy, there may be circumstances which combined with long possession may afford good and sufficient grounds for the right.<sup>10</sup> Thus a local custom may exist whereby a tenant who has held land in person or through his father for a very long period of years, paying only revenue and cesses, may acquire a right of occupancy.<sup>11</sup>

1. 96 P. R. 1889.  
2. 90 P. R. 1882.  
3. *Ibid.*  
4. *Ibid.*  
5. *Ibid.*  
6. 49 P. R. 1872.

7. 56 P. R. 1884.  
8. 8 P. R. 1905; 2 Lah. L. T.  
10.  
9. 16 L. W. 102 P. C.  
10. 81 P. R. 1867.  
11. 18 P. R. 1880; 3 P. R. 1917.

*Rights of occupancy not to be acquired by joint owner in land held in joint ownership.*

**S. 10.** In the absence of a custom to the contrary no one of several joint owners of land shall acquire a right of occupancy under this Chapter in land jointly owned by them.

NOTES.

The section provides a saving clause only for custom and not for agreements. Therefore unless a joint owner proves a special custom overriding the general rule that no one of several joint owners of land shall acquire a right of occupancy in the land jointly owned by him, he cannot succeed. 1 Consequently an *Ala Lambardar* one of the proprietors, remunerated by grant of *muafi* land from *shamilat* under an arrangement with the proprietor cannot acquire occupancy rights in the land held by him because of S. 10. 2 Similarly a *pattidar* cannot acquire a right of occupancy in the common lands of *pattidari* village community. 3 But the bar under S. 10 extends to the acquisition of occupancy rights in the joint holding only. Therefore a proprietor may acquire rights of occupancy in a holding in which he is not joint-holder. 4

*Continuance of existing occupancy rights.*

**S. 11.** Notwithstanding anything in the foregoing sections of this Chapter, a tenant who immediately before the commencement of this Act, has a right of occupancy in any land under an enactment specified in any line of the first column of the following table shall, when this Act comes into force, be held to have, for all the purposes of this Act, a right of occupancy in that land under the enactment specified in the same line of the second column of the table :—

*For table see next page.*

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1. 1 P. R. 1897 Rev.  
2. Ibid.

3. 1 P. R. 1899 Rev.  
4. 1 P. R. 1907.

PUNJAB TENANCY ACT, 1868.		THIS ACT.		
First column.		Second column.		
Section.	Clause.	Section.	Sub-section	Clause.
5	(1)	5	(1)	(a)
5	(2)	5	(1)	(b)
5	(3)	5	(1)	(c)
5	(4)	5	(1)	(d)
6	...	6	...	...
8	...	8	...	...

## NOTES

**Scope.**—Section 11 means that a tenant who had obtained an occupancy status under the former Act was to be held to have a corresponding status under the new Act when it came into force. It was not meant to debar any such tenant from benefitting by the provisions of the new Act if he could show that they had placed him in a more favourable position than he had heretofore held.<sup>1</sup> A person would be entitled to occupancy rights under this section if he has already acquired these rights under the old law when the present Act came into force.<sup>2</sup>

1. 4 P. R. 1895

2. P. R. 1897 Rev.



## CHAPTER III.

### RENT.

#### *Rents generally.*

*Respective rights of landlord and tenant to produce.*

S. 12. (1) The rent for the time being payable in respect of a tenancy shall be the first charge on the produce thereof.

(2) A tenant shall be entitled to tend, cut and harvest the produce of his tenancy in due course of husbandry without any interference on the part of his landlord.

(3) Except where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(4) Where rent is taken by division of the produce,

(a) the tenant shall be entitled to the exclusive possession of the whole produce until it is divided ;

(b) the landlord shall be entitled to be present at, and take part in, the division of the produce ; and

(c) When the produce has been divided the landlord shall be entitled to the possession of his share thereof.

#### NOTES.

The 'rent for the time being payable' as contemplated by this section, means not only rent which has accrued due but also rent which is just accruing due.<sup>1</sup> Consequently it has been laid down that the section is intended to give the landlord a lien upon the produce of a tenancy for a particular harvest in respect of not only the rent due for that harvest but also for the arrears of rent due for previous harvest.<sup>2</sup>

The term "produce of land or tenancy" means that which can be gathered and stored such as crops of the nature of cereals or grass or fruit crops but not the trees from which the crops or fruits are gathered.<sup>3</sup> In the case of *batai* paying land *kankar* should be shared between landlord and tenant in the same proportion as crop is shared.<sup>4</sup>

1. 54 P. R. 1895 F. B. See also  
15 A. 375.

2. 54 P. R. 1895

3. N. W. P. H. C. R. Vol. I, p.  
123.

4. 9 P. R. 1901 Rev. = 62 P. L. R.  
1901.

*Commutation and alteration of rent.*

S. 13. (1) Where rent is taken by any of the following methods, namely,—

- (a) by division or appraisement of the produce,
- (b) by rates fixed with reference to the nature of the crops grown,
- (c) by a rate on a recognized measure of area,
- (d) by a rent in gross on the tenancy, or
- (e) partly by one of the methods specified in clauses (a), (b) and (c) of this sub-section, and partly by another or others of them,

one of those methods shall not be commuted in whole or in part into another without the consent of both landlord and tenant.

(2) In the absence of a contract or a decree or order of competent authority to the contrary, a tenant, whose rent is taken by any of the methods specified in clauses (a), (b) and (c) of sub-section (1), or by the method specified in clause (d) of that sub-section, shall not be liable to pay for a tenancy rent at any higher rate, or of a higher amount, as the case may be, than the rate or amount payable in respect of the tenancy for the preceding agricultural year.

## NOTES.

**landlord.**—Though ordinarily a mortgagee with possession may be a landlord,<sup>1</sup> it has been laid down that S. 13 of the Act does not authorise him to commute the rent in kind for a rent in cash so as to bind the mortgagor after redemption of the mortgage.<sup>2</sup>

**Division of produce.**—Where a tenant had taken a spring crop of grain off the land on which he had an autumn crop of cotton, but the grain was only sown owing to partial failure of cotton and full cash cotton rates had not been paid by the tenant, held that he was liable to give *batai* from the grain crop. <sup>3</sup>

**Commutation of rent: consent of both landlord and tenant.**—Consent required by this section must be a consent

1. 149 P. W. R. 1918=47 I. C. 8; 89 P. R. 1887; 6 P. E. 1897 Rev.

2. 3 P. R. 1918 Rev.=132 P. L. R. 1918=46 I. C. 5.  
3. 77 P. R. 1873.

RENT OR AMOUNT PAYABLE FOR THE PRECEDING 39  
AGRICULTURAL YEAR.

on a fair footing and on a proper understanding of the tenant's or landlord's right. 1 Therefore a commutation agreed upon by a tenant under a mistaken view of his status shall not be deemed to be voluntary commutation or one made with consent within the meaning of this section. 2 Where a hereditary cultivator pays rent in cash but being in doubt as to whether his status as a hereditary tenant would be maintained, enters into an agreement to pay rent in kind, the agreement to pay rent in kind being without consideration, is not enforceable. 3 Where cash rents have been fixed at settlement, a proprietor cannot compel his tenant to pay rent for his land in kind, though the latter may heretofore have consented to do so. 4 The fact that the landlord has been in the habit of receiving the value of the share of produce payable to him, instead of the produce itself, does not bind him to take rent in cash for the future. 5

**Clause (2) Its Scope.**—The object of the clause is to prevent the rent of a tenancy (*i. e.*) rents of the kind specified, from being arbitrarily raised. It is not restricted in terms to a tenant holding for an indefinite period. Its language seems equally applicable to a tenant holding for an indefinite period in respect of the rent of successive years after the first as well as to the first year of a tenant occupying a vacated tenancy with the consent of the landlord but without any definite agreement as to the rent to be payable. 6

**Rate or amount payable for the preceding agricultural year.**—Where plaintiff sued for rent in kind and defendant pleaded that he had all along paid in cash, it was held that it was essential to determine the nature of the last payment preceding the suit, for if that payment were in money, the rent could not be commuted into rent in kind without the consent of the landlord and tenant. 7

*Payment for land occupied without consent of landlord.*

**S. 14.** Any person in possession of land occupied without the consent of the landlord shall be liable to pay for the use or occupation of that land at the rate of rent payable in the preceding agricultural year, or, if rent was not payable in that year, at such rate as the court may determine to be fair and equitable,

NOTES.

**Scope.**—It is not a correct interpretation of S. 14, that it is not intended to apply to trespassers generally. The object

1. 76 P. R. 1876, p. 129.

2. 42 P. R. 1877.

3. 16 P. R. 1872; 67 P. R. 1876.

4. 6 P. R. 1867 Rev.

5. 23 P. R. 1873.

6. 82 P. R. 1894.

7. 53 P. R. 1872.

of the section is to entitle "the landlord" of land occupied without his consent to recover payment on account of the use and occupation of such land from "any person" in possession of it as though such person was for this purpose a tenant and as though the money payable were for this purpose rent. 1A suit by a mortgagee of the land with possession against defendant mortgagor, for compensation for forcible possession and wrongful cultivation of the mortgaged land has been held to fall under this section. 2 Similarly a suit for damages by a sub-mortgagee alleging to have obtained possession under the mortgage but prevented by defendant from sowing it for the harvest on the strength of a factitious lease from the widow of original owner is covered by this section. 3

**Person in possession of land without the consent of landlord—** It is not necessarily the actual cultivating possession of land that is contemplated by this section. A person who prevents the lawful occupier of land from entering upon it and cultivating it, is nevertheless himself in possession and occupation merely because he omits to cultivate. He is in possession himself, because he controls the possession of the land and prevents the occupation of it by others. 4 Where plaintiffs alleged that certain land, the property of a widow, was mortgaged to them with possession and that the defendants prevented them from cultivating them and claimed compensation, it was held that the defendants were in possession of the land without the consent of the landlords (the plaintiffs) within the meaning of this section. 5 Similarly a person who dispossesses a mortgagee and forcibly cultivates the land is a person in possession of the land without the consent of landlord. 6 When a person holding cultivating possession of certain lands under a mortgagee agrees to surrender possession to the latter and not to cultivate the land in future but who in controvention of the terms of the agreement cultivates the land, the mortgagee landlord can claim compensation for use and occupation under this section. 7

**Landlord.—**A person entitled to possession of land is a landlord within the meaning of this section. 8 The term landlord as used in this section is not used in relation to tenant, the person there spoken of not being a tenant, but it clearly indicates the person who would be landlord if the land had been occupied with his consent instead of being occupied without it. 9 A mortgagee who has obtained formal possession in execution of a Civil Court, decree, must be regarded as landlord within the meaning of this section. 10 A prior mortgagee who obtains

1. 82 P. R. 1894.  
 2. 19 P. R. 1891; 68 P. R. 1891.  
 3. 26 P. R. 1895.  
 4. 26 P. R. 1895.  
 5. 82 P. R. 1894.  
 6. 19 P. R. 1891.  
 7. 30 P. R. 1917=41 P. W. R. 1917=38 I. C. 580.

8. 53 P. R. 1918=48 I. C. 437 (82 P. R. 1894; 1 P. R. 1893 Foll. 145 P. R. 1893 not Foll).  
 9. 19 P. R. 1891.  
 10. 6 P. R. 1905 Rev.=63 P. L. R. 1906.

a decree for possession of the land against the second mortgagee, the status of the former during the time suit remains pending is that of a landlord and of the latter that of a person in occupation without the consent of the landlord.<sup>1</sup>

**Fair and equitable rent.**—What is fair and equitable rent in any case, must depend upon the particular circumstances of that case. Ordinarily the rent paid for land of a similar description and with similar advantages by tenants of the same class in the neighbourhood would be the best standard for fixing rent. Rent should not be fixed with reference to average rents paid by a number of tenants who may be of different classes and whose holdings may be very dissimilar with regard to the description of the land or its advantages.<sup>2</sup>

**Title, determination of.**—When plaintiff's status as proprietor has been recognised by a competent Civil Court, a Revenue Court has no business to reopen the question. The plaintiff is entitled to claim dues under S. 14, Tenancy Act whether the decree of the Civil Court has been executed or not and whether possession has been obtained or not.<sup>3</sup>

*Collection of rents of undivided property.*

**S. 15.** Where two or more persons are landlords of a tenant in respect of the same tenancy, the tenant shall not be bound to pay part of the rent of his tenancy to one of those persons and part to another.

#### NOTES.

Payment of rent by a tenant to any of the co-sharers, on whose behalf he cultivates the joint land, is sufficient to release him from further liability and a suit by a co-sharer to recover his fractional share of rent is not maintainable.<sup>4</sup> To entitle a co-sharer to sue separately for rent there must be a special contract clearly to that effect.<sup>5</sup> But one out of several joint landlords may sue for the entire rent due, if the others are joined as defendants and if there is good reason for not joining them as plaintiffs.<sup>6</sup> Payment of rent to one of the co-sharers affords a good answer to a suit for rent by any one of them.<sup>7</sup>

*Presumption with respect to produce removed before division or appraisal.*

**S. 16.** Where rent is taken by division or ap-

1. 1 P. R. 1893 R.

2. 9 P. R. 1867 Rev.; 81 P. R. 1882; 24 P. R. 1888

3. 5 Lah. J. T. 1922 at p. 10  
See also 1927 Lah. L. T. at p. 9

4. 26 I. C. 287; 20 C. 107. See also 11 A. 224.

5. 46 I. C. 652.

6. 21 C. W. N. 371=37 I. C. 847;  
See also 14 C. 201; 19  
735; 2 A. 264; 29 C. 54;  
26 C. 527.

7. 19 C. 735; 10 W. R. 441; 6 W. R. 327.

praisement of the produce, if the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due division or appraisement thereof, or deals therewith in a manner contrary to established usage, the produce may be deemed to have been as full as the fullest crop of the same description on similar land in the neighbourhood for that harvest.

#### NOTES.

**Application of section.**—The presumption as to the character of the yield can only arise if it is proved that the tenant acted dishonestly in order to prevent due division or appraisement, and that the landlord acting with promptitude, honestly did his best to bring about the sharing of the crop.<sup>1</sup> Where, therefore, a landlord is non-resident a court should be very cautious in allowing weight to the presumption under this section, otherwise it will be to landlord's interest to avoid due sharing and sue for arrears of rent.<sup>2</sup>

**Estimate of produce.**—Where rent is taken in kind, a claim for such rent especially on *barani* land must be promptly brought, otherwise it is hardly possible to get data for a fairly safe estimate of the out-turn.<sup>3</sup>

*Appointment of referee for division or appraisement.*

**S. 17.** If either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the division or appraisement of the produce, or if there is a dispute about the division or appraisement, a Revenue Officer may, on the application of either party, appoint such person as he thinks fit to be a referee to divide or appraise the produce.

#### NOTES.

**Object and application.**—The object of the section is to provide against the engine of oppression in the hands of *zamindar* by not making the *batai* at all, but to let the grain rot on the thrashing floor or in the field. One year's loss of rent is nothing to the *zamindar* but to the tenant, it means starvation.<sup>4</sup> It has been held by the Financial Commissioner, Punjab, that in case of a dispute between co-sharers no question of landlord arises and in such a case it is not necessary that all the landlords

1. S. P. R. 1899 Rev.

2. Ibid.

3. Ibid.

4. Vide Famire Commission Report, Para 37.

should join in the application.<sup>1</sup> Section 144 of the Land Revenue Act makes the provisions of this Act applicable to disputes between co-sharers.<sup>2</sup> In dealing with applications under this section and S. 144 of the Land Revenue Act, a Revenue Officer should not go behind the entries in the revenue records and he should act as if the co-sharers therein recorded were in fact the co-sharers in the holding.<sup>3</sup>

*Appointment of assessors and procedure of referee.*

S. 18. (1) When a Revenue Officer appoints a referee under the last foregoing section, he may in his discretion, give him instruction with respect to the association with himself of any other persons as assessors the number, qualifications and selection of those assessors and the procedure to be followed in making the division or appraisalment.

(2) The referee so appointed shall make the division or appraisalment in accordance with any instructions which he may have received from the Revenue Officer under the last foregoing sub-section.

(3) Before making the division or appraisalment the referee shall give notice to the landlord and the tenant of the time and place at which the division or appraisalment will be made, but, if either the landlord or the tenant fails to attend either personally or by agent, the referee may proceed *ex parte*.

(4) For the purpose of making the division or appraisalment, the referee, with his assessors, if any, may enter upon any land on which or into any building in which the produce is.

*Procedure after division or appraisalment.*

S. 19. (1) The result of the division or appraisalment shall be recorded and signed by the referee, and the record shall be sub-mitted to the Revenue Officer.

(2) The Revenue Officer shall consider the record, and, after such further inquiry, if any, as he may deem

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1. 4 P. W. R. 1912 Rev.=15  
I. C. 914.

2. Ibid.  
3. Ibid.

necessary, shall make an order either confirming or varying the division or appraisalment.

(3) The Revenue Officer shall also make such order as to the costs of the reference as he may think fit.

(4) The costs may include the remuneration of the referee and of the assessors, if any, and may be levied from the applicant before the appointment of the referee subject to adjustment at the close of the proceedings.

#### NOTES.

**Financial Commissioner's instructions.**—In suits for the value of produce rents there is no conclusive presumption that produce calculated according to the Financial Commissioner's instructions in para 12 Standing Order 2 is the actual produce of the particular land in the particular harvest in suit. They are intended only to furnish means of calculating the probable produce and its probable selling value in cases in which the reliable evidence of the actual produce and its selling value is not available.<sup>1</sup>

**Appraisalment by referee : its value.**—The failure by a Revenue Officer to give effect to the direction contained in cl. (2) of this section does not affect the admissibility or the value of the evidence contained in appraisalment record.<sup>2</sup> The refusal by a tenant to accept the result of an appraisalment is no reason for declining to confirm it.<sup>3</sup>

*Enhancement of produce rents of occupancy tenants.*

**S. 20.** Where the rent of a tenant having a right of occupancy in any land is a share of the produce or of the appraised value thereof with or without an addition in money, or is paid according to rates fixed with reference to the nature of the crops grown, or is a rent in gross payable in kind, the tenant shall be entitled to occupy the land at that rent.

Provided that, when the land or any part thereof previously not irrigated or flooded becomes irrigated or flooded, the rent payable in respect of the land or part may, subject to the provisions of this Act, be enhanced to the share or rates, or with reference to the rent in gross, as

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1. 4 P. E. 1918 Rev.=1 P. W.      2 Ibid.  
 R. 1918 Rev.= I C.                3. Ibid.  
 980.



the case may be, paid by tenants, having a similar right of occupancy, for irrigated or flooded land of a similar description and with similar advantages.

## NOTES.

In dealing with the enhancement of produce rents of occupancy tenants, regard must be had to the points specified in S. 20.<sup>1</sup> The proper test is to ascertain the rent paid in kind and the proportion which such rent bears to the Revenue.<sup>2</sup> Observations of the learned Judge in 93 P. R. 1881, decided under S. 11 of the older Act, may be perused with advantage in this connection. "The rate referred to" proceeds the judgment "is the rate per acre payable by tenants having the same right for land of a similar description and similar advantages in the neighbourhood, and can only be arrived at by ascertaining the total amount payable for the land in each case, whether in a lump, sum, or as an aggregate of sums under the names of revenue, cesses and *malikana*. It is necessary to compare the aggregate of these items per acre in one holding with their aggregate per acre in another, before it can be said that the rent of the one is higher or lower than that of the other; and it is erroneous to say that the rents of both holdings are at the same rate because the *malikana*, which is only one of the items comprised in the rent bears the same ratio to the revenue in both cases, seeing that the revenue itself may fall at very unequal rates on the two holdings."

*Reduction of rents referred to in the last foregoing section*

S. 21. Where the land, or any part of the land, held by a tenant having a right of occupancy to whom the last foregoing section applies, ceases to be irrigated or flooded, the rent payable in respect of the land or part may be reduced to the share of rates, or with reference to the rent in gross, as the case may be, paid by tenants, having a similar right of occupancy for unirrigated or unflooded land of a similar description and with similar advantages.

## CASH RENTS PAID BY TENANTS HAVING RIGHT OF OCCUPANCY.

*Enhancement of cash rent of occupancy tenants.*

S. 22. (1) Where a tenant having a right of occupancy pays his rent entirely by a cash rate on a recognized measure of area or by a cash rent in gross on his

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1. 5 P. R. 1893 Rev.

2. 2 P. R. 1872 Rev.

tenancy, the rent may be enhanced on the ground that, after deduction therefrom of the land revenue of, and the rates and cesses chargeable on, the tenancy, it is—

- (a) if the tenant belongs to the class specified in clause (a) of sub-section (1) of Section 5, less than two annas per rupee of the amount of the land revenue ;
- (b) if he belongs to any of the classes specified in clauses (b), (c) and (d) of that sub-section less than six annas per rupee of the amount of the land revenue ;
- (c) if he belongs to the class specified in Section 6 or if his right of occupancy is established under Section 8, and his rent is regulated by contract, less than twelve annas per rupee of the amount of the land revenue.

(2) In a case to which sub-section (1) applies, the rent may be enhanced to an amount not exceeding two, six or twelve annas per rupee of the amount of the land revenue, as the case may be, in addition to the amount of the land revenue of the tenancy and the rates and cesses chargeable thereon.

(3) For the purposes of this section a muqarraridar shall be deemed to be a tenant of the class specified in clause (a) of sub-section (1) of Section 5.

#### NOTES.

**Land Revenue.**—The canal advantage land revenue rate levied in the Montgomery District is essentially part of the land revenue and falls within the meaning of Section 4 (10) (a); and the landlords are entitled to have their rent calculated on the fixed land revenue plus the amount of such fluctuating canal advantage land revenue rate as may from time to time be ascertained.<sup>1</sup>

**Enhancement of rent : status.**—In all cases for enhancement of rent the status of the tenant if in dispute, should be enquired into and determined before the question of enhance-

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1. 3 P. R. 1900 Rev.

ment can be properly dealt with.<sup>1</sup> The distinction made by law between different classes of tenants in regard to the question of enhancement should always be kept in view.<sup>2</sup> The omission to do so would amount to a material irregularity.<sup>3</sup> The mere fact that under S. 22 (1) (b) the tenants who claimed occupancy rights under S. 5 (1) (c) even if their claim was established, would be equally liable to the enhancement decreed, is no ground for refusing to determine their status inasmuch as future claims for further enhancement may depend upon such determination.<sup>4</sup>

**Rent is not regulated by contract.**—The words “and his rent is not regulated by contract” in S. 22 (1) (c) refer to occupancy tenants whose rights are established under S. 8 and not to those whose occupancy rights are established under S. 6. <sup>5</sup>

**Enhancement of rent : maximum limit.**—The maximum *malikana* allowable under S. 5 (1) (c) is six annas on the Government revenue, and under S. 8, twelve annas and the rent in the case of a tenant paying 12 p. c. on the revenue may fairly be raised to four annas, *i. e.* 25 p. c. but not more.<sup>6</sup> The courts, however, are not bound to decree in every case the full enhancement permissible under this section.<sup>7</sup> Where a tenant has made an improvement, rent cannot be enhanced until he has received compensation. <sup>8</sup>

*Reduction of rents referred to in the last foregoing section.*

**S. 23.** The rent payable by a tenant to whom the last foregoing section applies may be reduced on the ground that the productive powers of his tenancy have been decreased by a cause beyond his control.

#### NOTES.

A tenant whose land has been covered with sand would be entitled to reduction of rent under this section <sup>9</sup>. But a tenant cannot claim reduction of rent under this section on the ground of scarcity of canal water unless therein be some implied or express condition in the lease to that effect.<sup>10</sup>

1. 3 P. R. 1900 Rev.; 5 P. R. 1895 (appr. 1 P. R. 1897 R.); 5 P. R. 1892; 5 P. R. 1893.

2. 12 P. R. 1890 Rev.

3. 15 P. R. 1890 Rev.

4. 3 P. R. 1900 Rev.

5. 1926 Lah. L. T. 42.

6. 12 P. R. 1890 Rev.

7. 7 P. R. 1902 Rev.=15 P. L. R. 1903.

8. *Ibid.*

9. See Sutherland's W. E. S. P. No. 4864 p. 42.

10. 28 I. C. 5.

*Enhancement and reduction of rent by suit.*

S. 24. (1) A Revenue Court, on the suit of either landlord or tenant may, subject to the provisions of this and other sections of this Act, enhance or reduce the rent of any tenant having a right of occupancy.

(2) Where a decree for the enhancement of the rent of such a tenant has been passed under the Punjab Tenancy Act, 1868, a suit for further enhancement of his rent shall not lie till the expiration of five years from the date of the decree, unless in the meantime the local area in which the land comprised in the decree is situate has been generally re-assessed and the revenue payable in respect of that land has been increased.

(3) Subject to the provisions of sub-section (2), a suit instituted for the enhancement of the rent of a tenant having a right of occupancy shall not be entertained in either of the following cases, namely—

(a) if within the ten years next preceding its institution his rent has been commuted under Section 13 or enhanced under this section;

(b) if within that period a decree has been passed under this Act, dismissing on the merits of a suit for the enhancement of his rent.

unless the land or some part of the land comprised in his tenancy not having been irrigated or flooded at the time of such commutation, enhancement or decree, has become irrigated or flooded.

(4) For the purposes of this section a *muqarraridar* shall be deemed to be a tenant having a right of occupancy.

## NOTES.

**Enhancement of rent : status.**—See commentary under S. 22.

**Enhancement of rent : question of title.**—Where in a suit for enhancement of rent, the defendants plead that they are owners and not tenants, the court is bound to decide the question whether the defendants are tenants or not.<sup>1</sup>

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1. 2 P. R. 1890.

**Enhancement of rent.**—A tenant is not liable to pay higher rent to his landlord for his holding than the rent payable by him in the previous year, unless he has consented in writing to pay an increased rent or a decree for the enhancement of his rent has been obtained against him.<sup>1</sup> A court should not pass a decree for enhancement of rent without a definite finding as to the section and clause of the Act under which the tenants come.<sup>2</sup>

**Suit for enhancement of rent: necessary parties.**—One of several joint proprietors has no right to sue for enhancement of rent.<sup>3</sup> But in case of several joint owners perfect unanimity among them is not necessary for the maintenance of such a suit. Thus when out of a large number of proprietors, all but an insignificant minority were either actually suing or were indifferent, it was held by the Financial Commissioner that the suit was maintainable.<sup>4</sup>

**Malikana.**—A suit for enhancement of *malikana* is not contemplated by the Tenancy Act.<sup>5</sup>

**Reduction of rent.**—When a tenant is dispossessed of a portion of the land comprised in his tenancy, by a person claiming under a paramount title, he is entitled to a reduction of the rent.<sup>6</sup>

**Agreement: suit for enhancement.**—It is a valid answer to a suit for enhancement of rent that contract or agreement has been previously entered into by the parties precluding the landlord from suing for enhancement for a term of years. Entries in settlement records have been held to be agreements, barring suits for enhancement until the expiry of the period or term of settlement.<sup>7</sup> Such entries are, however, no bar after the expiry of the settlement.<sup>8</sup>

*Direction as to extent of enhancement or reduction.*

S. 25. In enhancing or reducing the rent of any land under the foregoing provisions of this chapter, the Court shall, within the limits prescribed by those provisions enhance or reduce the rent to such an amount as it considers fair and equitable, but shall not in any case fix the rent at a sum less than the amount of the land revenue of the land and the rates and cesses chargeable thereon.

1. 110 P. R. 1868.  
2. 1929 Lah. L. T. 11; 12 P. R. 1890.  
3. 77 P. R. 1883.  
4. 3 P. R. 1905 Rev.  
5. 93 P. R. 1881; 10 P. R. 1887 Rev.  
6. 6 I. C. 206.

7. 9 P. R. 1886, 9 P. R. 1888 Rev. 73 P. R. 1887; 110 P. R. 1887; 42 P. R. 1881; 43 P. R. 1884; 36 P. R. 1880; 21 P. R. 1884; 58 P. R. 1883; 32 and 184 P. R. 1882.  
8. 6 P. R. 1887 Rev. 16 P. R. 1915 = 26 I. C. 404.

## NOTES.

**Fair and equitable.**—Fair and equitable rates have been defined to be rates payable by the same class of *ryots* for land of a similar description and with similar advantages in the places adjacent.<sup>1</sup> To constitute an usual rent rate, it is not necessary that there should be a large number of tenants paying an exactly uniform rate, still there must be at least a fair number paying rates which do not greatly vary.<sup>2</sup> In exercising the discretion, a Revenue Court should, among other matters, take into consideration the circumstances of the tract in which the suit arises and the rates of rent or *malikana* previously paid.<sup>3</sup>

*Time for enhancement or reduction to take effect.*

S. 26. (1) Unless the Court decreeing an enhancement of rent otherwise directs the enhancement shall take effect from the commencement of the agricultural year next following the date of the decree.

(2) A Court decreeing a reduction of rent shall specify in the decree the date on and from which the reduction is to take effect.

#### ADJUSTMENT OF RENTS EXPRESSED IN TERMS OF THE LAND REVENUE.

*Adjustment of rents expressed in terms of the land revenue.*

S. 27. (1) Where the rent of a tenancy is the whole or a share of the land revenue thereof, with or without an addition in money, kind or service, and the land revenue of the holding in which the tenancy is situate, is altered, a Revenue Officer having authority under Section 56 of the Punjab Land Revenue Act, 1887, to determine the land revenue payable in respect of the several holdings comprised in the estate in which the tenancy is situate, shall determine also the amount of the land revenue of the tenancy or the proportionate share thereof, payable by the tenant as rent.

(2) Where an addition referred to in sub-section (1) is a percentage fixed with the land revenue of the tenancy, or the whole or a share of the rates and cesses chargeable thereon, or both, the Revenue Officer shall in like manner from time to time alter the amount of the addition in proportion to any alteration of such land revenue or rates and cesses.

(3) The sum or sums determined under the foregoing sub-sections, together with any addition previously payable

1. 9 P. R. 1887. See also notes under S. 14.

2. 24 P. R. 18-8.

3. F. C. Circular No. 17, para 3.

other than the additions referred to in sub-section (2), shall be the rent payable in respect of the tenancy until there is again an alteration of the land revenue thereof or of the rates and cesses chargeable thereon or until the rent is enhanced by a suit under this Act.

(4) An alteration of rent under this section shall not be deemed an enhancement or reduction of rent within the meaning of this Act.

(5) For the purposes of this section a muqarraridar shall be deemed to be a tenant having a right of occupancy.

#### ADJUSTMENT OF RENTS PAID BY OCCUPANCY TENANTS IN ATTOCK DISTRICT.

*Adjustment of rents paid by occupancy tenants in Attock district.*

S. 27-A. (1) Where a tenant having a right of occupancy in land in the Attock district pays wholly or partly in cash a rent not falling within the scope of Section 27 and the land revenue of the holding in which the tenancy is situated is altered—

a Revenue Officer having authority under Section 56 of the Punjab Land Revenue Act, 1887, to determine the land revenue payable in respect of the several holdings comprised in the estate in which the tenancy is situate may, by written order, and whether the rent was fixed by agreement or otherwise, and either upon the application of such tenant, or his landlord, or of his own motion increase or diminish such rent if wholly payable in cash, or such portion thereof as if payable in cash, to such extent as appears to the Revenue Officer to be proper having regard to the matters specified in sub-section (2).

(2) In increasing or diminishing the rent of a tenancy under the provisions of sub-section (1) the Revenue Officer shall, for the purpose of deciding the extent of such increase or diminution take into consideration only—

- (i) the land revenue of and the rates and cesses chargeable on the tenancy before the land revenue of the holding in which it is situated was altered;
- (ii) the land revenue of and the rates and cesses chargeable on the tenancy after such alteration; and

(iii) the methods by which the assessments of the land revenue in force before and after such alteration were calculated and distributed over the several holdings comprised in the estate in which the tenancy is situated.

(3) The rent determined as aforesaid shall be the rent payable in respect of the tenancy until there is again an alteration of the land revenue thereof or of the rates or cesses chargeable thereon, or until the rent is enhanced or reduced by a suit under this Act.

(4) For the purposes of this section a muqarraridar shall be deemed to be a tenant having a right of occupancy.

(5) An alteration of rent under this section shall not be deemed an enhancement or reduction of rent within the meaning of this Act.

*Alteration of rent on alteration of area.*

S. 28. (1) Every tenant shall—

(a) be liable to pay additional rent for all land proved 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 his tenancy of land which, having previously belonged to the tenancy, was lost by diluvion or otherwise without any reduction of the rent being made; and

(b) be entitled to an abatement of rent in respect of any deficiency proved to exist in the area of his tenancy 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 tenancy by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall have regard to the following among other matters, namely—

(a) the origin and conditions of the tenant's occupan-



cy, for instance, whether the rent was a rent in gross for the entire tenancy ;

- (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 ; and
- (c) the length of time during which there has been no dispute as to rent or area.

(3) In adding to or abating rent under this section, the Court shall add to or abate the rent to such an amount as it deems to be fair and equitable, and shall specify in its decree the date on and from which addition or abatement is to take effect.

(4) An addition to or abatement of rent under this section shall not be deemed an enhancement or reduction of rent with in the meaning of this Act.

#### NOTES.

**Scope and application.**—A tenant is at liberty to contract himself out of his right to apply for a reduction of his rent on the ground of diluvion.<sup>1</sup> Similarly a custom may be proved to exist contrary to the provision of this section and will be upheld inspite of this section. But such a custom being inequitable has to be strictly proved.<sup>2</sup> An entry in a *wajib-ul-arz* should not be considered as conclusive evidence of a custom especially where the custom set up is opposed to the principles founded on universal law and application. <sup>3</sup>

Excess in area may be caused by the following :—

(1) **Accretion or alluvion.**—By virtue of this section any newly appeared land shall be considered a part of the tenancy and the tenant would be liable to pay additional rent for it unless it could be shown that it was part of the original holding and that on its disappearance no abatement had been allowed in respect of it. General rule in the Punjab is that an occupancy tenant does not lose his rights by reason of the land of his holding being submerged. <sup>4</sup> The rule that where the land which has been submerged but re-appears and forms by accretion part of a particular estate the owner of that estate is entitled to it, is equally applicable to accretions to the land cultivated by

1. 44 I. C. 222.

2. 8 P. R. 1901 Rev ; 89 P. R. 1877.

3. 97 P. R. 1902. See also 4 P. R. 1912.  
Rev ; 37 P. R. 1917

4. 8 P. R. 1901 R = 54 P. L. R. 1901<sup>f</sup>

59 P. R. 1877 F. B. ; 96 P. R. 1879<sup>f</sup>

15 2 P. R. 1893 ; 127 P. R. 1879 ; 4  
P. R. 1912 Rev.

a tenant with rights of occupancy, and gives the tenant the right to take possession of and cultivate the land so reforming. **1** The fact that the land remained submerged or unclaimed for several years will not affect tenant's rights. **2** For though cultivating rights are lost by abandonment or voluntarily ceasing to occupy, ordinarily the only legal bar is the twelve years' limitation. **3** But when an hereditary cultivator has been out of possession for a considerable time and has not claimed immediately upon the re-appearance of the land, the court should consider whether these are not circumstances amounting to an equitable estoppel preventing the hereditary tenant from claiming. **4** The general rule that an occupancy tenant, does not lose his right by reason of the land of his holding being submerged is subject to non-existence of a custom to the contrary. **5** A custom in contravention of the general use being very hard and inequitable must be very strictly proved. **6** Such a custom has been found to exist in *Mauza Kachwala, Tahsil and District Shahpur*, **7** but not in *Mauza Khair Pur, Tahsil Khushab and Chak Ram Das, Tahsil Bhera, of the same District*. **8** The burden of proving a custom whereby the tenant in opposition to general rule loses his rights in the submerged land is on the landlord. **9**

**(2) Encroachment by tenant on others, land.**—A tenant may encroach upon the land of a third person. The encroachment thus made enures to the benefit of the landlord who is entitled to additional rent for the land so added to the subject of the tenancy. **10**

**(3) Encroachment by tenant on landlord's land.**—When an encroachment is made by a tenant on the adjoining land of his landlord, it is open to the landlord either to treat him as a tenant in respect of the excess land or as a trespasser, at his pleasure. **11** The tenant has no right to compel the landlord against his will to accept him as a tenant in respect of that land. **12**

**(4) Error in measurement.**—A tenant is not a trespasser in respect of land within the boundaries though in excess of the area originally leased to him but can be sued for additional rent for this land. **13** But it is the land that is to be looked to and not the estimated area. **14** Therefore a landlord is not entitled to additional rent on account of excess area merely because the area within the boundaries specified in the *pattah* is proved to be

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| 1. 19 P. R. 1876, 83 P. R. 1876.    | ports 560, 15 B 568  |
| 2. 83 P. R. 1876.                   | 11. 6 W.R. Act X, 97; 6 W.R. Act X, 106; 7 W.R. 122, 9 W. R. 65. |
| 3. Ibid.                            | 25 C. 302.   |
| 4. 83 P. R. 1876                    | 12. 25 C. 302.   |
| 5. 8 P. R. 1901 Rev=54 P.L.R., 1901 | 13. W. R. Sp. No. 1864, Act X. 38;                               |
| 89 P. R. 1877                       | 8 W.R. 14; 9 W.R. 476; 15 W.R. 91;                               |
| 6. 8 P.R. 1901 R=54 P.L.R. 1901.    | 17 W. R. 34.   |
| 7. 89 P.R. 1877.                    | 14. 15 W.R. 394; 12 W.R. 439; 16                                 |
| 8. 96 P. R. 1879; 127 P.R. 1879.    | W.R.P.C. 5. 20 W. R 224  |
| 9. 4 P. B. 1913 Rev.                |  |
| 10. 10 C. 820. See also 2 Hay's Rē- |  |

more than the estimated area given therein, but, if any part of the excess land lies without the specified boundaries, the landlord is at liberty to claim additional rent therefor.<sup>1</sup>

**What a plaintiff ought to prove.**—To entitle a plaintiff to a decree for increased rent on the ground of an alteration in area of the defendants' holding, the plaintiff must show that the defendant is holding land in excess of what he is paying rent for and in order to do that he must show for what quantity of land the defendant is paying rent.<sup>2</sup>

*Remission of rent by Courts decreeing arrears.*

S. 29. Notwithstanding anything in the foregoing sections of this chapter, if it appears to a Court making a decree for an arrear of rent, that the area of a tenancy has been so diminished by diluvion or otherwise, or that the produce thereof has been so diminished by drought, hail, deposit of sand or other like calamity, that the full amount of rent payable by the tenant cannot be equitably decreed the Court may, with the previous sanction of the Collector allow such remission from the rent payable by the tenant as may appear to it to be just.

**Sanction of the Collector.**—The Collector in granting or refusing sanction, should be guided generally by the same principles as govern remissions of land-revenue. If the rent is a full cash rent, varying in amount according to the results of the harvest, a remission for calamity should be readily allowed. If it is a fixed rent, of such a nature as to secure the tenant a large profit in a good year, remissions should not be allowed except on account of specially severe losses or when a succession of bad harvests occurs.<sup>3</sup>

## REMISSION.

*Remission and suspension of rent consequent on like treatment of land revenue.*

S. 30. (1) Whenever the payment of the whole or any part of the land revenue payable in respect of any land is remitted or suspended, a Revenue Officer may, if the rent be payable in cash or be rent payable in kind of which the amount is fixed, by order, remit or suspend, as the case may be, the payment of the rent of that land to an amount which may bear the same proportion to the whole of the rent payable in respect of the land as the land revenue of which payment has been remitted or suspended, bears to the whole of the land revenue payable in respect of the land :

<sup>1</sup> 44 I.C. 24

<sup>2</sup> 251. See also 5 C. L. J. 588; (Ref. 16 C. L. J. 313=37 C. 30 F. B.) 6 C. W. N. 818; 11 I. C. 212

22 I. C. 598.

<sup>3</sup> Financial Commissioner's Circular No 17, para 5

Provided that in the case of any occupancy tenant, whose rent is of the nature hereinbefore in this sub-section described, the remission or suspension of the land revenue payable in respect of his land shall, in the absence of a written order by a Revenue Officer to the contrary, carry with it a proportionate remission or suspension, as the case may be, of his rent.

When the payment of the rent of any land has been suspended under this clause it shall remain under suspension, until the Collector orders the revenue of that land to be realised.

(2) An order passed under sub-section (1) shall not be liable to be contested by suit in any Court.

(3) A suit shall not lie for the recovery of any rent of which the payment has been remitted, or during the period of suspension of any rent of which the payment has been suspended.

(4) Where the payment of rent has been suspended, the period during which the suspension has continued shall be excluded in the computation of the period of limitation prescribed for a suit for the recovery of the rent.

(5) If the landlord collects from a tenant any rent of which the payment has been remitted, or is under suspension, the Revenue Officer may recover from the landlord the amount or value of the rent so collected, and may also recover by way of penalty a further sum not exceeding such amount or value, and may cause to be refunded to the tenant the amount or value of the rent so collected from him.

(6) The provisions of this section relating to the remission and suspension of the payment of rent, may be applied, so far as they can be made applicable, to land of which the land revenue has been released, compounded for or redeemed, in any case in which, if the land revenue in respect of the land had not been released, compounded for or redeemed, the whole or any party of it might, in the opinion of the Revenue Officer, be remitted or suspended under the rules for the time being in force for regulating the remission and suspension of land revenue.

(7) Any sum of which the recovery is ordered under sub-section (5) on account of rent or penalty may be recover-

ed by the Collector as if it were an arrear of land revenue.

#### DEPOSITS.

*Power to deposit rent in certain cases with Revenue Officer.*

S. 31. In either of the following cases, namely:—

- (a) when a landlord refuse to receive, or grant a receipt for, any rent payable in money when tendered to him by a tenant,
- (b) when a tenant is in doubt as to the person entitled to receive rent payable in money,

the tenant may apply to a Revenue Officer for leave to deposit the rent in his office, and the Revenue Officer shall receive the deposit if, after examining the applicant, he is satisfied that there is sufficient ground for the application and if the applicant pays the fee, if any, chargeable for the issue of the notice next hereinafter referred to.

#### NOTES.

**Refuses to receive deposit.**—Where it is not possible for the tenants to obtain joint receipts of the co-sharer landlords for payment of rent, a tenant may make a valid deposit in court under the section.1

**Revenue Officer shall receive deposit.**—If an application is made to the court and if it contains the grounds under which an application made under this Section is authorised to be made and also the particulars which must be mentioned, the court is bound to receive the rent.2

**Rent in kind.**—No deposit can be made of rent in kind. But where the parties have agreed that upon failure to deliver the rent in kind, a fixed sum is to be paid in lieu thereof, the entire rent is payable in cash and a deposit may be made under the Section.3

*Effect of depositing rent.*

S. 32. (1) When a deposit has been so received, it shall be deemed to be a payment made by the tenant to his landlord or in respect of rent due.

(2) The Revenue Officer receiving the deposit shall give notice of the receipt thereof to every person who he has reason to believe claims or is entitled to the deposit, and may pay the amount thereof to any person appearing to him to be entitled thereto, or may, if he thinks fit, retain the deposit pending the decision of a competent Court as to the person so entitled.

1. 45 C. 721

2. 15 C. 166.

3. 25 C. 171.

(3) 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 a Revenue Officer under this section, but nothing in this sub-section shall prevent any person entitled to receive the amount of any such deposit from recovering it from a person to whom it has been paid by a Revenue Officer.

#### RECOVERY OF RENT FROM ATTACHED PRODUCE.

##### *Recovery of rent from attached produce.*

S. 33. (1) If an order is made by any Court for the attachment of the produce of a tenancy, or of any part of a tenancy, the landlord may apply to the Revenue Officer by whom the attachment is to be or has been made to sell the produce and pay to him out of the proceeds of the sale thereof the amount or value of—

- (a) any rent which has fallen due to him in respect of the tenancy within the year immediately preceding the application, and
- (b) the rent which will be falling due after the harvesting of the produce and is chargeable against it.

(2) The Revenue Officer shall give the person at whose instance the attachment was made an opportunity of showing cause why the application of the landlord should not be granted, and, if he finds the landlord's claim to the whole or any part of the rent to be proved, he shall cause the produce or such portion thereof as he may deem necessary to be sold, and shall apply the proceeds of the sale in the first instance to satisfy the claim.

(3) The finding of the Revenue Officer under sub-section (2) shall have the force of a decree in a suit between the landlord and the tenant.

#### NOTES.

Section 12 and the present section should be read together. While Section 12 lays down the lien which landlord has over produce of the tenancy, this section lays down how that lien is to be enforced under certain circumstances.

**Scope and object.**—The object of this section is to afford

the landlord a prompt remedy if he chooses to avail himself thereof.<sup>1</sup> The section first divides the rent due to landlord primarily into two clauses: (1) current rent, or the rent, that is accruing due, and (2) rent in arrear for past crops.<sup>2</sup> The former is properly described as chargeable on the produce with reference to the provision of Section 12, clause (1).<sup>3</sup> The latter class is again sub-divided under two heads, (a) rent due for the year immediately preceding the application in the case of attachment, (b) rent due for any period prior to such year, and the summary remedy is provided only in respect of rent falling under the first head.<sup>4</sup>

Clause (1) (b) "chargeable against it."—The words "chargeable against it" in Section 33 (1) (b) do not merely mean chargeable under Section 12 but are intended to be synonymous with the expression "in respect of the tenancy" in clause (a), that is merely designed to make it clear that the rent claimed must be for the same land of the same tenancy as that of which the produce has been attached.<sup>5</sup>

Lien—Where the landlord sued for and obtained a decree against his tenant for rent due for the harvest of *Kharif* 1948 and *Rabi* 1949, and attached the judgment-debtor's crop of *Rabi* 1950, which was mortgaged prior to attachment to a third person, who claimed priority over the decree and attachment, it was held by the Full Bench of the Punjab Chief Court that the landlord had a lien on the produce of the tenancy not only for current year but for arrears of rent and the plaintiff's mortgage did not give him the priority which he claimed as regards any portion of the attached produce.<sup>6</sup>

LEASES FOR PERIOD EXCEEDING TERM OF ASSESSMENT  
OF LAND REVENUE.

*Treatment of leases for period exceeding or equal to term of assessment of land revenue.*

S. 34. (1) Where a lease has been granted, or an agreement has been entered into, by a landowner in respect of any land assessed to land revenue, fixing for a period exceeding the terms for which the land revenue has been assessed the rent or other sum payable in respect of the land under the lease or agreement, and that term has expired, the lease or agreement shall be voidable—

(a) at the option of the land-owner if the land revenue of the land has been enhanced and the person to whom the lease has been granted or

1. 54 P.R. 1895 F.B. per Rivaz, J.  
2. 54 P.R. 1895 B. per Chatterji, J.  
3. 54 P.R. 1895 F.B. per Chatterji, J.

4. *Ibid*  
5. 54 P.R. 1895 F.B. per Chatterji, J.  
6. 54 P.R. 1895 F.B. (3 A 433; 15 A. 875 Cit and Con)

with whom the agreement has been entered into, refuses to pay such rent or other sum as a Revenue Court, on the suit of the landowner, determines to be fair and equitable or a Revenue Officer under the provisions of Section 27-A has determined to be proper; and

where the relation of landlord and tenant exists between the grantor and grantee of the lease, or between the person who entered into the agreement—

- (b) at the option of the tenant if the land revenue of the land has been reduced and the landlord refuses to accept such rent as a Revenue Court on the suit of the tenant determines to be fair and equitable or a Revenue Officer under the provisions of Section 27-A has determined to be proper.

- (2) An agreement relative to the occupation, rent profits or produce of any land which has been entered into for the term of the currency of an assessment shall, unless a contrary intention clearly appears in the agreement or the agreement is terminated by consent of parties or course of law, continue in force until a revised assessment takes effect.

#### NOTES.

**Clause (2) : agreement.**—An agreement between landlord and tenant, by which suit for enhancement would ordinarily be barred during the period of settlement, is not to be deemed to have been put an end to by the mere announcement of the new assessments but to remain in force until the record of rights is handed over to the Deputy Commissioner with the sanction of the Government.<sup>1</sup>

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1. 9 P. R. 1833 (21 P. R. 1884 fol.)



## CHAPTER IV.

### RELINQUISHMENT, ABANDONMENT AND REJECTMENT.

#### *Relinquishment by tenant for a fixed term.*

S. 35. A tenant holding for a fixed term under a contract or a decree or order of competent authority may relinquish his tenancy without notice at the end of that term.

#### NOTES.

**Relinquishment.**—A mere non-payment of rent would not operate as relinquishment.<sup>1</sup> But where the entire holding is transferred to a third person and there is no proof of payment of rent or of any arrangement made to pay rent, it would amount to relinquishment.<sup>2</sup> Where a tenant makes a usufructuary mortgage of tenancy and delivers the possession to the mortgagee he cannot during the subsistence of the mortgage relinquish his holding to the prejudice of mortgagee's rights.<sup>3</sup> A lessee is on much the same footing as a mortgagee. Therefore an occupancy tenant, it has been held, cannot during the subsistence of the lease by him, relinquish his holding to his landlord to the prejudice of his lessee's right, and the lessee's rights will not be affected thereby.<sup>4</sup>

**Joint tenants, relinquishment by some of them.**—A relinquishment by some out of the joint tenants has been held to be operative to the extent of their shares.<sup>5</sup>

#### *Relinquishment by any other tenant.*

S. 36. (1) Any other tenant may relinquish his tenancy by giving verbally or in writing to his landlord, or to his landlord's agent, on or before the fifteenth day of January in any year, notice of his intention to relinquish the tenancy at the end of the agricultural year then current.

(2) The tenant may, instead of, or in addition to, giving the notice in the manner mentioned in sub-section (1), apply to a Revenue Officer on or before the date afore-

1. 18 A. 290

2. 42 C. 761=27 I. C. 271

3. 33 A. 335=9 I. C. 217; 1. B 577

4. 18 A 354; 21 I. C. 58

5. 11 I. C. 38=15 C. W. N 680  
(8 C. W. N 315 F)

said to cause the notice to be served on the landlord, and the Reveue Officer, on receiving the cost of service from the tenant, shall cause notice to be served as soon as may be.

(3) If the tenant does not give notice in the manner prescribed in this section, he shall be liable to pay the rent of his tenancy for any part of the ensuing agricultural year during which the tenancy is not let by the landlord to some other person or is not cultivated by the landlord himself.

*Relinquishment of part only of a tenancy.*

S. 37. A tenant cannot, without the consent of his landlord, relinquish a part only of his tenancy.

ABANDONMENT.

*Abandonment of tenancy by occupancy tenant.*

S. 38. (1) If a tenant having a right of occupancy fails for more than one year without sufficient cause to cultivate his tenancy, either by himself or some other person and to arrange for payment of rent thereof as it falls due, the right of occupancy shall be extinguished from the end of that year.

(2) For the purpose of this section a muqarraridar shall be deemed to be a tenant having a right of occupancy.

NOTES.

**Scope.**—The principle that for the continued existence of an occupancy right, it is essential that the land be continuously occupied by the tenant or his agent, and that if it is not, the right becomes extinct, applies only between landlord and tenant and not between joint owners or tenants.†

**Abandonment.**—The section clearly points to the conclusion that a year's absence from the tenancy does not of itself extinguish the right of occupancy. To constitute abandonment under this section three things are necessary and all these three must exist in combination with each other and these are, (1) that the tenant fails for more than one year to cultivate his tenancy either by himself or some other person, (2) that he so fails without sufficient cause, and (3) that he fails to arrange for payment of rent of the

tenancy as it falls due.<sup>1</sup> To constitute abandonment there must be not only relinquishment of possession but also the absence of *animus revertendi*.<sup>2</sup> In order to establish the conditions contemplated by this section, the tenant whose abandonment of his tenancy is alleged must have been at some time or other in possession of the tenancy in question.<sup>3</sup> As to the intention of the section the essential point for consideration is whether the landlord has sustained any injury moving from the tenant which would justify the extinction of the right. If the landlord has sustained no injury whatever, the courts should require extremely strict proof as to all the three points above noted before proceeding to give the landlord a decree.<sup>4</sup>

**Failure to cultivate.**—To amount to an abandonment, the relinquishment by the tenant must be voluntary.<sup>5</sup> Therefore a plaintiff who was recorded hereditary tenant of the first settlement but at the revised settlement, being recorded a tenant at will had relinquished possession of his land, was again in 1869 under the operation of the Punjab Tenancy Act, 1868, restored to his original position of hereditary tenant, sued for possession in 1872, it was held that there was no abandonment within the meaning of the Act as it was not a voluntary one.<sup>6</sup> It is clear from the wording of the section that it is not necessary that the tenant himself should cultivate the holding. If he makes arrangement for the cultivation of the holding his absence therefrom will not amount to abandonment.<sup>7</sup> Where occupancy tenants do not for a long time cultivate the land without sufficient cause and do not arrange for payment of rent when due abandonment is established and the adverse possession by the proprietors may be presumed from the fact that they gave the land to their own tenants at will.<sup>8</sup>

**Abandonment by widow.**—Where a widow succeeding to occupancy rights abandons the rights by non-cultivation under the section, her right is not extinguished but it devolves at once on the collaterals under Section 59 (1) (a) and (c). A collateral who thus succeeds cannot be said to have abandoned the rights owing to non-cultivating before entering into possession of land.<sup>9</sup>

**Sufficient cause.**—Minority is a sufficient cause within the meaning of this section. Thus it has been laid down that the occupancy rights of a minor are not lost by non-cultivation, as his minority is a sufficient cause for failure to cultivate and the

1. 2 P.R. 1901 Rev.

2. 44 P.R. 1917

3. 2 P. R. 1914 Rev.

4. 2 P.R. 1901 Rev.

5. 46 P.R. 1873

6. Ibid.

7. 58 P.R. 1887; 20 P. R. 18 71. See also 2 P.R. 1901 Rev, 22 P.R. 1876.

8. 170 P.R. 1919.

9. 2 P. R. 1914 Rev.

landlord must be presumed in the absence of any satisfactory evidence to the contrary to stand in a *quasi* fiduciary position towards the tenant and is bound to restore the holding of the minor when he comes of age.<sup>1</sup> In the absence of a custom to the contrary, submersion of land is a sufficient cause for non-cultivation under this section.<sup>2</sup> But if after re-appearance of lands, the tenants stand by for some years and allow the landlords to take such produce as they can and fail to cultivate the tenancy without sufficient cause for more than a year, they will be considered to have abandoned their holding.<sup>3</sup>

**Payment of rent.**—There can be no abandonment or implied surrender where a person bound to pay the entire rent has either paid it or tendered it.<sup>4</sup> When a substantial arrangement for the payment of rent due to the landlord is made there can be no question of abandonment.<sup>5</sup>

#### EJECTMENT, LIABILITY TO EJECTMENT.

*Grounds of ejectment of occupancy tenant.*

S. 39. (1) A tenant having a right of occupancy shall be liable to be ejected from his tenancy on any of the following grounds, namely,—

- (a) that he has used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it;
- (b) where rent is payable in kind, that he has without sufficient cause failed to cultivate that land in the manner or to the extent customary in the locality in which the land is situate;
- (c) that a decree for an arrear of rent in respect of the tenancy has been passed against him and remains unsatisfied.

(2) For the purposes of this section a muqarraridar shall be deemed to be a tenant having a right of occupancy.

#### NOTES.

**Liability to ejectment.**—Where the land of a tenancy has been diverted from its original purpose, the tenant is indeed liable to be ejected under clause (a) of this section. But this clause is to

1. 8 P.R. 190; 2 P.R. 1901 Rev.  
2. 80 P.R. 1905; 8 P.R. 1901 Rev.  
3. 8. P.R. 1901 Rev.

4. 13 N.L.R. 175  
5. 2 P.R. 1901 Rev=56 P.L.E. 1901.

be read with S. 48 of the Act. 1 It is by no means necessary to eject the tenant if the rights of the landlord can be recognised in some other way. Thus where land is let for building purposes in the neighbourhood of a town, ejectment is not the proper remedy but compensation in form of enhanced rent would meet the ends of justice. 2

**Renders unfit For the purpose for which he held it.**—These words should be taken to refer to something which may alter the character of the land or cause injury to the land or the landlord, *e.g.*, turning Sir land into a building land excavating it for a tank, or probably cutting down a valuable grove, starting a brick kiln, tannery, saltpetre, *kunkar* pit, etc. 3 A walled enclosure and cattle shed erected by occupancy tenants on the *arable* lands in their possession were held not to alter the nature of their holding, the said buildings being closely connected with the purposes of agriculture. 4 But in the above noted case the tenants paid cash rent and it is doubtful whether the same would be the case with tenants paying rent in kind for in their case the erection of such buildings would necessarily result in the curtailment of area under cultivation. Occupation by a hereditary tenant of a portion of the *shamilat* land with the consent or acquiescence of proprietor for storing manure for agricultural purposes cannot be disturbed so long as he remains a tenant in the village and uses the site for the purposes for which it was given, but if he diverts the site to other purposes as for instance to build upon, he forfeits his rights. 5

#### Cause (b)

**Failure to cultivate without sufficient cause.**—Though the land be entered in revenue papers as *chahi* and revenue payable on it be also at *chahi* rate, if the area of the land is too small to be profitably irrigated by well water, the failure on the part of the tenant to resort to irrigation by well will not amount to a failure to cultivate without sufficient cause as the tenant cannot incur the outlay necessary for well irrigation without loss. 6

**Clause. (c) Decree for rent.**—The phrase “decree for an arrear of rent” includes the amount decreed for costs in the suit as well as the amount actually due for rent. 7 Where a tenant has appealed against a decree for rent, a decree for rent should not be passed against him until the appeal is decided. 8 In making a decree for ejectment the decree must specify the precise lands from which a tenant is to be ejected. 9

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- |                                    |                                     |
|------------------------------------|-------------------------------------|
| 1. 3 P.R. 1904 Rev. 4 P. R 1904    | 1877 36 & 152 P.R.; 1882            |
| Rev                                | 6. 54 P.E. 1875                     |
| 2. 3 P.B. 1904 Rev=79 P L.R. 1903  | 7. 87 P.R. 1881.                    |
| 4 P.B. 1904 Rev=82 P.L.E. 1904     | 8. 78 P.R. 1873. 60 P.R. 1874 (App. |
| 3. 7 A 691, 9 A 244                | 3 P.R. 1876)                        |
| 4. 122 P.R. 1888                   | 9. 6 P.R. 1861.                     |
| 5. 65 P. R. 1895. See also 24 P.R. |                                     |

*Grounds of ejectment of tenant for a fixed term.*

S. 40. A tenant not having a right of occupancy but holding for a fixed term under a contract or a decree or order of competent authority, shall be liable to be ejected from his tenancy at the expiration of that term, and on any of the following grounds, before the expiration thereof, namely,—

- (a) that he has used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it;
- (b) where rent is payable in kind, that, he has without sufficient cause failed to cultivate that land in the manner or to the extent customary in the locality in which the land is situate;
- (c) on any ground which would justify ejectment under the contract, decree or order.

*Ejectment of tenant from year to year.*

S. 41. A tenant who has not a right of occupancy and does not hold for a fixed term under a contract or a decree or order of competent authority, may be ejected at the end of any agricultural year.

## NOTES.

**Right to eject.**—The right to eject a tenant-at-will is an inherent right of a tenure.<sup>1</sup>

**Tenant-at-will.**—A mortgagee of occupancy rights after the death of the mortgagor leaving no lien, is merely a tenant-at-will of the landlord.<sup>2</sup> A lessee of a lease reserving a yearly rent and containing no other provision is no better than a tenant-at-will.<sup>3</sup>

(Standing Order No. 2, Para 6).

## PROCEDURE ON EJECTMENT.

*Restriction on ejectment.*

S. 42. A tenant shall not be ejected otherwise than

1. 10 P.R. 1905 Rev.

2. 8 P.R. 1905 Rev=67 P.L.R. 1906

3. 70 P.R. 1895

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in execution of decree for ejectment, except in the following cases, namely,—

- (a) when a decree for an arrear of rent in respect of his tenancy has been passed against him and remains unsatisfied ;
- (b) when the tenant has not a right of occupancy and does not hold for a fixed term under a contract or a decree or order of competent authority.

*Application to Revenue Officer for ejectment.*

S. 43. In any such case as is mentioned in clause (a) or clause (b) of the last foregoing section, the landlord may apply to a Revenue Officer for the ejectment of the tenant in the case mentioned in the former clause or for the service on the tenant of a notice of ejectment in the case mentioned in the latter clause.

#### NOTES.

**Application to a Revenue Officer.**—A landlord has his choice of proceeding either by notice of ejectment under Sections 43 and 45 of the Tenancy Act, or by suit for ejectment, without previous notice under Section 77 (3) (e) of the Act.<sup>1</sup>

**Landlord.**—As a general rule for purposes of ejectment all the joint landlords collectively constitute one landlord.<sup>2</sup> Therefore some of the landlords only cannot apply for or bring a suit for ejectment.<sup>3</sup> All the landlords must either act together and unanimously or, if they cannot agree must obtain partition and then proceed as they severally think fit with reference to their separated shares.<sup>4</sup> But it has been held by the Financial Commissioner that the above mentioned doctrine must not be so blindly applied as to occasion a mis-carriage of justice.<sup>5</sup> Therefore where seven out of nine co-sharers sued and the other two were absent in Burma and all the co-sharers were related to each other in the male line, the rigor of the rule was relaxed and they were held entitled to apply.<sup>6</sup> But before an exception is made the court must be satisfied that the co-sharers who do not sue are, for some reasonable cause, not in a position to do so, that the co-sharers who do sue are acting *bona fide* in the interests of

1. 5 P.R. 1896

2. 19 P.R. 1886, 16 P.R. 1887, 20 P.L.R. 1907. See also 1 P.R. 1903 Rev.

3. 19 P.R. 1886, 20 P.L.R. 1907.

4. 19 P.R. 1886, 10 P.R. 1903 Rev.

5. 1 P.R. 1903 Rev=72 P.L.R. 1903

6. Ibid.

absentees as well as in their own interests and that the tenants will not be prejudiced on merits of the case by the decision of the suit in the absence of some of the landlords.<sup>1</sup>

*Ejectment for failure to satisfy decree for arrear of rent.*

S. 44. (1) On receiving the application in any such case as is mentioned in clause (a) of Section 42, the Revenue Officer shall, after such inquiry with respect to the existence of the arrear as he deems necessary, cause a notice to be served on the tenant, stating the date of the decree and the amount due thereunder, and informing him that if he does not pay that amount to the Revenue Officer within fifteen days from receipt of the notice he will be ejected from the land.

(2) If the amount is not so paid, the Revenue Officer shall, subject to the provisions of this Act with respect to the payment of compensation, order the ejectment of the tenant unless good cause is shown to the contrary.

(Standing Order No. 2, Para 3).

*Ejectment of tenant from year to year by notice.*

S. 45. (1) On receiving the application of the landlord in any such case as is mentioned in clause (b) of Section 42, the Revenue Officer shall, if the application is in order and not open to objection on the face of it, cause a notice of ejectment to be served on the tenant.

(2) A notice under sub-section (1) shall not be served after the fifteenth day of November in any agricultural year.

(3) The notice shall specify the name of the landlord on whose application it is issued, and describe the land to which it relates, and shall inform the tenant that he must vacate the land before the first day of May next following, or that, if he intends to contest his liability to ejectment he must institute a suit for that purpose in a Revenue Court within two months from the date of the service of the notice.

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1. 1 P. R. 1903 Rev.=72 P. L. R. 1903.



(4) The notice shall also inform the tenant that if he does not intend to contest his liability to be ejected and he has any claim for compensation on ejection he should, within two months from the date of the service of the notice, prefer his claim to the Revenue Officer having authority under the next following sub-section to order his ejection in the circumstances described in that sub-section.

(5) If within two months from the date of the service of the notice the tenant does not institute a suit to contest his liability to be ejected, a Revenue Officer, on the application of the landlord, shall, subject to the provisions of this Act with respect to the payment of compensation, order the ejection of the tenant.

Provided that the Revenue Officer shall not make the order until he is satisfied that the notice was duly served on the tenant.

(6) If within those two months the tenant institutes a suit to contest his liability to be ejected and fails in the suit, the Court by which the suit is determined shall by its decree direct the ejection of the tenant.

#### NOTES.

**Issue of notice, requisites for**—The relation of landlord and tenant must subsist at the time the notice is issued.<sup>1</sup> When the question comes to be contested and such relation is not proved to exist at the time of issue of notice, the notice is invalid. It is not necessary for a person alleging himself to be the landlord and seeking issue of notice to adduce any other proof in support of his allegation beyond filing an extract from the revenue papers showing the existence of tenancy. If the revenue records support his application he will have notice issued to the alleged tenant, whatever his real title to occupy the land may be.<sup>2</sup>

**Limitation**—A suit to contest a notice of ejection can only be brought within two months from the service of such notice and a suit under Section 50 cannot be brought till ejection has taken place.<sup>3</sup>

**Onus probandi** In a suit to contest a notice of ejection on the ground of proprietary title, the fact of the plaintiff being

1. 91 P. R. 1881

2. 3 P. R. 1895.

3. 2 P. R. 1902 Rev=87 P. L. R. 1902

in possession raises the presumption that he is owner and not tenant and it is for the defendant to prove that he is landlord and if the landlord gives *prima facie* proof of his being a landlord for example by entries in revenue records, then it is for the plaintiff to prove that the defendant is not his landlord.<sup>1</sup>

**Landlord and tenant.**—A person is a landlord for purposes of this section who styling himself landlord causes a notice to issue, and that person is tenant whom the landlord styles a tenant and causes to be served with notice, and in accordance with the terms of the notice any such person must be allowed to come into Revenue Court and contest it whether he admits that he is a tenant or claims some other status.<sup>2</sup>

**Compensation.**—A court is bound to determine the amount of compensation in a suit to contest the notice of ejection.<sup>3</sup> The question of compensation should not be determined in a suit to establish a right of occupancy under Section 77 (3) (a) independently of Section 45, Tenancy Act, no notice of ejection having previously been served.<sup>4</sup>

**Decree for ejection, effect of.**—A decree for ejection recognising the termination of the tenancy operates as a severance of the relationship between the parties as landlord and tenant and in the absence of a new contract the subsequent possession of the tenant should be regarded that of a trespasser.<sup>5</sup>

**Decree, form of.**—In making a decree for ejection the court must specify the precise lands from which a tenant is to be ejected.<sup>6</sup>

*Power to make rules.*

S. 46. The Financial Commissioners may make rules prescribing—

- (a) the form and language of applications and notices under the two last foregoing sections; and
- (b) the manner in which those applications and notices are to be signed and attested.

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1 3 P. R. 1895.

2. *Ibid.*

3 4 P.W.R. 1915 Rev.

4. 9 P. R. 1890 Rev.

5. 39 I.C. 954.

6. 6 P. R. 1891 Rev.

## GENERAL PROVISIONS RESPECTING EJECTMENT.

*Time for ejectment.*

S. 47. A decree or order of the ejectment of a tenant shall not be executed at any other time than between the first day of May and the fifteenth day of June (both days inclusive), unless the Court making the decree or, where the order is made under Section 44, the officer making the order, otherwise directs.

*Relief against forfeiture.*

S. 48. (1) If in a suit for the ejectment of a tenant on either of the grounds mentioned in clauses (a) and (b) of Section 39 or of Section 40 it appears to the Court that the injury caused by the act or omission on which the suit is based is capable of being remedied, or that an award of compensation will be sufficient satisfaction to the landlord therefor, the Court may, instead of making a decree for the ejectment of the tenant, order him to remedy the injury within a period to be fixed in the order, or order him to pay into Court, within such a period, such compensation as the Court thinks fit.

(2) The Court may from time to time, for special reasons, extend a period fixed by it under sub-section (1).

(3) If within the period, or extended period, as the case may be, fixed by the Court under this section the injury is remedied or the compensation is paid, a decree for the ejectment of the tenant shall not be made.

## NOTES.

Although where the land of a tenancy has been diverted from its original purpose the tenant is liable to be ejected under Section 39 (a) but in cases where the property by reason of its situation in the neighbourhood of large cities advancing in prosperity has been converted from its original purpose to land suitable for building purposes and where there is no immediate injury to the landlord, it is by no means necessary to eject the tenant if the rights of the landlord can be recognised in some other way.

In such cases the Revenue Courts should facilitate the process in the interest of the landlord and the tenant and the general community.<sup>1</sup>

*Rights of ejected tenants in respect of crops and land prepared for sowing.*

**S. 49. (1)** Where at the time of the proposed ejectment of a tenant from any land his uncut or ungathered crops are standing on any part thereof, he shall not be ejected from that part until the crops have ripened and he has been allowed a reasonable time to harvest them.

(2) The Court or Revenue Officer decreeing or ordering the ejectment of the tenant may, on the application of the landlord, determine any dispute arising in consequence of the provisions of sub-section (1) between the landlord and the tenant or between the landlord and any person entitled to harvest the crops of the tenant and may in its or his discretion—

- (a) direct that the tenant pay for the longer occupation of the land secured to him under sub-section (1) such rent as may be fair and equitable, or
- (b) determine the value of the tenant's uncut and ungathered crops, and, on payment thereof by the landlord to the Court or Revenue Officer, forthwith eject the tenant.

(3) When a tenant for whose ejectment proceedings have been taken has, conformably with local usage, prepared for sowing any land comprised in his tenancy, but has not sown or planted crops on that land, he shall be entitled to receive from the landlord before ejectment a fair equivalent in money for the labour and capital expended by him in so preparing the land, and the Court or Revenue Officer before which or whom the proceedings are pending shall, on the application of the tenant, determine

1. 3 P. R. 1904 Rev = 79 P. L. R.  
1904. See also 4 P. R. 1904 Rev.

P. R. 1312 Rev.

the sum payable to the tenant under this sub-section and stay his ejectment until that sum has been paid to him.

### RELIEF FOR WRONGFUL DISPOSSESSION.

*Relief for wrongful dispossession or ejectment.*

S. 50. In either of the following cases, namely, —

- (a) if a tenant has been dispossessed without his consent of his tenancy or any part thereof otherwise than in execution of a decree or than in pursuance of an order under Section 44 or Section 45,
- (b) if a tenant who, not having instituted a suit under Section 45 has been ejected from his tenancy or any part thereof in pursuance of an order under that section denies his liability to be ejected,

the tenant may, within one year from the date of his dispossession or ejectment, institute a suit for recovery of possession or occupancy, or for compensation, or for both.

### NOTES.

**Tenant.**—Whatever be the meaning of the term 'tenant' elsewhere, in the Punjab Tenancy Act, in Section 50 of the Act, it means a person who having been a tenant has been dispossessed from his tenancy.<sup>1</sup>

**Scope of section.**—Section 50 which provides one year's limitation for a dispossessed tenant to institute a suit for recovery of possession, though it contains no express words limiting its operation to cases of dispossession and ejectment by landlord, must from its position in the Act, be held to be so limited, as the section occurs in a chapter devoted to matters which concern exclusively landlords and tenants, (*i. e.*) relinquishment, abandonment (acts by a tenant) and ejectment (an act by a landlord) and it may fairly be interpreted as referring to suits between landlord and tenant only.<sup>2</sup> Therefore where the ouster is not by the landlord but by a third person and the suit is against the latter, it is beyond the provision of this section and is cognizable by a civil court.<sup>3</sup>

1. 98 I. C. 875; 90 P. E. 1918 F. B.  
2. 33 P. E. 1889.

3. *Ibid.*

**Suit by heirs of tenant.**—A suit by the collaterals of a deceased occupancy tenant to recover possession of his holding from landlord on the ground of *inheritance* is quite distinct from a suit based on wrongful dispossession covered by Section 50.1 But where the collateral heir of an occupancy tenant sues for the recovery of possession of the holding from the landlord on the ground that he had been *forcibly dispossessed by the landlord after he had entered into possession*, the suit falls under Section 50 and is cognizable by a Revenue court only.2 The headnote of the case reported as 1926 Lah. 6 = 89 I. C. 884 lays down that a suit by the heirs of an occupancy tenant to recover possession of the occupancy holding from the landlord is cognizable by a Revenue court and not by a civil court. The headnote it is submitted is incorrect and misleading. In that case the occupancy tenant had mortgaged the land. The mortgage was successfully avoided by the landlord who obtained possession of the holding. The sons of the tenant sued the landlord for possession and it was held that the suit was cognizable by a Revenue Court. Therefore all that the ruling lays down is that where a landlord successfully avoids an unauthorised alienation by a tenant and obtained possession of the holding, a suit for possession against him is cognizable by a Revenue Court and not by a Civil Court. In this view of the case it runs counter to 1 P. R. 1911 Rev. and not 160 P. R. 1890 referred to above.

**Suit by a tenant alienor.**—A suit by an occupancy tenant who voluntarily alienates his rights for re-entry on his holding, after a suit is successfully brought by a landlord to declare the alienation effected by the tenant void, is cognizable only by a Civil Court, inasmuch as the tenant neither has possession nor is he tenant holding under the landlord in any way.3 As already pointed a contrary view has been expressed in 89 I. C. 884 = 1926 Lah. 6.

**Remedies open to a dispossessed tenant.**—Ordinarily a person dispossessed of his immovable property has two remedies, (1) a summary suit under Section 9 of the Specific Relief Act 1877, within 6 months of his ouster and a regular suit for possession within 12 years from the date of dispossession. In case of tenants against the landlords the summary remedy provided by Section 9, Specific Relief Act has been taken away by Section 51 of the Act. The only question is whether in addition to the summary remedy provided by Section 50 of the Act, a dispossessed tenant has the remedy of a regular suit in a Civil Court open to him or not. It is now well settled that a Civil Court has no jurisdiction to hear and determine a suit instituted by a tenant who has been

1. 160 P. R. 1890.  
2. 43 P. R. 1904

3. 1 P. R. 1911 Rev; 51 P. L. R. 615.

wrongly dispossessed of his tenancy and the sole remedy open to the tenant for the recovery of possession or for compensation for wrongful dispossession or for both, is a suit in a Revenue Court which he must institute within one year from the date of dispossession.<sup>1</sup> Such a suit is not made cognizable by a Civil Court simply because more than a year has elapsed since the dispossession of the tenant.<sup>2</sup>

**Procedure for application under Section 50.**—An application under Section 50, Punjab Tenancy Act claiming recovery of possession of occupancy or compensation or both must be treated like a regular suit, and the entire procedure laid down, for trying the suits such summoning the other party, striking issues and the like, should be followed.<sup>3</sup>

*Bar to civil suits.*

**S. 50-A.** No person whose ejection has been ordered by a revenue court under Section 45, sub-section (6), or whose suit has been dismissed under Section 50, may institute a suit in a civil court to contest his liability to ejection, or to recover possession of occupancy rights, or to recover compensation.

NOTES.

This section has been added by Punjab Act V of 1929. A Full Bench of the Lahore High Court in 9 Lah. 38 answered in the affirmative the reference whether a Civil Court has jurisdiction to try a suit by a person who has been dispossessed from his tenancy after a notice issued to him under Section 43 of the Tenancy Act and who has been unsuccessful in a suit under Section 45 to contest his liability to ejection, for possession of the land from which he has been ejected on the ground that he has a right of occupancy therein. This was however not the intention of the Legislative. This section has, therefore, been added to give effect to the intention of the Tenancy Act that the decision of the Revenue Courts under Sections 45 and 50 of the Act should be final expressly barring recourse to a Civil Court for the purposes of attacking the decision of Revenue Courts in such cases. The force of 9 Lah. 38 has therefore been abrogated.

*Bar of relief by suit under Section 9, Act I, 1877.*

**S. 51.** Possession of a tenancy or of any land comprised in a tenancy shall not be recoverable under section 9 of the Specific Relief Act, 877, by a tenant dispossessed thereof.

1. 90 P. B. 1918 F.B.; 92 I.C. 697;  
96 I. C. 479

2. 96 L.C. 490; 92 I.C. 597.  
3. 1927 L.L.T. 31.

## NOTES.

A suit by a tenant-at-will who holds land under an occupancy, tenant for recovery of possession not against the latter but against the proprietor under whom the occupancy tenant holds land, is not a suit between landlord and tenant and is, therefore, competent under Section 9, Specific Relief Act.1

POWER TO VARY DATES PRESCRIBED BY THIS  
CHAPTER.

*Power of Local Government to fix dates for certain purposes.*

S. 52. (1) The Local Government may, for all or any of the territories under its administration, by notification fix for the purposes of Sections 36, 45 and 47, or of any of those sections, any other dates instead of those specified therein.

(2) A notification under this section shall not take effect till after the expiration of six months from the date of the publication thereof.



## CHAPTER V.

### ALIENATION OF, AND SUCCESSION TO, RIGHT OF OCCUPATION.

#### ALIENATION.

*Provisions of Chapter V not to apply to muqarraridars.*

S. 52-A. The provisions of this Chapter shall not apply to muqarraridars.

*Private transfer of right of occupancy under Section 5 by tenant.*

S. 53. (1) A tenant having a right of occupancy under Section 5 may transfer that right by sale, gift, or mortgage, subject to the conditions mentioned in this section.

(2) If he intends to transfer the right by sale, gift, mortgage by conditional sale or usufructuary mortgage, he shall cause notice of his intention to be served on his landlord through a Revenue Officer, and shall defer proceeding with the transfer for a period of one month from the date on which the notice is served.

(3) Within that period of one month the landlord may claim to purchase the right at such value as a Revenue Officer may, on application made to him in this behalf, fix.

(4) When the application to the Revenue Officer is to fix the value of a right of occupancy which is already mortgaged, he shall fix the value of the right as if it were not mortgaged.

(5) The landlord shall be deemed to have purchased the right if he pays the value to the Revenue Officer within such time as that officer appoints.

(6) On the value being so paid, the right of occupancy shall be extinct, and the Revenue Officer shall, on the application of the landlord, put the landlord in possession of the tenancy.

(7) If the right of occupancy was already mortgaged, the tenancy shall pass to the landlord unincumbered by the mortgage, but the mortgage-debt shall be a charge on the purchase money.

(8) If there is no such charge as aforesaid, the Revenue Officer shall, subject to any directions which he may receive from any Court, pay the purchase-money to the tenant.

(9) If there is such a charge, the Revenue Officer shall, subject as aforesaid, either apply in discharge of the mortgage-debt so much of the purchase-money as is required for that purpose and pay the balance, if any, to the tenant or retain the purchase money pending the decision of a Civil Court as to the person or persons entitled thereto.

(10) Where there are several landlords of a tenancy, any one of them may be deemed to be the landlord for the purposes of the section.

(11) No suit or other proceedings 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 a Revenue Officer under the two last foregoing sub-sections, but nothing in this sub-section shall prevent any person entitled to receive the whole or any part of the purchase money from recovering it from a person to whom it has been paid by a Revenue Officer.

#### NOTES.

**Scope and application.**—This section deals with voluntary transfers of occupancy rights under S.5 while involuntary transfers of occupancy rights under the same section are dealt with under S. 56 of the Act.<sup>1</sup> Section 56 deals with voluntary as well as involuntary transfers of occupancy rights under S. 6.<sup>2</sup> The power to transfer occupancy rights as provided in this section is subject to the terms of any agreement as defined in Sections 111 and 112 of the Act.<sup>3</sup> The section provides a kind of pre-emptive rights for the landlord in case of proposed alienations by the tenant.<sup>4</sup> Landlord's rights are the same whether the tenancy is sold to him direct or he has obtained the tenancy by exercising his rights conferred upon him under S. 53.<sup>5</sup> Where the tenant proposes to sell to the landlord from the first (any one of the many landlords being deemed to be a landlord for the purposes of this section under cl. 10) there is no scope for the application of this section and occupancy rights become extinct under cl. (6). In such a case the reversioners are not entitled to impugn the sale, though the rights of landlords *inter se, i.e.*, the power of the other land.

1. 82 P.R. 1903=104 P.L.R. 1904      4. 24 P.R. 1902; 53 P.L.R. 1911; 36

2. Ibid

P.R. 1912

3. 87 P. R. 1901=104 P.L.R. 1401

5. 24 P.R. 1902 F.B.

lords to contest unauthorised transfers to one of the several landlords will remain unaffected.<sup>1</sup> But where the landlord does not exercise his right of pre-emption under this section or sue to have a transfer made without his consent declared void or even when he sues and succeeds in having the transfer declared void the result is in no case the extinction of the occupancy rights in his favour, and the reversioners of the transferor can contest the sale or transfer.<sup>2</sup> The section is meant to safeguard the interests of landlord. Thus though a previous offer is essential to the valid exercise of the power as against the landlord, neither the tenant nor any of his relations can object to the transfer on the ground of previous offer not having been made to the owner.<sup>3</sup> Under the old Act it was held that an offer to the mortgagee of the landowner did not satisfy the requirements of the section concerning offer to the landlord.<sup>4</sup> Where an occupancy tenant alienated in favour of one out of several joint landlords without their consent, the transaction was set aside at their instance.<sup>5</sup> But where a landlord having full knowledge of an alienation (though effected without previous consent) allowed the alienee to remain in possession for a long time without suing, it was held that he had acquiesced in the alienation and was not entitled to object.<sup>6</sup> Proceedings under this section, are not proceedings in a Revenue Court but before a Revenue Officer.<sup>7</sup> The wording of the section shows that the landlord has the option to purchase out and out even though the tenant may desire only to mortgage. Simple mortgages are not covered by this section, but gifts made in favour of relatives *bona fide* are not exempted.

#### SUB-SECTION (1).

**Tenant's right of alienation.**—A tenant having a right of occupancy has absolute power to alienate his holding unrestrained by any one, if he complies with the provisions of Ss. 53 and 56 of the Act. **8**

#### SUB-SECTION (2).

**Landlord: notice to.**—It is to be noticed that in this subsection the term used to describe the landlord is "his landlord," while in other clauses it is "the landlord." Clause (10) of the section enacts that where there are several landlords of a tenancy, any one of them may be deemed to be "the landlord". But what is the meaning of the words "his landlord" *i.e.*, whether it applies to all landlords collectively or may apply to any one of

1. 24 P.B. 1902 F. B. See also 31 P.R. 1896 73 P.R. 1911; 52 P.L.R. 1911 66 P.W.L. 1917=137 P.L.R. 1917=41 I.C. 301; 163 P.W.R. 1917=42 I.C. 468, 6 P.R. 1917=39 I.C. 96.  
2. 52 P.L.R. 1911.  
3. 30 P.R. 1881. 109 P.R. 1881. 56 P.R. 1887.  
4. 19 P.R. 1879.  
5. 92 P.R. 1887 See also 24 P. R.

1902 for rights of landlords *inter se* in case of alienation in favour of one of them  
6. 100 P.R. 1887; 26 P.B. 1889 1 and 2 P.R. 1898.  
7. 32 P.R. 1906.  
8. 73 P.R. 1911=113 P.W.R.; 1911=208 P.L.R. 1911 (31 P.R. 1896 F. B.; 89 P.R. 1893; 24 P.R. 1902 F. B. Ref.) •

them is not free from doubt. Perhaps the use of the word 'his' with landlord is intentional and is used to distinguish it from the landlord and means all the landlords collectively. Moreover, because the section was enacted to safeguard the interests of the landlords, their interests would be better served if for purposes of notice the term landlord should denote all the landlords and for purposes of exercising right under the section any one of the landlords.

#### SUB-SECTION (3).

**Revocation by a tenant.**—S. 53 (3) does not deprive the occupancy tenant of a *Locus Penitentiae*. He may withdraw from the proceedings at any time prior to the completion of the purchase by the landlord as determined by clause (5).<sup>1</sup> It is not the intention of the legislature to render the action of a tenant irrevocable once he has made an application under clause (2) of the section. A tenant has as much right to refuse to carry on the proceedings as the landlord has to refuse to accept the valuations of the right of occupancy by the Revenue Officer. Upon proper construction of the section, a tenant is competent to withdraw his offer up to such time as the landlord makes the payment contemplated by sub-section (5).<sup>2</sup>

**The Value.**—The value to be fixed by the Revenue Officer is the value of the holding to the tenant at the time when the notice of the tenant's intention to transfer is served on the landlord. The best measure of that value is what the tenant was able to get and willing to accept at that time.<sup>3</sup> But the value to the tenant must of course be the *bona fide* value. If it is founded on an alleged debt and such debt has no real existence or if the consideration for the transfer is wilfully exaggerated by the tenant and his transferee to defeat the landlord's claim, then no value has been proved which the Revenue Officer should accept.<sup>4</sup> In such a case the Revenue Officer will be fully justified in taking the market value as the measure of the price which the landlord should be required to pay.<sup>5</sup> But the accumulation of interest in accordance with the terms of the mortgage will not make the debt a fictitious one and will be no ground for reducing the value to the benefit of landlord.<sup>6</sup> Where in proceedings under this section an adjustment out of Court having been arrived at between the landlord and the occupancy tenant, the landlord was put in possession by Revenue Officer, and the usufructuary mortgagee brought a suit for possession against the landlord, it

1. 1 P. R. 1917 Rev.=38 I. C. 944.

2. 4 L. 173=73 I.C. 209 -5 L.L.J.

338=1923 Lah. 521.

3. 12 P. R. 1901 Rev.=43 P.L.R.

1902

4. 2 P. R. 1904 Rev=31 P.L.R.

1904.

5. Ibid.

6. Ibid.

was held that proceedings under the section being before a Revenue Officer and not before a Revenue Court, S. 88 (2) (a) of the Act did not apply and adjustment out of court could not be recognised as under Code of Civil Procedure and that inasmuch as the Revenue Officer did not fix the price, nor did he make the landlord deposit the money in court, nor did he act under cl. (9) of the section, the right of occupancy was not extinct and the plaintiff was entitled to possession of the land as mortgagee of the occupancy rights. **1**

**Limitation.**—The nature of status of occupancy tenant is not affected by presence or absence of statutory heirs. To avoid a gift by an occupancy tenant of his holding to an adopted son, time runs against the landlord from the date of gift and not from the date of donor's death since he can oust the donee during the donor's lifetime, otherwise the gift ceases to be voidable and if it is not voidable by the reversioner, the donee becomes a tenant. **2**

#### SUB-SECTION (4) AND (7).

**Mortgage.**—Where any occupancy holding is sold to the landlord under the provisions of this section, the land passes to the landlord unencumbered by any mortgage created by the tenant, the mortgage debt if any, becoming a charge upon the purchase money. **3** If however an occupancy tenant, has alone paid off an old standing mortgage by himself, he is entitled to retain possession of the share of the mortgaged area, until his mortgage rights have been satisfied. **4**

#### SUB-SECTION (5).

A landlord cannot be compelled to pay the price fixed by the Revenue Officer under the provisions of the section. It is open to him to resile from the position taken by him under sub-section (3). **5** After the offer contemplated by the section has been made to and accepted by the landlord, the purchase becomes absolute under the present clause and the landlord's position is unassailable by a third party the right of occupancy having become extinct under clause (6). **6**

#### SUB-SECTION (6).

**Extinction of right of occupancy.**—All that this sub-section means, is that on the landlord purchasing occupancy rights, the

1. 32 P.R. 1906=97 P.L.R. 1906.

2. 5 P.R. 1913 Rev; 5 P.W.R. 1913 Rev; 200 P. L. R. 1913; 19 I. C. 344

3. 23 P.R. 1912.

4. 95 P.R. 1919=52 I.C. 525.

5. 4 L. 173=73 I. C. 209=5 L.L.J. 338=1923 Lah. 521.

6. 31 P.R. 1896 F. B.

rights of the occupancy tenant or anyone who would have a right under S. 59 to succeed him after his death are finally extinguished. This sub-section is not meant to cover the special case where the landlord is not the proprietor and to legislate between mortgagor and mortgagee.<sup>1</sup> Where the occupancy rights are sold to the landlord subsequent to a mortgage of those rights and the Revenue Officer does not fix the price, nor does he make the landlord deposit the money in court, nor does he act under clause (9), the right of occupancy does not become extinct within the meaning of this clause.<sup>2</sup> But where the landlord purchases the occupancy rights under S. 53 at the value fixed by Revenue Officer, both the rights of occupancy and the mortgage rights created by the occupancy tenant become extinct and the land passes free from encumbrance to the landlord, the mortgage debt becoming a charge on the purchase money.<sup>3</sup> If the mortgagee is dissatisfied with the value fixed, he can sue for a declaration under S. 42, Specific Relief Act to the effect that the mortgage debt due to him is larger than the sum ascertained by the Revenue Officer.<sup>4</sup>

#### SUB-SECTION (9).

Where the Revenue Officer ascertaining under S. 53 (9) of the Tenancy Act, the amount of the mortgage debt due to the mortgagee under his mortgage, as a charge on the purchase money, decided the dispute against the mortgagee, the mortgagee had a good cause of action to bring a declaratory suit under S. 42 of the Specific Relief Act, for in view of the provisions of S. 53 no further relief was open to him such as would preclude a suit for mere declaration.<sup>5</sup>

#### SUB-SECTION (10).

It is not necessary that all the landlords conjointly should exercise their rights of purchase under the section. Any one or more of them may do so. So far as the share of purchasing landlords is concerned, the occupancy rights would be extinguished under cl. (6) but in respect of the share of the remaining landlords the purchasing landlords would become occupancy tenants of the others by virtue of S. 57 of the Act.

#### MISCELLANEOUS.

**Transfer of occupancy rights: Punjab Alienation of Land Act.—**  
The Financial Commissioner has issued instructions to all Revenue Officers, that where an occupancy tenant proposes to

1. 42 I. C. 468.

2. 32 P.R. 1906=27 P.L.R. 1906

3. 23 P.R. 1912=17 I.C. 776=23  
P.W.R. 1912.

4. Ibid.

5. 23 P.R. 1912=17 I. C. 776=23  
P. W R. 1912.

alienate his land, *i.e.* his occupancy holding to his landlord, and sanction is required under S. 3 (2) of the Punjab Alienation of Land Act (XIII of 1900), sanction should always be given as a matter of course, irrespective of the tribe or calling of the landlord.<sup>1</sup>

**Mutation proceedings: Consent by the landlord**—Mutation of names relating to transfer of occupancy rights must not be refused simply because the landlord refuses his consent or because the provisions of S. 53 or 56 of the Act have not been complied with, if the transfer has taken place as a matter of fact.<sup>2</sup>

**Pre-emption Act and transfer of occupancy rights.**—A failure by a landlord to proceed under the present section will not debar him from exercising his right of pre-emption under the Pre-emption Act if he has any, for the simple reason that mere abstention from claiming under this section does neither constitute acquiescence nor waiver of the right of pre-emption.<sup>3</sup>

*Procedure on foreclosure of mortgage of right of occupancy under Section 5.*

S. 54. Where a mortgagee of a right of occupancy under Section 5 proposes to foreclose his mortgage, or otherwise enforce his lien on the land subject to the right, the provisions of the last foregoing section shall, so far as they can be made applicable, apply as if the mortgagee were the tenant.

*Sale of right of occupancy under Section 5 in execution of decree.*

S. 55. (1) A right of occupancy under Section 5 may be sold in execution of a decree or order of a Court.

(2) But notice of an intended sale of any such right shall be given by the Court to the landlord, and, if at any time before the close of the day on which the sale takes place the landlord pays to the Court or to the officer conducting the sale a deposit of twenty-five per centum on the highest bid made at the sale, he shall be declared to be the purchaser instead of the person who made that bid.

*Transfer of right of occupancy under any other section than Section 5.*

S. 56. A right of occupancy under any other section than Section 5 shall not be attached or sold in execution of a decree or order of any Court or, without the previous consent in writing of the landlord, be transferred by private contract.

1. F. C. Cir. letter No. 6045, dated 16th October 1905.  
2. 44LP. R. 1903.

3. 22 P. R. 1901—86 P.L.R. 1901.  
See also 36 P.R. 1912.

## NOTES

**Scope of section.**—The provisions of this section apply to every kind of alienation, sale, gift or mortgage. 1 The section deals with both kinds of sales voluntary as well as involuntary, of occupancy rights other than those under S. 5. 2 Involuntary sales are barred and voluntary sales can only be made by consent in writing of the landlord under the section. 3 Therefore rights of occupancy under any other section than S. 5 are absolutely protected from attachment and sale in execution of decree, only against third parties, but equally against the landlord. 4 The section, however, cannot help a landlord who does not seek to *avoid* the transfer but seeks to maintain it in his favour and defend it against a pre-emptor. 5 It is to be remembered that this section was enacted for the protection of the interests of the landlord. It does not therefore, affect the validity of the contract as between the tenant and his alienee if the landlord does not choose to attack it or if after having attacked it, he waives his rights under the decree obtained by him. 6

**Exchange.**—An exchange is a transfer within the meaning of this section. 7

**Landlord.**—A mortgagee is a landlord and therefore the sale of his rights by an occupancy tenant under S. 6 to such mortgagee is not subject to pre-emption by the mortgagor's reversioners. 8 Landlord means all the joint owners of the land. 9 Therefore a consent of some the proprietors has been held to be insufficient and not binding on the other proprietors whose consent has not been obtained. 10

**Acquiescence.**—If a tenant transfers his right without consent in writing but the landlord acquiesces in the transfer, it is as binding on him as the consent in writing. 11 If a transfer is made without the previous consent in writing, the acquiescence of the landlord may be inferred if he does not sue within a reasonable time to cancel the voidable transfer. 12 As to what constitutes a reasonable time must depend upon the circumstances of each case. 13 In cases in which the payment of rent by the alienee to the landlord or his representative is proved or may be legally presumed, he having already full knowledge of the status of the alienee, in the absence of satisfactory explanation by the landlord for his conduct, the acceptance of rent for more than one harvest without bringing a suit for the cancellation of the voidable transfer is an act which amounts to acquiescence. 14

*Rights and liabilities of transferee of right of occupancy.*

**S. 57.** When a right of occupancy has been transferred

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| 1. 79 P. B. 1911=113 P.W.R. 1911<br>=208 P.L.R., 1911=11 I C. 427. | 9 22 P.R. 1837; 95 P.R. 1883; 65<br>P.B. 1894. |
| 2. 82 P.R. 1908.   | 10. 65 P.R. 1894, 85 P.R. 1883.                |
| 3. Ibid  | 11. 23 P.R. 1891; 100 P.R. 1887.               |
| 4. Ibid  | 36 P.R. 1889 See also 11 P.R.<br>1898.         |
| 5. 86 P.R. 1912=13 I C. 28.  | 12. 1 P.R. 1898; 2 P.R. 1898.                  |
| 6. 118 I.O. 911.   | 13. Ibid.                                      |
| 7. 2 P.R. 1898 Rev.  | 14. 1 and 2 P.R. 1898 Rev.                     |
| 8. 30 P. B. 1919.  |  |



ed by sale, gift or usufructuary mortgage to a person other than the landlord that person shall, in respect of the land in which the right subsists, have the same rights, and be subject to the same liabilities, as the tenant to whom before the transfer the right belonged, had and was subject to.

## NOTES.

The interest of a mortgagee can be no greater and lasts no longer than that of the mortgagor (occupancy tenant) from whom it is derived. If the mortgagor's interest comes wholly to an end by reason of his death without heirs, the mortgagee's interest ceases with it and the landlord is entitled to possession of the land mortgaged even if the mortgage is made with the proprietor's knowledge or is afterwards assented to by him.<sup>1</sup> A subsequent occupation of the mortgagee, however, long it may be, could only be regarded as that of a tenant-at-will.<sup>2</sup> Mere length of time does not create any right as such right can only be created in one of the ways described in Tenancy Act. **3**

*Subletting.*

**S. 58. (1)** A tenant having a right of occupancy in land may, subject to the provisions of this Act and to the conditions of any written contract between him and his landlord, sublet the land or any part thereof for any term not exceeding seven years.

(2) A person to whom land is sublet by a tenant having a right of occupancy therein shall, in respect of that land, and so far as regards the landlord, be, jointly with the tenant, subject to all the liabilities of the tenant under this Act.

## NOTES.

**Scope.**—The provision in S. 58 putting the sub-tenant in the same position, so far as regards the landlord, as the tenant, is a special provision in a special enactment and has no application to the ordinary law of landlord and tenant. **4**

**Sub-lease.**—A sub-lease under this section will only endure so long as the tenancy lasts. **5** A subletting by an occupancy tenant operates to create privity of contract as landlord and tenant between the land-holder and sub-tenant. Therefore a court ordering the sub-tenant's ejection is bound to award him compensation for improvement effected by him. **6**

1. 79 P.R. 1878 (Fol. 6 P.R. 1901).

2. 8 P.R. 1905 Rev.=67 P.L.R.  
1906

3. 67 P.L.R. 1906.

4. 14 P. R. 1898.

5. 79 P. R. 1878.

6. 1 P.W.R 1916. Rev.=34 I. C.  
248.

**Determination of tenancy : duty of the tenant.**—Upon the determination of tenancy it is the duty of the tenant to simply yield up peaceable and complete possession of the premises devised to him. This duty is not discharged by merely going out of possession unless he restores possession to his landlord and if he has underlet the whole or any portion of the premises, he will be liable for a breach of the obligation, if his sub-tenant refuses or neglects to give up possession when the term ends.<sup>1</sup>

*Transfer of right of occupancy under any section of the Act by exchange.*

S. 58-A. (1) Any tenant with a right of occupancy may, with the consent of his landlord, transfer his land to all the members of a Co-operative Society for the consolidation of holdings of which both he and his landlord are members and obtain from them any other land in exchange.

(2) Notwithstanding anything contained in this Act or any other enactment in force, any land obtained in exchange in pursuance of the provisions of sub-section (1) shall be deemed to be subject to the same right of occupancy as the land given for it in exchange.

#### NOTES.

**Same right of occupancy etc.**—But for the possession that the rights of the tenant in the land acquired in exchange would be of a piece with his original rights, it could possibly be held that his rights in such land fell under Section 8 instead of Section 5 or 6 as the case may be. To guard against such a contingency which would have worked hardship on the tenant it has been specifically provided that there will be no change in the nature of rights by virtue of exchange.

#### SUCCESSION.

*Succession to right of occupancy.*

S. 59. (1) When a tenant having a right of occupancy in any land dies, the right shall devolve—

(a) on his male lineal descendants, if any, in the male line of descent, and,

(b) failing such descendants, on his widow, if any, until she dies or re-marries or abandons

- the land or is under the provision of this Act ejected therefrom, and,
- (c) failing such descendants and widow, or, if the deceased tenant left a widow, then when her interest terminates under clause (b) of this sub-section, on his male collateral relatives in the line of descent from the common ancestor of the deceased tenant and those relatives :

Provided, with respect to clause (c) of this sub-section, that the common ancestor occupied the land.

*Explanation.*—For the purpose of clause (c), land obtained in exchange by the deceased tenant or any of his predecessors in interest in pursuance of the provisions of sub-section (1) of Section 58-A shall be deemed to have been occupied by the common ancestor if the land given for it in exchange was occupied by him.

(2) As among descendants and collateral relatives claiming under sub-section (1), the right shall, subject to the provisions of that sub-section, devolve as if it were land left by the deceased in the village in which the land subject to the right is situate.

(3) When the widow of a deceased tenant succeeds to a right of occupancy, she shall not transfer the right by sale, gift or mortgage or by sub-lease for a term exceeding one year.

(4) If the deceased tenant has left no such persons as are mentioned in sub-section (1) on whom his right of occupancy may devolve under that sub-section, the right shall be extinguished.

#### NOTES.

**Scope and application**—Section 59 is conclusive on the question of succession to the occupancy tenancy.<sup>1</sup> In other words succession to an occupancy tenancy is governed by the provisions of this section and not by custom applicable to the parties or by their personal law.<sup>2</sup> But the section does not apply to *muqarraridar* tenants whose position is superior to that of occupancy tenants and approaches to that of a sub-proprietor; his right devolves according to the law applicable to the parties as if it were a proprietary right.<sup>3</sup> The provisions as embodied

1. 10 Lah 510

1909 52 P. R. 1906;

2. 3 Lah L. J. 89; 50 P.R. 1910; 74

P.W.R. 1910; 38 P.R. 1910; 97 P.R.

3. 10 P.R. 1906 Rev

in this section may be overridden by an agreement valid according to the provisions of Sections 111 and 112 of the Act.<sup>1</sup> But mere statements of custom in *wajib-ul-arz* will not override the provisions of this section.<sup>2</sup> The rules laid down in this section are much more restricted in their scope than those of Hindu, Muhammadan or Customary Law.<sup>3</sup> It is, however, to be remembered that the section is confined to matters of succession only and does not touch tenant's power of alienation.<sup>4</sup> Therefore an alienation by an occupancy tenant interfering with the normal succession under the succession is not forbidden. A tenant may, therefore defeat succession by making an alienation in favour of the landlord or a stranger in accordance with the rules laid down in the Act, subject of course to the right of his heirs and collaterals to object to such alienation on grounds outside the Act.<sup>5</sup> The section does not deal with the rights of reversioners and it has been held that it has no bearing whatever on the question of the power of alienation by occupancy tenant or of the right of an heir to control the actual holder.<sup>6</sup> On the death of the alienor an occupancy tenant, the landlord cannot under the section claim the holding where there is a reversioner entitled to succeed.<sup>7</sup>

**Agreements.**—This section gives way to an agreement if any, with respect to succession to the right of occupancy.<sup>8</sup> The parties can by a written agreement either prior or subsequent to 1871 settle on a law of succession different from the succession prescribed in the Act for the provisions of Sections 111 and 112 of Act govern those of Section 59.<sup>9</sup> But a person who rests his case upon an agreement overriding statutory rules of succession as embodied in this section must show that the language of the agreement is clear and that intention is unmistakable.<sup>10</sup> An entry made in the record of rights prior to 1871 providing rules of succession to land in which a right of occupancy subsists is an agreement enforceable under the provisions of Sections 111 and 112 of the Act, notwithstanding anything contained in the Section.<sup>11</sup> But where an entry in the *wajib-ul-arz* did not amount to an agreement but simply an expression of opinion as to the course of succession to be followed, the provisions of the section were held not to be overridden by the said entry.<sup>12</sup> In a later ruling also it has been held that an entry in the *wajib-ul-arz* containing rules of succession at variance with the statutory rules is insufficient to establish an agreement between landlord and tenant as to

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| <p>1. 1 Lah. L.T. p. 31; 130 P.R. 1907 =76 P.L.R. 1908; 98 P.W.R. 1907.<br/>See also 47 P.R. 1877; 64 P.R. 1877<br/>108 P.R. 1881; 1, 22, 116 P.R. 1882,<br/>135 P.R. 1889; 20 P.R. 1896</p> <p>2. 17 P.R. 1909 =166 P.W.R. 1909 =<br/>10 P.L.R. 1910 =4 I.C. 851.</p> <p>3. 15 P.R. 1914</p> <p>4. 97 P.L.R. 1911 =11 P.W.R. 1911<br/>= 8 I.C. 869 6 P.R. 1917 =39 I.C. 96<br/>110 I.C. 725</p> <p>5. 97 P.L. . 1911</p> | <p>6. 6 P.R. 1917 =39 I.C. 96.</p> <p>7. 38 P.R. 1909 =60 P.W.R. 1907<br/>= 1 I.C. 708.</p> <p>8. 1 Lah. L.T. p. 31 19 P.E. 1917.</p> <p>9. 130 P.R. 1907 =76 P.L.R. 1903<br/>See also 17 P.R. 1877, 64 P.R. 1887<br/>108 P.R. 1881 1, 22, 116 P.R. 1882.<br/>B. 1889, 20 P.R. 1896</p> <p>10. 19 P.R. 1917 (145 P.R. 1890.<br/>70 P.L.R. 1913 Ref to)</p> <p>11. 98 P.W.R. 1907.</p> <p>12. 130 P.R. 1 07 =76 P.L.R. 1903</p> |
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succession to occupancy rights, such an entry simply amounting to an expression of opinion that the succession is to follow a particular course.<sup>1</sup> Therefore in a dispute between a landlord and a collateral of a deceased occupancy tenant, where their common ancestor had not occupied the land, the provisions of Section 59 were held to defeat the collaterals inspite of an entry in the *wajib-ul-arz* as to a contrary custom.<sup>2</sup> A collateral of a deceased occupancy tenant who bases his claim to succeed to his tenancy upon an agreement must prove it in one of the three following ways :- (1) he must produce a document which contains the terms agreed upon between the parties; (2) he may put forward an entry made before the 1st November 1871 and attested by the proper officer in the record of the Regular Settlement sanctioned by the Local Government, or (3) he may rely on an entry in a record of rights made after the above mentioned date or an entry in an annual record prepared under the provisions of the Punjab Land Revenue Act, 1887. An entry which comes under (2) is by law deemed to be an agreement and nothing beyond its mere production is required, while the entry coming under (3) does not *proprio vigore* amount to an agreement and the party relying upon it has to prove that it embodies the terms of an agreement between the parties.<sup>3</sup> An agreement in the settlement records to the effect that if a tenant dies, then his descendants (*aulad*) or if he dies sonless his collaterals (*karabatian*) will be entitled to cultivate the land as an occupancy-tenant is to be deemed an agreement modifying the rules as to succession. But a mere clause in the *wajib-ul-arz* to the effect that "*baad marne muzaria maurusi ke, uska beta ya karabti kasht karega*" does not amount to an agreement within the meaning of Section 111 of the Act such as would confer on the nephew of the deceased tenant a right of succession.<sup>4</sup> In the absence of an express intention to the contrary agreements recorded in a settlement record are not intended to take effect after the expiry of the period of settlement.<sup>5</sup> For purposes of Section 112 of the Act a *wajib-ul-arz* of revised settlement alone is to be considered.<sup>6</sup> But it has been held that a right acquired by a plaintiff under an agreement in the old *wajib-ul-arz* cannot be effected by anything in the new *wajib-ul-arz* which does not even purport to operate retrospectively and which was drawn up at a time when the plaintiff was a minor and altogether ignorant of its contents.<sup>7</sup>

**Joint tenancy: survivorship.**—In a *maurusi* holding held by more than one person jointly, on the death of any one of them,

1. 16 P. R. 1915.

2. 97 P. R. 1909.

3. 64 P.L.R. 1915=16 P.R. 1915=26 L.C. 404=21 P.W.R. 1915.

4. 185 P.W.R. 1913; See also 130 P.R. 1907=76 P.L.R. 1908; 16 P. R. 1915; 97 P.L.R. 1909.

5. 16 P.R. 1915=64 P.L.R. 1915=

21 P.W.R. 1915=26 L. C. 404 (97

P.R. 1909=166 P.W.R. 1909=10

P.L.R. 1910; 212 P.W.R. 1913=

22 P. R. 1914=339 P.L.R. 1913. (Foll)

6. 23 P.R. 1914=212 P.W.R. 1913=339 P.L.R. 1913.

7. 87 P.E. 1291.

his rights pass by survivorship to others.<sup>1</sup> Section 59 deals only with the question of succession and does not affect the ordinary rule of survivorship between joint tenants. The right of landlord to claim extinction of an occupancy right where there are joint tenants does not arise on the death of one of them as they collectively constitute a single tenant and the right continues to exist in the survivor or survivors.<sup>2</sup> Joint tenancy according to the Punjab custom is not the same as the estate known as joint tenancy in English law. As regards the landlord, joint tenants of a holding, even though it was not held by their common ancestor are to be regarded as single tenant and as long as any one of them or the descendants of any of them survive, the landlord cannot claim the share of any tenant when the line has died out.<sup>3</sup> There is no warrant in the Punjab Tenancy Act for drawing a distinction between a joint tenancy and tenancy in common for purposes of Section 59. Therefore the rule of survivorship will apply not only in case of a joint tenancy but also where a tenancy is a tenancy in common. In other words the rule of survivorship applies equally to cases in which the tenants hold the occupancy tenancy in well defined shares as to those in which their shares are not specified.<sup>4</sup> The following passage by Tek Chand, J. in 11 Lah. 427 F. B. is worth perusal. "It seems to me" observed his lordship "that this rule (of survivorship) is equally applicable to an occupancy tenure where there is unity of tenancy with a plurality of parties possessing well defined shares. As stated already, the Punjab Tenancy Act does not contain any thing to the contrary. In the case of such an occupancy tenancy (as in that of ordinary tenancies) the share of the deceased co-tenant will first go to his own heirs and on his line becoming extinct, it will pass to the surviving co-tenant, the only difference being that in determining who the heirs of the deceased co-tenant in the former case are, the provisions of Section 59 (1) and (2) Tenancy Act will have to be borne in mind according to which succession is limited to the male lineal descendants and the widow of the deceased, and to such of his collateral relatives as are descended from a common ancestor who had occupied the land." A was the landlord of the holding of which B, C, and D were occupancy tenants. The shares of B, C and D were specified and it was admitted that they were not members of a joint Hindu family, nor were they joint tenants in the sense in which that expression is used in English law. On the line of D becoming extinct (*i. e.* there being no person in existence who was entitled

1. 6 P.R. 1917 Rev=5 P.W.R. 1917  
Rev.=42 I.C. 87; 95 P.W.R. 1918=  
45 I.C. 574; 6 P.R. 1902=11 P.L.R.  
1903; 9 P. R. 1891; 109 P. R. 1894;  
4 P.R. 1880 86 P.R. 1870; 56 P.R.  
1868; 150 P.R. 1882.  
2. 6 P.R. 1902=11 P.L.R. 1903;  
95 P.W.R. 1918=45 I.C. 574; See

also 100 P.R. 1908.  
3. 5 Lah. L.J. 381=78 I.C. 370  
4. 11 Lah. 427 F. B. (100 P.R.  
1908; 60 I.C. 513; 60 I.C. 862; 1926  
Lah 338 overruled; 109 P.R. 1894  
F.B. appr. 98 I.C. 871; 73 I.C.  
370; 129 Lah. 74; 45 I.C. 574

to succeed to D under Section 59 (1) Tenancy Act) the question arose whether D's share in the holding passed by survivorship to the other occupancy tenant B and C or did it lapse to the landlord A. The majority of the judges constituting the Full Bench in 11 Lah. 427 held that D's share in the holding passed to B and C and did not lapse to the landlord A.

The fact that the occupancy tenants are recorded as having defined shares in the tenancy does not make any difference and does not affect the rights of survivorship.<sup>1</sup> If two persons buy an occupancy holding jointly in equal shares and cultivate it partly in common and partly separately, there being no actual partition of their shares, the tenancy in such a case is joint and on the death without heirs of one of the tenants, his share would devolve on the other tenant or his heirs and not on the landlord.<sup>2</sup> There is a right of survivorship in case of co-widows as well. In case where two widows were joint tenants of an undivided holding and one died the survivor was held entitled to occupancy rights in the whole.<sup>3</sup> It must however be remembered that the principle of survivorship among joint tenants of an occupancy holding cannot be applied to the case of an heir either lineal or collateral, claiming a share in ancestral holding which has fallen in on the death of one of the tenants, even though the deceased was joint in cultivation with some of the family other than the claimant who was separate and in such case Section 59 would have the full operation and the rights of the parties must be decided with reference to that provision of law.<sup>4</sup>

SUB-SECTION (1).

**Shall devolve.**—The expression “shall devolve” means that the succession whenever it opens must take place in the order specified in the section. But it does not mean that a succession will necessarily open. The section does not create an absolute indefeasible right of succession in the persons named therein.<sup>5</sup>

**Male lineal descendants.**—The words “male lineal descendants” include the sons of the tenants and sons of such sons without limit and where the personal law of the tenants permits adoption, the word sons as above used includes adopted sons.<sup>6</sup>

A formally adopted son under *Hindu* Law is a male lineal descendant of his adoptive father within the meaning of Section 59 (1) (a) and is entitled to succeed to the holding of the latter.<sup>7</sup> Similarly an adopted son under custom where custom sanctions such an adoption (and the adoption has the full effect of a formal adoption under *Hindu* Law) in a male lineal descendant under the clause <sup>8</sup> Consequently it has been

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1. 95 P.W.R. 1918=45 I.C. 574. =8 I.C. 869  
 2. 6 P.B. 1917 Rev =5 P.W.R. 1917 6. 117 I.C. 902.  
 Rev.=42 I.C. 87 7. 2 P.R. 1913=30 P. W. R. 1913=  
 3. 9 P.R. 1891 Rev 71 P.L.R. 1913=191.C.; 40 F.B.; 6  
 4. 109 P.R. 1894 (55 P.R. 1891 P.W.B. 1921; 69 P. R. 1879, c.f. 40  
 over-ruled) P.R. 1894.  
 5. 11 P.W.R. 1911=97 P.L.R. 1911 8. 83 P.R. 1912. 94 P.R. 1883.

held that a person belonging to the districts of the old Delhi territory, whose adoption though prohibited by Hindu law, is valid under custom which gives such an adoption, the full effect of a formal adoption under Hindu law can be regarded as a male lineal descendant within the meaning of this section.1

But a mere customary adoption or appointment of an heir does not fall within this section.2 An illegitimate son of a deceased *Rajput* is not a male lineal descendant of his putative father within this section and cannot succeed to the occupancy tenancy left by the deceased.3 A daughter's son though adopted as a son is not a male lineal descendant as such an adoption is not sanctioned by Hindu Law.4 But in case of non-agricultural *Baniās* of Delhi it was held that the adoption of sister's son being valid according to custom, the adopted son could succeed to the occupancy tenancy.5 A *khanadamad* is not a male lineal descendant.6 Where the question of adoption is in dispute the onus is, on the claimant to establish his status as adopted son.7 Where in adoption is proved to have taken place in a community in which customary appointment of an heir is unknown, the presumption is that adoption is a formal one and the adopted-son is a male lineal descendant as contemplated by this section.8 A posthumous son is a male lineal descendant and the landlord is not entitled to possession.9

**Widow of predeceased son.**—Under Section 59 Tenancy Act a widow of predeceased son has no status.10

**Chela.**—A *chela* is not a male lineal descendant in the male line of descent of his *guru* within the meaning of this section and is not therefore entitled to succeed to occupancy holding which is the personal property of the deceased *guru*.11 But where occupancy rights belong to a religious institution the *chela* of the last incumbent who has become *mahant* of the institution entitled to succeed to him in his representative capacity as head of such institution.12

**Clause 4 widow.**—A widow succeeds to a life interest only and her powers have been hedged in by sub-section (3). Therefore an alienation of occupancy land by the widow of a deceased tenant succeeding to a right of occupancy is absolutely void. 13 The right of a widow arises only on failure of the male lineal descendants of the deceased occupancy tenant. Where a posthumous son is born to the deceased, his male lineal descendants fail

1. 11 Lah. 481 F.B.

2. 2 P.R. 1913=30 P.W.R. 1913 =  
19 I.C. 40=71 P.L.R. 1913; 43 P.R.  
1895 F.B; 34 P.R. 1883; 5 P.R.  
1913 Rev.=200 P. L. R 1913=5  
P. W. R. 1913=19 I.C. 344.

3. 15 P.R. 1914=301 P.L.R. 1913=  
20 I.C. 755=203 P.W.R. 1913

4. 22 P.R. 1898  
5. 88 P.R. 1912.

6. 44 P.R. 1885

7. 6 P.W.R. 1921

8. *Ibid*

9. 3 P.R. 1901 Rev=110 P.L.R.  
1901

10. 10 Lah 510

11. 22 P.R. 1896 F.B. .

12. 2 P.R. 1907 Rev. See also 22 P'  
E. 1896 F.B.

13. 54 P.L.R. 1911=195 P.W.R. 1911  
=9 I.C. 339



temporarily only and the widow's right-endures only so long as that failure occurs. On the birth of a son the widow's limited interest ceases and the purchaser of the occupancy rights from her is liable to be evicted by the posthumous son.<sup>1</sup>

**Abandonment by widow.**—To constitute abandonment of occupancy holding within the meaning of this clause there must be not only relinquishment of possession but also absence of *animus revertendi*.<sup>2</sup> A gift pure and simple, unaccompanied by any other act or omission cannot be regarded either relinquishment under Section 38 or abandonment under the present clause.<sup>3</sup> Abandonment like ejection, terminates the right of the widow and the right of occupancy at once devolves upon the next claimant. At the very moment the widow completes the period required to bring Section 38 of the Act into operation she ceases to be the tenant having the right of occupancy by operation of the present clause.<sup>4</sup>

**Clause (c) Termination of widow's interest.**—If a widow succeeding to a right of occupancy abandons the right by non-cultivation under Section 38 of the Act, the right at once devolves on the collaterals.<sup>5</sup>

**Gurbhais.**—*Gurbhais* or fellow disciples of a *Sanyasi faqir* have been held to be male collateral relations for, though the *Sanyasis* do not marry, a disciple succeeds his *guru* as a son succeeds his father, there is a relationship of analogous character.<sup>6</sup>

**Collaterals' right to contest.**—Unless a plaintiff can prove that the land was occupied by the common ancestor he has no *locus standi* to contest an alienation by the widow of an occupancy tenant because he is not an heir and is no better position than any stranger even though he be a collateral of her deceased husband: so far as he is concerned the consent or otherwise of landlord is immaterial.<sup>7</sup>

**Common ancestor occupied the land.**—Where an occupancy tenant dies without leaving male lineal descendants and collaterals claim to succeed as against the landlord they must show that common ancestor of themselves and of the deceased occupied the land.<sup>8</sup> The expression "occupied the land" has been advisedly used by the legislature without qualification. The only question to be determined is the simple fact whether a given person had occupied the land without further question as to the character in which he occupied it. The expression therefore does not necessarily mean occupied as an occupancy tenant. Even an occupation as a tenant-at-will is quite enough.<sup>9</sup> The word occupation

1. 3 P.B. 1901=110 P.L.R. 1901

2. 44 P.R. 1917=1 P.W.R. 1917=51 P.L.R. 1917=39 I.C. 163

3. Ibid.

4. 200 P.L.R. 1935=2 P.E. 1914 Rev =25 I.C. 834.

5. Ibid.

6. 82 P.B. 1833 c.f. 22 P.R. 1826

7. 3 Lah. L.J. 81

8. 21 P.W.B. 1915=16 P.B. 1915=64 P.L.R. 1915=26 I.C. 404.

9. 88 P.R. 1833; 47 P.R. 1839

means actual occupation and does not cover an occupation by implication of law.<sup>1</sup>

**Occupation : presumption.**—If the father of a deceased tenant has admittedly been in possession for about 50 years, the presumption is that the deceased tenant's grandfather had been in possession of the property.<sup>2</sup> When possession of land is traced a long way back through generations, the presumption is that, that the last person whose occupation is proved got the land from his father unless it is shown that he got it in some other way, the *onus* of proving which lies on the person making this allegation. It is the most natural way of getting the occupancy of land.<sup>3</sup> When a piece of land is owned at the time of first settlement jointly by persons who are brothers or cousins, the presumption in the absence of any indication that the land was self-acquired property of the owners, is that it was originally, held by their common ancestor.<sup>4</sup> Such a presumption however can be suitably carried back to more than one generation.<sup>5</sup>

#### SUB-SECTION (2).

The sub-section means to lay down a rule of 'succession among descendants and collaterals claiming under the previous sub-section and the expression 'as if it were land,' appears to have been used for the sake of brevity.<sup>6</sup> It is only *qua* the landlord that the right of occupancy tenants can as a matter of distinction from other permanent rights in land be said to be created by statute. When questions of inheritance and the like arise to respect of occupancy tenants *inter se*, such questions are not distinguishable in kind from those that arise in respect of proprietary rights to which ordinary agricultural custom be applicable.<sup>7</sup> Consequently it has been held that S. 59 (2) lets in custom in case of succession to occupancy holding.<sup>8</sup> Though S. 59 governs succession to occupancy rights as against landlord, the rights of collaterals *inter se* would be governed by the tribal or the village custom that may be relevant. Thus the collaterals whole blood may by custom exclude collaterals of half blood.<sup>9</sup>

#### SUB-SECTION (3).

**Alienation by widow.**—This sub-section was enacted in the interests not of the landlord but of reversioners, and the wording of S. 60 does not involve the conclusion that a transfer in contravention of the preceding sections, if not made void by the landlord, is of necessity valid.<sup>10</sup> Thus a transfer, by a widow, of occupancy

1. 100 P.R. 1908

2. 101 P.R. 1908 = 4 I. C. 691 (56 P.R. 1906 = 62 P.R. 1882 Ref)

3. 18 P.R. 1876

4. 1930 Lah; 793 85 P.L.R. 1918

5. 85 P.L.R. 1918; 10 P.E. 1883

6. 89 P.E. 1898 F. B. per Chatterji,

J. p. 311

7. 89 P.R. 1898 F.B. per Gordon Walker J

8. 1925 Lah. 599

9. 1925 Lah. 227

10. 6 P.R. 1913 Rev = 120 P.L.R. 1914 = 22 I. C. 660.

rights in favour of the landlords, involves a breach of statutory law, contravening the provisions of this clause and should not be recognised by a Revenue Officer.<sup>1</sup> A mortgage of occupancy rights by a widow whether or not for necessity was held by the Chief Court to be void even if it received the assent of the landlord.<sup>2</sup> Similarly a sale of occupancy land by the widow of a deceased tenant succeeding to a right of occupancy is absolutely void.<sup>3</sup> A reversionary heir therefore is entitled to take possession of the land without payment, on the death of the widow.<sup>4</sup> Even an entry in the *wajib-ul-arz* to the effect that occupancy tenant has the power of sale (*ikhhtiyur farokht maurusiyat ka hai*) does not enable the widow of a deceased tenant to mortgage her rights of occupancy, although in the case of the occupancy tenant himself such power of sale would include the lessor power of mortgage.<sup>5</sup> There is however some authority for the opposite view that this sub-section has nothing to do with control of alienations of occupancy rights by reversioners and that it only deals with the relationship between a landlord and tenant and with the alienations which a landlord can avoid i.e., which are avoidable at the instance of the landlord.<sup>6</sup> But it is open to a reversioner to show that he can control an alienation by a widow under custom. Consequently it has been held that the mere fact that a landlord has consented to any alienation by an occupancy tenant does not bind the reversioners if they have a right to contest it under customary law, that is if they are able to prove that, if the land had been ancestral land they could have contested the alienation.<sup>7</sup>

But an alienation by a widow as against the landlord is not void but only voidable.<sup>8</sup> Thus possession of a donee of a right of occupancy from the widow of a deceased occupancy tenant does not become adverse to the landlord from the date of donee's obtaining possession in pursuance of the gift but from the date of the widow's death.<sup>9</sup> In a case by the landlord for avoiding a transfer by widow a reversioner cannot claim to be added as a plaintiff.<sup>10</sup> A reversioner's remedy, in case the landlord takes no action is, to have the alienation by a widow cancelled by a civil court or if the widow is out of possession, to sue the transferee for possession on the ground of widow's abandonment.<sup>11</sup> But if the landlord has by a suit in Revenue Court got possession against the transferee and the widow makes no effort to regain possession, he can sue the landlord for the possession on the ground of widow's abandonment.<sup>12</sup>

1. 6 P.R. 1913 Rev=120 P.L.R. 1914=22 I.C. 660.

2. 50 P.L.R. 1913=26 P.W.R. 1913-18 I.C. 623. 69 P.R. 1900 39 P.R. 1897. See also 86 P.W.R. 1909=4 I.C. 626 49 P.L.R. 1904.

3. 54 P.L.R. 1911=195 P.W.R. 1911=9 I.C. 339.

4. 50 P.L.R. 1913=26 P.W.R. 1913=18 I.C. 823.

5. 39 P.R. 1898 Diss in 130 I.C. 517

6. 130 I.C. 517 44 P.R. 1917. 6 P.R.

1917.

7. 67 I.C. 38.

8. 44 P.R. 1917=1 P.W.R. 1917=51 P.L.R. 1917=39 I.C. 163 3 P.R. 1910 Rev.

9. 44 P.R. 1917=51 P.L.R. 1917=1 P.W.R. 1917=39 I.C. 163.

10. 3 P.R. 1910 Rev.=6 I.C. 912.

11. Ibid.

12. 3 P.R. 1910 Rev.=6 I.C. 942 (4 P.R. 1907 overruled 39 P.R. 1898. 81 P.R. 1996 Ref)

**Sub-lease for a term exceeding one year.**—The legislature in allowing a sub-lease only for one year did not intend to lay down that a sub-lease exceeding that period would be void during the lifetime of the widow, but the object of the provisions in S. 60 of the Act is, that a sub-lease for one year would be binding both upon the reversioner and the landlord even if the widow died before the expiry of the period.<sup>1</sup>

#### SUB-SECTION (4).

**Extinction of occupancy rights.**—The donee of an occupancy holding with the consent of the landlord becomes a tenant of the landlord and on his line becoming extinct the holding is extinguished in landlord's favour and does not revert to the donor. The rule that land reverts to the donor's family on the extinction of the donee's line does not apply to Section 59 of the Act. The rule affects only the lines of the donor and donee and cannot prejudice the rights of a third party.<sup>2</sup> On the death without heirs of a tenant his right of occupancy is extinguished and the landlord is entitled to recover possession of the holding without paying off the mortgage debt.<sup>3</sup>

#### IRREGULAR TRANSFERS.

*Irregular transfer of right of occupancy.*

**S. 60.** Any transfer made of a right of occupancy in contravention of the foregoing provisions of this Chapter shall be voidable at the instance of the landlord.

#### NOTES.

**Landlord.**—Reading Section 53 with this section, the term landlord may mean under this section all or some or only one of the owners according to the circumstances and with due regard to equitable considerations.<sup>4</sup> The alienation of a right of occupancy by a tenant to one of several landlords does not bind the other landlords whose consent is not obtained. They are entitled to contest such alienations as being invalid by reason of their having been effected without their previous consent.<sup>5</sup> If one of the landlords consents to an alienation by the occupancy tenant, the transaction *qua* his share is non-voidable even by his representatives apart from the customary law.<sup>6</sup>

**Scope of Section**—Section 60 governs the provisions of Section 59 (3) so that if the widow alienates property the alienation is voidable at the landlord's instance.<sup>7</sup>

1. 44 P.R. 1917=51 P.L.R. 1917=39 I.C. 162=1 P.W.R. 1917.

2. 113 P.R. 1913=3 P.L.R. 1913=198 P.W.R. 1913=20 I.C. 771.

3. 6 P.R. 1901k Rev.=86 P.L.R. 1901.

4. 65 P.R. 1894. (Ref. 11 P.R. 1895;

2 R.R. 1899 Rev; 7 P.R. 1905 Rev.

5. 7 P.R. 1905 Rev; 66 P.W.R. 1917, 68 P.L.R. 1906; 35 P.R. 1893 92 P.R. 1887.

6. 1927 Lah. 135.

7. 130 I.C. 517.

This section only deals with the relative powers of tenant and landlord only, there being not the smallest suggestion of the rights of reversioners.<sup>1</sup> Transfers under Section 59 (3) and Chapter V are voidable at the instance of the landlord under this section and the landlord should bring a suit in a Revenue Court under Section 77 (h) of the Act.<sup>2</sup> But the wording of the section does not involve the conclusion that a transfer in contravention of the preceding sections, if not made void by the landlord is of necessity valid.<sup>3</sup> The section does not help the landlord who seeks not to avoid the transfer but to maintain it in his favour and defend it against a pre-emptor.<sup>4</sup>

**Plea of irregular transfer: whether a tenant can raise it.**—A tenant effecting a transfer has no power to plead want of consent by the landlord. Thus in a suit for possession of land, the occupancy rights in which, had been sold, it was held that the defendant-vendor could not dispute the validity of his own sale on the ground of his landlord's right to the first offer of the land sold.<sup>5</sup>

**Voidable.** This section declares a transfer not in accordance with the provision of the Act to be a transaction voidable at the option of the landlord. Where, therefore, the landlord exercises his option successfully the transaction becomes altogether void.<sup>6</sup> A will by an occupancy tenant of his occupancy rights being in contravention of the provisions of S. 59 is governed by this section and is therefore, voidable at the instance of the landlord.<sup>7</sup> A sale of occupancy rights in contravention of S. 53 or S. 56 of the Act is voidable by the landlord under this section.<sup>8</sup> Where occupancy tenant under S. 6 mortgaged his rights to the defendants, and after his death without heirs, plaintiff-landlord entered into possession and sued for a declaratory decree that the land had reverted to him free of mortgage, it was held that plaintiff, to succeed in his suit, would have to prove that the transfer was in contravention of the Act or is void.<sup>9</sup> If on the death of an occupancy tenant, the landlord claims possession of the holding from the defendant who is adopted son of the tenant and also donee with possession since a number of years, the landlord is entitled to treat the occupancy rights as having lapsed on the death of the defendant's adoptive father, if the tenant in possession merely claims title as an adopted son. But if he derives his title from a gift transfer under Section 53, and not from inheritance under S.59 and the gift is not set aside by the landlords within the period of limitation, the transaction ceases to be a voidable one, inasmuch as a gift is not analogous to a mortgage and even if it be admitted that an

1. 6 P.R. 1917=39 I.C. 96.

2. 3 P.R. 1910=6 I.O. 942.

3. 6 P.R. 1913=120 P.R. 1914=22 I.C. 660

4. 36 P.R. 1912=13 I. C. 28.

5. 30 P.R. 1881. See also 88 P.R.

1917.

6. 17 P.R. 1892 F.B.

7. 97 P.L.R. 1911=11 P.W.R. 1911=8 I.C. 869.

8. 6 P.R. 1897; 11 P.R. 1895 F.B.

9. 83 P.R. 1894.

heirless occupancy tenant possesses only a life interest, the alienee under a transfer, which is not voidable at the suit of any reversioner and which has ceased to be voidable at the suit of the landlord, steps, as provided expressly in Section 57 and generally in Section 4 (7) of the Act, into the shoes of the occupancy tenant.<sup>1</sup>

**Acquiescence of landlord.**—The principle of acquiescence is applicable to unauthorised alienations of tenancies under Section 5, no less to those of tenancies under Sections 6 and 8.<sup>2</sup> When a landlord is fully aware that the occupancy tenant has transferred his right of occupancy without having previously obtained the consent of that landlord in writing, unless that landlord sues within a reasonable time to cancel the voidable transfer, his acquiescence may be inferred.<sup>3</sup> As to what period constitutes a reasonable time must depend on the circumstances of each case.<sup>4</sup> In some cases it might be two years, in some three or more.<sup>5</sup> Any how a delay of 5 years or more certainly under ordinary circumstance will amount to acquiescence.<sup>6</sup> But from a lapse of 15 months only it was held that no acquiescence could be implied.<sup>7</sup> If a landlord with full knowledge of the facts intentionally acts in such a manner as to affirm the transfer, he cannot afterwards disaffirm it.<sup>8</sup> Acquiescence may be presumed by acceptance of rent by the landlord or his representative for more than one harvest from the alienees.<sup>9</sup> Where a sale took place by a registered deed in 1899, in the presence of the landlord's agent, and at any rate the mutation was effected in public and rents paid by the vendee tenants after that were accepted by the landlord, it was held that acquiescence in the sale was implied by this action of the landlords and their suit to set aside the sale failed.<sup>10</sup>

**Unauthorised alienation forfeiture of tenancy.**—There is nothing in the law which renders the interest of an occupancy tenant liable to forfeiture merely by reason of an unauthorised alienation of the tenancy.<sup>11</sup> It is now a well established proposition of law that a tenant has a right to recover possession from the landlord on the alienation being declared void.<sup>12</sup>

In fact in a suit for possession by the landlord against the tenant (alienor) and the alienees, the proper decree to make is

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| <p>1. 5 P.R. 1913 Rev. (43 P.R. 1895; 91 P.R. 1894 Ref 79 P.R. 1878; 8 P.R. 1908 Rev Dist).</p> <p>2. 8 P.R. 1904 Rev. (1) 2 P.R. 1898 Ref. Dist 44 P.L.R. 1908</p> <p>3. 1 P.R. 1893 See 2 P.R. 1898 Rev 8 P.R. 1904 Rev.</p> <p>4. 1 P.R. 1898 Rev.</p> <p>5. Ibid.</p> <p>6. 147 P.R. 1872; 82 P.R. 1882.</p> | <p>7. 3 P.R. 1907 Rev.=4 P.V.R. 1907 Rev.=44 P.L.R. 1903</p> <p>8. 161 P.R. 1833; 100 P. E. 1837; 26 P. R 1889.</p> <p>9. 1 P.R. 1898.</p> <p>10. 8 P.R. 1904.</p> <p>11. 54 P.R. 1884.</p> <p>12. 81 P.L.R. 1911=1 P.R. 1911 Rev.=2 P.V.R. 1911 Rev=8 I.C. 733.</p> |
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that the plaintiff (the landlord) be given possession against the alienor only.<sup>1</sup> Landlord is competent to sue for possession against a third person and recover possession from him,<sup>2</sup> though in his turn he is liable to restore possession to the tenant when he claims it.<sup>3</sup> If an occupancy tenant mortgages his holding to a third person and then dies leaving no heir who can succeed him, under Section 59 the tenancy becomes extinct and the landlord can recover possession without payment of mortgage debt.<sup>4</sup>

**Alienations by occupancy tenants and reversioners' rights.**—Ancestral occupancy lands are on the same footing as ancestral proprietary land. Therefore an alienation of ancestral occupancy lands in favour of persons other than the landlord is liable to be contested by the reversioners.<sup>5</sup> Custom empowers a reversioner to contest an alienation of occupancy rights by a tenant in favour of a stranger even though such alienation be assented to by the landlord.<sup>6</sup>

A collateral of an occupancy tenant can sue for a declaration that a certain alienation of occupancy rights will not bind his reversionary interests if it is proved that the common ancestor held the land and he is competent to maintain such a suit in case of proprietary land.<sup>7</sup>

A reversioner may exercise this right even after the alienation has been successfully challenged by the landlord.<sup>8</sup> But an alienation by a tenant of self-acquired or non-ancestral tenancy cannot be avoided by the heirs of the tenant.<sup>9</sup> An alienation of occupancy right whether by way of sale or mortgage effected in favour of the landlord cannot be impugned by the reversioners on the score of want of consideration and necessity.<sup>10</sup> It makes no difference whether the alienation is in favour of one or some of the lands only or in favour of all.<sup>11</sup> An occupancy tenant is competent to surrender his tenancy to the proprietor even gratis subject to no condition of consent by his heirs.<sup>12</sup>

**Landlords' right to object to validity of transaction by way of defence in Civil suit.**—It had once been held by the Chief Court of the Punjab that it was open to a defendant landlord in answer to a suit by the transferee of a tenant's right that the transfer was made in violation of the conditions of Section 53 of the Act 13. But later on a Full Bench of the same court laid down

1. 6 P.E. 1893.

2. 55 P.E. 1879.

3. 1 P.R. 1911 Rev.=31 P.L.R. 1911=2 P.W.R. 1911 Rev.=8 I.C. 733.

4. 79 P.R. 1878. See also 32 P.R. 1912.

5. 52 P.L.R. 1911=201 P.W.R. 1911=9 I.C. 292; 69 P.R. 1900; (89 P.R. 1899 F. B. Fol)

6. 69 P.R. 1900. See also 71 P.R. 1893; 83 P.E. 1895; 12 P.R. 1904;

16 P.R. 1906; 86 P.W.R. 1909; 52 P.L.R. 1911.

7. 98 P.R. 1907 F. B.

8. 38 P.R. 1909=1 I. C. 708=60 P.W.R. 1907.

9. 97 P.L.R. 1911=11 P.W.R. 1911=8 I.C. 869.

10. 73 P.L.R. 1911=1 I.C. 427; 19 P.L.R. 1907; 81 P.R. 1896 F. B.

11. 24 P.R. 1902; 137 P.L.R. 1917.

12. 19 P.L.R. 1907.

13. 65 P.R. 1894.

that a civil court was debarred by Section 77 of the Act from taking cognizance of such an objection, and the only way in which the landlord could make the voidable transfer actually void, is by a suit in the Revenue Court; until he had brought such a suit successfully his plea could only be that the transfer was voidable and this would be no real answer to the suit.<sup>1</sup> No plea raised by a defendant, in reply to a civil claim, can be entertained or taken cognizance of by a civil court (even incidentally), if that plea relates to any matter in respect of which such defendant would be entitled to bring a suit in a Revenue Court and such pleas must be entirely ignored by a civil court even though they go to the very root of the case.<sup>2</sup>

**Limitation**—The period of limitation for bringing a suit to void a voidable transfer of occupancy rights is 6 years from the date on which the cause of action arises, i.e. the date on which the right to sue accrues.<sup>3</sup> Similarly it has been held that limitation for a suit by a landlord to dispossess a person to whom occupancy rights have been sold is six years from the date of the sale under Art. 120 of the Limitation Act and that Art. 144 of that Act has no application to such a suit.<sup>4</sup>

But in a recent ruling reported as 1928 Lah L. J. p. 38 it has been held that a limitation for a suit by a landlord for possession of occupancy holding against an alienee from a childless widow is 12 years from the death of the widow. But it is respectfully submitted that the correctness of this case is open to doubt.

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1. 11 P. R. 1895 F. B. See also 96 P. R. 1894.  
 2. 76 P. R. 1909 (11 P. R. 1895; 24 P. R. 1907 Foll.)  
 3. 135 P. R. 1888; 1 P. R., 1898 Rev;  
 7 P. R. 1905 Rev.

4. 1 P. R. 1916 Rev. (3 P. R. 1910 Rev. Dist which had held that limitation in such a suit was 12 years under Art 144 of the Limitation Act.)



## CHAPTER VI.

### IMPROVEMENTS AND COMPENSATION.

#### IMPROVEMENTS BY LANDLORDS.

##### *Improvement by landlords in tenancies of occupancy tenants.*

S. 61. (1) Without the previous permission of the Collector a landlord shall not make an improvement on the tenancy of a tenant having a right of occupancy.

(2) If a landlord desires to make such an improvement he may apply to the Collector for permission to make it, and the Collector shall, before making an order on the application, hear the objection, if any, of the tenant.

(3) On making an order on an application under subsection (2) the Collector shall be guided by such rules if any, as the Local Government may make in this behalf.

##### *Enhancement of rent in consideration of an improvement made by a landlord on the tenancy of an occupancy tenant.*

S. 62. (1) When a landlord has, with the permission mentioned in the last foregoing section, made an improvement on the tenancy of a tenant having a right of occupancy he may apply to the Collector for an enhancement of the rent of the tenant.

(2) If the tenant is a tenant to whom Section 20 applies, the Collector shall enhance his rent to the share or rates, or with reference to the rent in gross, as the case may be, paid by tenants, having a similar right of occupancy, for land of a similar description and with similar advantages

(3) If the tenant is a tenant to whom section 52 applies, the Collector shall enhance his rent to such amount as the tenant would be liable to pay under that section if the land revenue were reassessed.

(4) When the improvement ceases to exist, the Collector may, on the application of the tenant, reduce the tenant's rent—

- (a) in the case of a tenant to whom sub-section (2) applies to the share or rates, or with reference to the rent in gross, as the case may be, paid by tenants, having a similar right of occupancy, for land of a similar description and with similar advantage, and
- (b) in the case of a tenant to whom sub-section (3) applies to such an amount as the tenant would be liable to pay if the land-revenue were re-assessed.

(5) Sections 25 and 26 shall be construed as applying to an application under this section, and a suit shall not lie in any Court for any purpose for which an application might be made under this section.

#### IMPROVEMENTS BY TENANTS.

*Title of occupancy tenant to make improvements.*

S. 63. A tenant having a right of occupancy is entitled to make improvements on his tenancy.

#### NOTES.

Under this section a tenant having a right of occupancy is entitled to make improvements on his tenancy, and according to the definition given in Section 4(19) of the Act, improvement, includes the planting of trees.<sup>1</sup> Even an entry in any record of rights providing that a landlord may prevent a tenant from making or eject him for making such improvements on his tenancy, as he is entitled to make under this Act, or that a tenant ejected from his tenancy shall not be entitled to compensation for improvements or for disturbance in any case in which he would under this Act be entitled to compensation therefor shall be void to that extent<sup>2</sup>

*Title of tenants not having right of occupancy to make improvements.*

S. 64. (1) A tenant not having a right of occupancy may make improvements on his tenancy with the assent of his landlord,

1. 4 P.W.R. 1908 Rev.

2. See Section 109 infra.

(2) If at any time the question arises whether or not the landlord assented to the making of an improvement by a tenant not having a right of occupancy, the assent may be inferred from circumstances.

*Improvements made before commencement of this Act.*

S. 65. Improvements made by a tenant before the commencement of this Act shall be deemed to have been made in accordance with this Act, unless in the case of a tenant not having a right of occupancy it is shown that the improvement was made in contravention of a written agreement between him and his landlord.

NOTES.

If a well is constructed before the commencement of the present Act, a tenant would be entitled to compensation for improvements under this section unless he has acted in contravention of a written agreement between him and the landlord.<sup>1</sup>

*Improvements begun in anticipation of ejectment.*

S. 66. A tenant ejected in execution of a decree, or in pursuance of a notice of ejectment, shall not be entitled to compensation for any improvement begun by him after the institution of the suit, or service of the notice, which resulted in his ejectment.

*Tender of lease for twenty years to tenant to be a bar to right to compensation.*

S. 67. If a landlord tenders to a tenant a lease of his tenancy for a term of not less than twenty years from the date of the tender at the rent then paid by the tenant, or at such other rent as may be agreed on, the tender, if accepted by the tenant, shall bar any claim by him to compensation in respect of improvements previously made on the tenancy.

NOTES

A tenant is not entitled to compensation where the landlord has tendered 20 years' lease under this section or where the tenant has had the benefit of the improvement for so long a time that the estimate of the compensation is reduced to nothing.<sup>2</sup>

1. 3 P.E. 1896 Rev.

2. 7 P.E. 1902 Rev.

*Liability to pay compensation for improvements to tenant on ejection or on enhancement of his rent.*

S. 68. Subject to the foregoing provisions of this chapter, a tenant who has made an improvement on his tenancy in accordance with this Act shall not be ejected, and the rent payable by him shall not be enhanced, until he has received compensation for the improvement.

NOTES.

**Construction.**—This section is imperative and lays down without qualification the rule that when a tenant has made an improvement on his tenancy in accordance with the Act, his rent shall not be enhanced until he has received compensation for the improvement, the only exceptions being; (1) where the landlord has tendered a years' lease under S. 67; or (2) where with reference to S. 72 (e) the tenant has had the benefit of the improvement for so long a time that the estimate of compensation is reduced to nothing.<sup>1</sup> There is not a word in either S. 68 or S. 70 to show that it is the intention of Legislature that the compensation should only be awarded when enhancement is granted in consequence of an improvement.<sup>2</sup>

**Compensation.**—Compensation for improvement only includes the cost of the actual improvements and not money spent unnecessarily on supposed or alleged improvements.<sup>3</sup> Where a well (the alleged improvement) watered other land besides that which the defendant occupied as tenant to the plaintiff, it was held that the assessment of compensation should have reference only to the proportionate benefit that plaintiff's land derived from the well and should not be measured by the expense of making the well.<sup>4</sup> Money value of a tenant's labour in reclaiming waste lands may be given as compensation, but damages cannot be awarded as compensation.<sup>5</sup>

**Compensation on ejection or enhancement of rent.**—See notes under S. 45. heading 'Grounds for contesting notice' and also consult 9, 6 P. R. 1881. 18 P. R. 1883; 136 C. P. R. 1883 and 61 P. R. 1883.

A decree for enhancement of rent cannot be passed unless the tenant has been paid compensation for the improvements effected by him on the tenancy.<sup>6</sup>

1. 7 P. R. 1902 Rev.=15 P. L. R. 1908.

2. P. R. 1902 Rev. p. 16.

3. 1 P. R. 1872.

4. Ibid.

5. 85 P. R. 1877.

6. 61 P. R. 1893, 7 P. R. 1902 Rev.

COMPENSATION FOR DISTURBANCE OF CLEARING  
TENANTS.

*Compensation for disturbance of clearing tenants.*

S. 69. (1) A tenant who has cleared and brought under cultivation waste land in which he has not a right of occupancy shall, if ejected from that land, be entitled to receive from the landlord as compensation for disturbance in addition to any compensation for improvements, a sum to be determined by a Revenue Court or Revenue Officer in accordance with the merits of the case, but not exceeding five years' rent of the land:

Provided that a tenant who is a joint owner of land to which this section applies shall not be entitled to compensation for disturbance on ejection from the land or any part thereof.

(2) If rent has been paid for land by division or appraisement of the produce, or by rates fixed with reference to the nature of the crops grown, or if no rent, or no rent other than the land revenue of the land and the rates and cesses chargeable thereon, has been paid therefor, the compensation may be computed as if double the amount of the land revenue of the land were the annual rent thereof.

NOTES.

**Scale of compensation.**—The scale of compensation as laid down in S. 69 is the maximum and the sum to be awarded in each case is to be determined according to the merits of the case.<sup>1</sup> In estimating the compensation to be awarded for any improvements, the Revenue Officers should act upon the principles laid down by S. 72, Tenancy Act. <sup>2</sup> Under the principle of the proviso to S. 69 of the Act compensation for disturbance or ejection should not be given, but the case of improvements is quite distinct.<sup>3</sup>

PROCEDURE IN DETERMINING COMPENSATION.

*Determination of compensation by Revenue Court.*

S. 70. (1) In every suit by a tenant to contest his

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1. Fin circular No. 17, para 11,  
p. 68.

2. 9 P R. 1902 Rev.  
3. Ibid. •

liability to ejectment or by a landlord to eject a tenant or to enhance his rent, the Court shall direct the tenant to file a statement of his claim, if any, to compensation for improvements or for disturbance and of the grounds thereof.

(2) If the Court decrees the ejectment of the tenant or the enhancement of his rent, it shall determine the amount of compensation, if any, due to the tenant, and shall stay execution of the decree until the landlord pays into Court that amount less any arrears of rent or costs proved to the satisfaction of the Court to be due to him from the tenant.

#### NOTES

**Compensation, determination of.**--The question of compensation should be decided in the suit, whether for ejectment by the landlord or to contest the notice of ejectment by the tenant and should not be left over for future settlement. **1** The court has no power to ask the tenant to pay court-fee for improvements claimed but is bound to determine the amount in the suit to contest the notice of ejectment. **2** Failure to decide this question would amount to a material irregularity justifying revision. **3** In fact a court hearing a suit relating to ejectment is bound to invite a tenant to state his claim to compensation and if his ejectment is decreed, then to deal finally with that claim. **4** But the question of compensation is not to be determined where no notice of ejectment has been served. **5**

**Ejectment of tenant.**--A landlord can proceed in ejectment against that person alone whose name has been recorded in the revenue papers for along time as a sole tenant and from whom alone he has been collecting rent, without hunting about for any one who may have some claims as co-heir to the holding. **6**

*Determination of compensation by Revenue Officers.*

**S. 71.** In either of the following cases, namely,

- (a) when a notice has been served on a tenant under Section 44,
- (b) when a notice of ejectment has been served on a tenant under Section 45 and the tenant has

1. 13 P.R. 1890 Rev.; 4 P.W.R. 1915.

2. 4 P.W.R. 1915 Rev.=30 I.C. 848.

3. 1926 Lah. L.T. 37; 4 P.W.R. 1915 Rev.=30 I.C. 848; 13 P.R.

1890; 4 P.E. 1981 Rev.; 6 P.E. 1892 Rev.

4. F.C. No. 17 para 6, Cl. 1V.

5. 9 P.R. 1890.

6. 33 L.C. 264.

not instituted a suit to contest his liability to be ejected, the tenant may apply to the Revenue Officer having authority to order his ejection under Section 44 or Section 45, as the case may be, to determine the amount of compensation due to him for improvements or for disturbance, or for both, and the Revenue Officer shall determine the amount, if any, accordingly and stay the ejection of the tenant until the landlord pays to the Revenue Officer the amount so determined less any arrears of rent or costs proved to the satisfaction of the Revenue Officer to be due to the landlord from the tenant.

*Matters to be regarded in assessment of compensation for improvements.*

**S. 72.** In estimating the compensation to be awarded under this Chapter to a tenant for an improvement the Court or Revenue Officer shall have regard to—

- (a) the amount by which the value or the produce of the tenancy, or the value of that produce, is increased by the improvement ;
- (b) the condition of the improvement and the probable duration of its effect ;
- (c) the labour and capital required for the making of such an improvement ;
- (d) any reduction or remission of rent or other advantage allowed to the tenant by the landlord in consideration of the improvement ; and
- (e) in the case of reclamation, or of the conversion of unirrigated into irrigated land, the length of time during which the tenant has had the benefit of the improvement.

NOTES.

**Scope.**--While S. 68 renders it imperative that an occupancy tenant who has made improvements to his tenancy, prior to a suit for enhancement of rent, should receive compensation for such improvements prior to any enhancement which may be decreed taking effect, Section 72 prescribes certain matters which have to be

considered in determining the amount of that compensation and the same matters have to be considered in determining the compensation which it is equally imperative to award to an improving tenant who is to be ejected.<sup>1</sup>

**Compensation, measure of.** An occupancy tenant should receive in respect of improvements made such a sum as will, in spite of the enhancement of his rent enable him to recoup himself completely for his capital expenditure, plus interest thereon, incurred on the improvements *in the same time* as he would have so recouped himself, had such enhancement not been allowed. The compensation need by no means always equal the initial capital cost of improvements. All that is necessary is that the tenant should be properly and equitably compensated which in the case of enhancement means that he should not be placed, as a result of the enhancement in a worse position for fully recouping himself within a reasonable period for capital expenditure incurred than he was prior to the enhancement.<sup>2</sup> In allowing compensation to tenants for wells sunk by them, the Revenue Courts should lease their decisions on entries in *naqsha chabhat* and not on reports of engineers for it is well known that the estimates prepared by engineers are frequently incorrect.<sup>3</sup> Where there is no entry in respect of certain wells in *naqsha chabhat*, it is right to refer to entries in respect to other wells. <sup>4</sup>

*Form of compensation.*

S. 73. (1) The compensation shall be made by payment in money, unless the parties agree that it be made in whole or in part by the grant of a beneficial lease of land or in some other way.

(2) If the parties so agree, the Court or Revenue Officer shall make an order accordingly.

RELIEF IN CASE OF EJECTMENT BEFORE DETERMINATION OF COMPENSATION.

*Relief in case of ejectment before determination of compensation.*

S. 74. (1) If from any cause the amount of compensation payable to a tenant—

(a) under this Chapter for improvements or disturbance; or

1. 11 Lah. L.T. 1926.

2. Ibid.

3. 1924 Lah. L. T p. 20.

4. Ibid.



(b) under Section 49 for the value of uncut or un-gathered crops or the preparation of land for sowing ; .

has not been determined before the tenant is ejected, the ejectment shall not be invalidated by reason of the omission but the Court or Revenue Officer which decreed or who ordered the ejectment may, on application made by the tenant within one year from the date of the ejectment, correct the omission by making in favour of the tenant an order for the payment to him by the landlord of such compensation as the Court or officer may determine the tenant to be entitled to.

(2) An order made under sub-section (1) may be executed in the same manner as a decree for money may be executed by a Revenue Court.

#### NOTES.

**Compensation.**—Even if a tenant has been ejected in execution of a decree of ejectment, the court executing the decree is bound to award compensation for improvement.<sup>1</sup> A court has no power to ask a tenant to pay court-fee on compensation for improvements claimed by him but is bound to determine the amount in the suit to contest a notice of ejectment.<sup>2</sup>

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1. 1 P.W.R. 1916 Rev.

2. 4 P.W.R. 1915 Rev.

## CHAPTER VII.

### JURISDICTION AND PROCEDURE.

#### JURISDICTION.

##### *Revenue Officers.*

S. 75. (1) There shall be the same classes of Revenue Officers under this Act as under the Punjab Land Revenue Act, 1887, and, in the absence of any order of the Local Government to the contrary, a Revenue Officer of any class having jurisdiction within any local limits under that Act shall be a Revenue Officer of the same class having jurisdiction within the same local limits under this Act.

(2) The expressions "Collector" and "Financial Commissioner" have the same meaning in this Act as in the Punjab Land Revenue Act, 1887.

##### *Applications and proceedings cognizable by Revenue Officers.*

S. 76. (1) The following applications and proceedings shall be disposed of by Revenue Officers as such, and no Court shall take cognizance of any dispute or matter with respect to which any such application or proceeding might be made or had :—

#### First Group.

- (a) proceedings under Section 27 for the adjustment of rent expressed in terms of the land revenue ;
  - (aa) proceedings under Section 27-A for the adjustment of rents of occupancy tenants in the Attock District.
- (b) proceedings relating to the remission and suspension of rents under Section 30 ;
- (c) applications under Section 43 for the ejectment of a tenant against whom a decree for an arrear of rent in respect of his tenancy has been passed and remains unsatisfied ;

- (d) applications under Section 45, sub-sections (5), for the ejectment of a tenant on whom a notice of ejectment has been served and who has not instituted a suit to contest his liability to be ejected but has claimed compensation under Section 71 ;
- (e) applications under Section 53 or Section 54 for the fixing of the value of a right of occupancy ;
- (f) applications under Section 53 or Section 54 by landlords for possession of land, the right of occupancy in which has become extinct ;
- (g) proceedings under Chapter VI with respect to the award of compensation for improvements or disturbance ;

**Second Group.**

- (h) applications under Section 17 with respect to the division or appraisal of produce ;
- (i) applications under section 45, sub-section (5), for the ejectment of a tenant on whom a notice of ejectment has been served and who has not instituted a suit to contest his liability to be ejected and has not claimed compensation under Section 71 ;
- (j) applications for the determination—
  - (i) under Section 49 of the rent payable for land occupied by crops uncut or ungathered at the time of an order being made for the ejectment of a tenant, or
  - (ii) under Section 49 or Section 74 of the value of such crops or of the sum payable to the tenant for labour and capital expended by him in preparing land for sowing ;

**Third Group.**

- (k) applications under Section 31 by tenants to deposit rent ;

- (l) applications under Section 36 for service of notice of relinquishment ;
  - (m) applications under Section 43 for service of notice of ejectment ;
  - (n) applications under Section 53 or Section 54 for service of notice of intended transfer or of intended foreclosure or other enforcement of lien.
- (2) Except as otherwise provided by any rule made by the Financial Commissioner in this behalf,—
- (a) a Collector or an Assistant Collector of the first grade may dispose of any of the applications and proceedings mentioned in sub-section (1) ;
  - (b) an Assistant Collector of the second grade, not being a Naib-Tahsildar, may dispose of any of the applications mentioned in the second; and
  - (c) a Naib-Tahsildar, when invested with the powers of an Assistant Collector of the second grade, may dispose of any of the applications mentioned in the third group of that sub-section.

*Revenue Courts and suits cognizable by them.*

S. 77. (1) When a Revenue Officer is exercising jurisdiction with respect to any such suit as is described in sub-section (3), or with respect to an appeal or other proceeding arising out of any such suit, he shall be called a Revenue Court.

(2) There shall be the same classes of Revenue Courts as of Revenue Officer under this Act, and, in the absence of any order of the Local Government to the contrary, a Revenue Officer of any class having jurisdiction within any local limits under this Act shall be a Revenue Court of the same class having jurisdiction within the same local limits.

(3) The following suits shall be instituted in and heard and determined by Revenue Courts, and no other courts shall take cognizance of any dispute or matter with respect to which any suit might be instituted :—

Provided that—

(1) Where in a suit cognizable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, the Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by Order VII, rule 10, Civil Procedure Code, and return the plaint for presentation to the Collector ;

(2) On the plaint being presented to the Collector, the Collector shall proceed to hear and determine the suit where the value thereof exceeds Rs. 1,000 or the matter involved is of the nature mentioned in Section 77 (3), First Group, of the Punjab Tenancy Act, 1887, and in other cases may send the suit to an Assistant Collector of the first grade for decision.

#### First Group.

- (a) suits between landlord and tenant for enhancement or reduction of rent under Section 24 ;
- (b) suits between landlord and tenant for addition to or abatement of rent under section 28, or for commutation of rent ;
- (c) suits under Section 34 for the determination of rent or other sum on the expiration of the term of an assessment of land-revenue ;  
and suits relating to the rent to be paid under a mortgage made in accordance with form (c) as prescribed by Section 6 of the Punjab Alienation of Land Act 1900 ;

#### Second Group.

- (d) suits by a tenant to establish a claim to a right of occupancy, or by landlord to prove that a tenant has not such a right ;
- (e) suits by a landlord to eject a tenant ;
- (f) suits by a tenant under Section 45 to contest liability to ejectment, when notice of ejectment has been served ;

- (g) suits by a tenant under Section 50 for recovery of possession or occupancy, or for compensation, or for both ;
- (h) suits by a landlord to set aside a transfer made of a right of occupancy, or to dispossess a person to whom such a transfer has been made, or for both purposes ;
- (i) any other suit between landlord and tenant arising out of the lease or conditions on which a tenancy is held ;
- (j) suit for sums payable on account of village cesses or village expenses ;
- (k) suits by a co-sharer in an estate or holding for a share of the profits thereof or for a settlement of accounts ;
- (l) suits for the recovery of over-payments of rent or land revenue or of any other demand for which a suit lies in a Revenue Court under this subsection ;
- (m) suits relating to the emolument of *kanungos*, *zaildars*, *inamdars* or village officers.

### Third Group.

- (n) suits by a landlord for arrears of rent or the money equivalent of rent, or for sums recoverable under Section 14 ;
- (o) suits by a landowner to recover moneys claimed as due for the enjoyment of rights in or over land or in water, including rights of irrigation, rights over fisheries, rights of pasturage and forest rights ;
- (p) suits for sums payable on account of land-revenue or of any other demand recoverable as an arrear of land-revenue under any enactment for the time being in force, and by a superior landowner for other sums due to him as such.

(4) Excepts as otherwise provided by any rule made by the Financial Commissioner in this behalf,

(a) a Collector may hear and determine any of the suits mentioned in sub-section (3) ;

(b) an Assistant Collector of the first grade may hear and determine any of the suits mentioned in the second and third groups of that sub-section, and, if he has by name been specially empowered in this behalf by the Local Government, any of the suits mentioned in the first group ; and

(c) an Assistant Collector of the second grade may hear and determine any of the suits mentioned in the third group.

#### NOTES.

**Scope.**—S. 77 (3) not only provides that the suits of which a list is given must be instituted in and heard and determined by Revenue Courts, but also that no other court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted. <sup>1</sup> But the sub-section since it ousts the jurisdiction of civil courts must be strictly construed. <sup>2</sup> The Civil Courts have plenary jurisdiction and their jurisdiction in any particular matter cannot be regarded as ousted unless the legislature has in unmistakable language taken away that jurisdiction. <sup>3</sup> The broad general principle is that jurisdiction of Civil Courts is only ousted in regard to such classes of cases as are clearly actually covered by the precise terms of one or other of the classes of the section or which are clearly in substance identical with the classes covered by the clauses of that Section though differing in form. <sup>4</sup>

**Jurisdiction, determination of.**—As a general principle of law the jurisdiction of a court in which a suit is instituted is to be determined by reference to the allegations contained in the plaint supplemented in some instances by statements made by the plaintiff in the course of pleadings and in this connection the pleas of the defendant are immaterial. <sup>5</sup> But by virtue of proviso to Section 77 (3), a plea raised by the defendant may oust jurisdiction of the Civil Courts in a suit which is initially cognizable by such courts on the allegations made in the plaint. <sup>6</sup> Thus it has been laid down that where in a suit for possession on the

1. 96 P. R. 1894 ; 11 P. R. 1895

2. 126 P. R. 1906 ; 9 Lah. 38 F. B ;  
45 I. C. I. 454

3. 76 P. R. 1909 F. B

4. 33 P. R. 1908 F. B.

5. 45 P. R. 1907 ; 43 P. R. 1917 ; 24

P. R. 1907 ; 152 P. W. R. 1911.

6. 119 I. C. 721 ; 9 Lah. 38 F. B. ; 94  
I. C. 514. •

allegation of defendant's trespass, it becomes necessary on the plea of the defendant that he is an occupancy tenant, to adjudicate as to the status of the defendant as occupancy tenant, the jurisdiction of the Civil Court is ousted.<sup>1</sup> In considering the allegations in the plaint purposes of determining jurisdiction no regard should be had to the possibility of the plaintiff having mis-stated the facts.<sup>2</sup>

**Jurisdiction of Civil or Revenue Court.**—It has been clearly laid down by the Chief Court of the Punjab that there is no foundation for the idea that the suits brought under the Specific Relief Act are *ipso facto* entertainable by Civil Courts only. On the contrary where a suit falls within the purview of any clause of Section 77 (3) of the Act that suit must be heard by a Revenue Court, whether or not so far as the form of the suit or the particular remedy prayed for, is concerned, the suit also falls within the purview of any section of the Specific Relief Act.<sup>3</sup> A Revenue Court is not competent to go behind the decision of a Civil Court and to re-open matters already decided by competent judicial authority. The Revenue Courts should always accept a civil decree and act upon it, it being not their business to enquire whether it is right or wrong.<sup>4</sup>

The decree of a Revenue Court when it lacks jurisdiction is a nullity and should, therefore, be disregarded. Not being a decree by a court of competent jurisdiction, it can neither operate as *res judicata* nor will the plaintiff be barred by rules of estoppel from bringing a suit in a Civil Court as provisions of Section 115 of the Evidence Act do not apply to his case. A suit for a declaration by a person entered in the revenue papers as a tenant-at-will under the defendants that he was the owner of the land in respect of which notice of ejection had been served on him and that the relation of landlord and tenant did not exist between plaintiff and the defendants is maintainable in a civil court, even after the dismissal of the suit brought in a Revenue Court to contest notice of ejection.<sup>5</sup>

In cases under the Punjab Tenancy Act, the question of jurisdiction is often an extremely complicated and difficult one. It is better for the court in matters of doubt, unless parties insist, to proceed with the case and give a decree as a decree so given, if subsequently held by the High Court to have been given by a court without jurisdiction, can be registered as a decree

1. 94 I C 514.

2. 43 P R. 1917.

3. 58 P.L.R. 1917=104 P.W.R.

1916=34 I C. 209

4. 13 P.R. 1901 (Rv).

5. 56 P. W. R. 1907.



of the corresponding court on the revenue side.<sup>1</sup> In such cases no possible harm is done by the Civil Court trying the suit because under Section 100 of the Act, the High Court can always order the decree to be recorded as a decree of whatever court was in its opinion competent to try it. Therefore unless the parties raise the question of jurisdiction in cases under this Act, and unless the point is absolutely settled by rulings of the High Court, the Civil Court should proceed and try to dispose of the suit.<sup>2</sup>

**Any dispute or matter.**—Under S. 77 (3) a civil court is debarred from taking cognizance not only of a suit but also of any dispute or matter within which a suit might have been instituted in a Revenue Court.<sup>3</sup>

**Proviso.**—The intention of the Legislature in enacting the proviso was to depart from the general rule where by the allegations in a plaint primarily determine jurisdiction and are to be looked to in order to ascertain the nature of the suit. The suit, the proviso seeks to affect, is one that is *prima facie* within the jurisdiction of the civil court in which it has been instituted and therefore obviously refers to a suit which would ordinarily be triable by the civil court and provides that if in the course of the trial of that suit it becomes necessary to decide any matter which can under this sub-section be heard and determined by a Revenue Court alone, the Civil Court shall decline to proceed further and deal with the suit (not the matter alone) in the manner laid down.<sup>4</sup> Where after having entertained a suit of civil nature, the Civil Court reaches a point in the trial of which it holds that the plaintiff is a tenant and is suing as such, the proviso takes effect and makes it incumbent on the court to return the plaint for presentation to the collector.<sup>5</sup> A suit by a tenant to establish a claim to a right of occupancy or by a landlord to prove that a tenant has not such a right is exclusively triable by a Revenue Court and having regard to the proviso to S. 77 a Civil Court has no jurisdiction to decide that the tenants had a subsisting right of occupancy.<sup>6</sup> A Civil Court can entertain a suit brought by a party in respect of an occupancy holding under clause (d) or (g) of S. 77 (3) under certain conditions i. e., when it involves a matter of status or a point of law such as *res-judicata* or any other similar matter. But when such matters have been determined and it becomes necessary to decide any matter which under S. 77 (3) can only be heard and determined by a Revenue Court, the Civil Court must act under the first proviso.<sup>7</sup> A suit brought by a person who has been dispossessed from his tenancy

1. 1923 Lah. 903.

2. 1923 Lah. 895.

3. 76 P. E. 1909 F. B.

4. 9 Lah. 38 F. B.

5. 1922 Lah. 173.

6. 3 Lah. 84; 111 P. R. 1916; 68 P. L. R. 1918.

7. 123 I. C. 2700; 9 Lah. 38 F. B.

after a notice issued to him under S. 43 of the Act and who has been unsuccessful in a suit under S. 45 to contest his liability to ejection, for possession of the land from which he has been ejected on the ground that he had a right of occupancy therein, is not barred by S. 77 (3) (d) of the act and a Civil Court has jurisdiction to try such a suit. But if in such a suit it becomes necessary to decide any matter which can under Section 77 (3) of the Act be heard and decided only by a Revenue Court, the Civil Court should endorse upon the plaint the nature of the matter for decision and the particulars required by Order VII, Rule 10, of the Code of Civil Procedure and return the plaint for presentation to the Collector. **1** It must be remembered that the proviso does not take away the power of the High Court of directing the decree of a subordinate Civil Court to be registered as a decree of a Revenue Court under Section 100 of the Act. **2**

**Matter.**—The word matter has been designedly used in proviso (1) to Section 77 (3), of the Punjab Tenancy Act in contradiction to suit and it is intended through a suit as laid may be within the jurisdiction of a Civil Court, if the pleadings raise any matter involving an issue which it becomes necessary to decide and the decision of which necessitates an encroachment on the jurisdiction of Revenue Courts, the whole suit and not just the matter has to be referred to Revenue Courts for decision. **3**

**Objection as to jurisdiction, time for.**—An objection as to jurisdiction, if it be patent on the face of the record, can be taken at any stage of the litigation. **4**

**Res judicata**—The decision of a Revenue Court on the question of title is not *res judicata* in a civil suit. Therefore a Civil Court has jurisdiction to declare that a plaintiff has acquired proprietary title in the land notwithstanding that a Revenue Court has already held the plaintiff a tenant of the defendant. **5** There cannot be the least doubt that Revenue Courts are not competent to go behind the decision of Civil Courts and to reopen matters already decided by a competent judicial authority or where the claim is based on a Civil Court's decree to enter on enquiries which substantially involve the issue as to whether that decree has been rightly given or not. The Revenue Courts should always accept such a decree and act upon it. **6** But unless the matter of jurisdiction has once been put in issue and finally decided, the rule of *res judicata* has no application on the question of jurisdiction arising subsequently. The mere fact of a Civil Court declining to exercise

1 9 Lah 38 F B

2 73 P. S. 1915.

3 9 Lah. 83 F. B.; 1927 Lah. 35.

4 119 I. C. 721 (2).

5 45 P. R. 918.

6 13 P. R. 1901 Rev.

jurisdiction either by returning the plaint or by dismissing the suit on the ground that it lay in the Revenue Court, cannot be treated as an adjudication on the point.<sup>1</sup>

CLAUSE (a).

In a suit for enhancement of rent where the defendant pleads that he is proprietor and not the tenant, the Revenue Court is bound to decide the question whether the defendant is a proprietor or a tenant.<sup>2</sup> If a tenant's claim for declaration of occupancy rights is dismissed, the decree should be simply one for the dismissal of the claim as brought, leaving the question of ejection and compensation for future settlement in an ejection suit.<sup>3</sup>

CLAUSE (b).

Where the plaintiffs in substance wanted to go behind a decree of Revenue Court commuting rent from cash to kind, it was held that the Civil Court had no jurisdiction, though the plaintiffs asserted that the defendants acted fraudulently in obtaining the decree of the Revenue Court.<sup>4</sup> A suit for a declaration that the plaintiffs are entitled to receive rent in kind and not in cash, is not triable by Civil Courts.<sup>5</sup> Even if the contention that the suit is one for the correction of a revenue entry be sound, it would be triable by a Revenue Court alone and the jurisdiction of the Civil Court would be barred under S. 158 (2) (vi) of the Land Revenue Act.<sup>6</sup> But in an earlier ruling it has been held that a suit for correction of an entry in Record of Rights, Annual Record or the Register of Mutations is cognizable by a Revenue Court for where a suit is not covered by S. 77 (3) of the Act a Revenue Court could not try it.<sup>7</sup>

CLAUSE (d).

**Tenant.**—To establish a complete relation of landlord and tenant between two persons in respect of land within the meaning of the Tenancy Act, it is essential that two things shall occur, viz, (1) a right to enter upon and possess the land and (2) an entry into possession. Upon entry and not before, the person having the right becomes a tenant and holds the land under the person called landlord. But when once the person having the right has entered into possession, he does not merely by reason of a wrongful dispossession by the landlord or by a third person, cease to

1. 92 P. R. 1902 F. B

2. 2 P. B 1890 Rev.

3. 9 P. B. 1890 Rev.

4. 1923 Lah. 412.

5. 4 L. 127=5 L. J. 335=73

I. C. 673=1923 Lah. 405.

6. Ibid.

7. 102 P. W. R. 1917=64 P. R. 1917  
=41 I. C. 895.

hold the land under the landlord and is not deprived of the character of tenant. The legal relation of landlord and tenant once completed continues notwithstanding the dispossession. 1

The test whether a person has or has not become a tenant (with or without a right of occupancy) is whether such person having a right to enter upon and possess a particular land, has or has not entered into possession in pursuance of that right. If such person has entered he is a tenant. If after he has entered his title to a right of occupancy is in dispute, then a suit by him to establish it or by the landlord to dispute it falls under the present clause and is cognizable by a Revenue Court. If such a person has not entered, his suit for entry into possession, whether he claims a right of occupancy or not, is not cognizable by a Revenue Court, but by a Civil Court only. 2

**Suits cognizable by Revenue Courts.**—(1) A suit by a tenant to establish a claim to a right of occupancy or by a landlord to prove that a tenant has not such a right is triable by a Revenue Court only and a Civil Court has no jurisdiction to decide that the tenants had a subsisting right of occupancy. 3

(2) A claim to establish a right of occupancy by adverse possession. 4

(3) A suit by an occupancy tenant of a specific land for a declaration that he is occupancy tenant, having exchanged his original occupancy holding with the original occupancy tenant of the land in suit. 5

(4) A suit by one of the proprietary body against another for declaring that the former is the occupancy tenant of the land belonging to the latter, regardless of the fact that the dispute has arisen out of the partition proceedings. 6

(5) A suit to establish *mukarrirdar* rights by a tenant who is in actual possession of the land in question is cognizable by a Revenue Court only. 7

(6) A suit for possession by the purchaser from the deceased occupancy tenant against one who claimed under a gift from the same tenant but the validity of which was disputed by the plaintiff is cognizable by a Revenue Court only. 8

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| <p>1. 44 P. R. 1891 F. B. (9 P. R. 1888 F. B. 105 P. B. 1890 Ref. Foll. in 70 P. R. 1893; 188 P. W. R. 1912=14 I. C. 236; Ref. 32 P. R. 1902=16 P. L. R. 1903; 43 P. R. 1904; 32 P. R. 1906=79 P. L. R. 1906; 12 P. R. 1909 =124 P. L. R. 1909; 13 P. R. 1909; 124 P. L. R. 1908=1 I. C. 321; 1 P. R. 1911 Rev.=81 P. L. B. 1911=8 I. C. 733 Dist. 45 R. R. 1891; 22 P. R.; 1894; (9 Lah. 38 F. B.)</p> | <p>2. Ibid<br/>3. 8 L. 84=4 L. L. J. 196=4 P. L. R. 44=1922 Lah. 33=65 I. C. 52.<br/>4. 4 L. L. J. 240=69 P. W. R. 1921 159 P. R. 1919=54 I. C. 911. 1927 Lah. 848.<br/>5. 139 P. R. 1906=110 P. L. R. 1907.<br/>6. 282 P. L. R. 1914=156 P. W. R. 1914=27 I. C. 89.<br/>7. 11 P. R. 1878 Rev. Contra 2 P. R. 1903 Civil.<br/>8. 141 P. W. R. 1918=46 I. C. 882.</p> |
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**Suits not under the clause and therefore cognizable by civil courts.**—A suit brought by a person who has been dispossessed of the tenancy after a notice issued to him under S. 43 of the Tenancy Act and who has been unsuccessful in a suit under S. 45 to contest his liability to ejection for possession of the land from which he has been ejected on the ground that he had a right of occupancy therein, is not barred under the clause and a Civil Court has jurisdiction to try such a suit. But if in such a suit it becomes necessary to decide any matter which can under S. 77 (3) be heard and decided only by a Revenue Court, the Civil Court should return the plaint for presentation to Revenue Court. 1

(2) A suit by a reversioner to contest the validity of the creation of occupancy rights by a widow is cognizable by a Civil Court only. 2

(3) A suit by the landlord to eject the reversioner on the ground that he is not entitled to succeed to the land as occupancy tenant thereof on the death of the widow of the last male owner, is cognizable by a Civil Court only. 3

(4) A suit for possession of land as occupancy tenant brought by a person who has been dispossessed under Section 93 of the Act and who has been unsuccessful in a suit to contest his liability to ejection, is triable by a Civil Court only and this clause has no application. 4

(5) A suit by a person out of possession, claiming the possession of the land from the proprietor on the ground that he has a right of succession as a tenant does not fall either under this clause or clause (2) and is cognizable by a Civil Court only. 5

(6) A suit by a landlord for recovery of certain lands lately held by a tenant who died *la waris* from a person who is alleged to have taken possession thereof without any title is cognizable by a Civil Court as a suit against a trespasser. 6

(7) A suit by a person for a declaration that he has *mukar-ridari* rights in certain land is cognizable by a Civil Court. 7

(8) A suit by collateral heirs of the deceased occupancy tenant against the proprietor for possession of the holding of the deceased as his heirs. 8

1. 9 Lah. 38 F. B.

2. 56 I. C. 465.

3. 103 P. R. 1918=48 I. C. 363=130 P. L. R. 1918=179 P. W. R. 1918 (22 P. R. 1894 Ref. 111 PR. 1916 Dist).

4. 49 P. R. 1919=51 I. C. 443; (70 P.

R. 1893 Foll 90 P. R. 1917 Dist)

5. 44 P. R. 1891.

6. 22 P. R. 1894, 12 Lah. 111

7. 42 P. R. 1908=187 P. L. R. 1908; Contra 11 P. R. 1888 Rev.

8. 160 P. R. 1890.

(9) Where the plaintiffs claim a share in the occupancy holding and not as tenants under the defendants, the suit is triable by a civil courts.<sup>1</sup>

(10) A plaintiff's claim to be declared an owner is undoubtedly cognizable by a civil court. Similarly, his claim that the land in suit really formed part of the hereditary holding is within the cognizance of the Civil Court.<sup>2</sup>

#### CLAUSE (e)

Suits to eject a tenant:—

**Landlord and tenant; mortgagor and mortgagee.**—There is nothing in the Tenancy Act to prevent a proprietor from becoming the tenant of his mortgagee when the mortgage is one with possession. <sup>3</sup> In the case of an ordinary simple or collateral mortgage, where the mortgagor retains possession of the mortgaged property and a right to possession only accrues to the mortgagee when the mortgagor fails to perform the ordinary conditions of a mortgage, such as payment of the principle or instalments or interest on the dates fixed, it cannot be said that the mortgagor holds under the mortgagee or is his tenant.<sup>4</sup> On the other hand it is not necessary to place the mortgagor in the position of a tenant that there should have been a formal surrender of possession of the property to the mortgagee, and a retransfer of it to the mortgagor, nor is it necessary that there should be two separate deeds or agreements. Whenever there is a suit by a mortgagee to obtain possession of the mortgaged land from the mortgagor, the question whether the suit is or is not a revenue suit, depends upon whether the plaintiff's claim involves the plea that the defendant mortgagor stands in regard to the plaintiff mortgagee in the relation of tenant to landlord. Where there is a written instrument on which the claim is based or to which the plaint refers, the instrument will need to be construed in order to discover the expressed intention of the parties as to their consequent mutual position in respect to the possession of the mortgaged land. In construing such instruments it is needful to bear in mind that possession may be of two kinds—one a possession of a proprietary nature (*kabza malikana*) and the other mere cultivating possession (*kabza kashit*). When a mortgagor derives a title to cultivating possession of the

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1. 4 L. 195=75 I.C. 545=1923 Lah. 3 46 P. E 1891 F. B.  
500. 4. Ibid.  
2. 4 L.L.J. 240 =69 P. W. R. 1921.

mortgaged land from a mortgagee to whom the right of proprietary possession has been transferred by the mortgagor, the mortgagor hold the land under the mortgage. On the other hand where by the mortgage the right of the proprietary possession is agreed to be transferred to the mortgagee, without cultivating possession being retained by the mortgagor and possession of the mortgaged land is, notwithstanding his contracts retained by the mortgagor, so that the mortgagee, is driven to a suit for entry, here upon these facts alone it cannot be said that the mortgagor holds the land under the mortgage. He holds by no title derived from the mortgagee and in reality is holding the land against him and not under him.<sup>1</sup> The bare fact of the mortgage being with possession unaccompanied by any stipulation that the mortgagor holds under the mortgagee does not create the relationship of landlord and tenant.<sup>2</sup>

Where a mortgage is with possession and the mortgage deed provides for the mortgagor holding the land under (*minjanib wa ba jazat*) the mortgagee and for the payment of rent (*lugan*) by the former to the latter the relationship between the parties would be that of tenant and landlord and a suit by the mortgagee to eject the mortgagor from possession would be a revenue suit.<sup>3</sup>

**Suits under the clause and therefore Cognizable by a Revenue Court only.**—A suit for possession as mortgagee on the allegation that under the terms of the mortgage the mortgagor was to retain possession and pay the mortgagee a certain *malikana* or rent annually, in default of payment of which the mortgagee was to be put in possession and that the default in payment had occurred.<sup>4</sup>

(2) A suit for possession of land on the allegation that the defendant is paying a share of fixed produce as rent.<sup>5</sup>

(3) A suit by a landlord against a tenant under Section 39 of the Act for ejectment from the tenancy on the ground *inter alia* that he has without sufficient cause failed to cultivate the land in the manner and to the extent customary in the locality in which the land is situate.<sup>6</sup>

(4) A suit to eject the defendant from the land on the allegation that the land in suit had been given to him on payment of certain rent and that he had refused to pay the same and had set up an adverse title and refused to vacate it.<sup>7</sup>

1. 46 P. B. 1894 F. B. Per Plowden J. p. 146—147.

2. 211 P. L. R. 1915=168 P. W. R. 1914.

3. 9 P. B. 1913 Rev.=82, P. L. R. 1914=22 I. C. 656.

4. 19 P. B. 1893; 46 P. B. 1894 F. B.

5. 25 P. B. 1909=70 P. L. R. 1909, =39 P. W. R. 1909=1 I. C. 465.

6. 42 I. C. 279.

7. 162 P. B. 1890.

(5) A suit for possession based on the allegation that the land was the *malkiyat* of the plaintiffs and their ancestors and was given to the defendants for cultivation for a certain term but that the defendants deceitfully got an entry made in the settlement papers that the land was their own, the plaint distinctly alleging that the relationship of landlord and tenant existed between the parties.<sup>1</sup>

(6) A suit by a person claiming proprietary rights through an assignment by heirs of original proprietor, for possession against defendants alleged to be in possession under a lease which expires with the settlement, the suit in effect being for the ejection of defendants.<sup>2</sup>

(7) A suit for ejection of mortgagors where the mortgage deed was described as with possession and the mortgagor stipulated to cultivate the land *minjanib wa ba ijazat murtihanan* and pay the mortgagee a yearly rent and in default of payment of rent for 3 years the mortgagee was at liberty to take possession and the plaintiff's mortgagees not having received any rent for 6 years.<sup>3</sup>

(8) A suit for possession of land based on the allegation that the defendant was the plaintiff's tenant without occupancy rights and had regularly been paying half the produce yearly but that recently he had refused to pay the same.<sup>4</sup>

(9) Where the allegation in the plaint is that the defendant proprietor took the land from the plaintiff hereditary tenant for cultivation on payment of revenue and paid revenue to plaintiff, that is, the hereditary tenant sublet part of his holding to the proprietor and in respect of this portion the relation of landlord and tenant existed between them and now the landlord, the hereditary tenant seeks to eject his tenant, the proprietor, the suit is cognizable by a Revenue Court only.<sup>5</sup>

(10) Where the mortgage deed by way of conditional sale provided that the cultivating possession was to be retained by the mortgagor who was liable to pay a fixed *munafa* in lieu of interest due on the mortgage money but that in default of payment within the stipulated period, the land shall be considered as absolutely sold, a suit by the mortgagees for ejection of mortgagors is cognizable by a Revenue Court.<sup>6</sup>

1. 53 P. R. 1893.

2. 57 P. R. 1894.

3. 9 P. R. 1913 Rev. = 82 P. L. R. 1914 = 22 I. C. 656.

4. 102 P. R. 1887.

5. 9 P. R. 1888.

6. 150 P. L. R. 1910.



(11) Where the agreement between the mortgagor (defendant) and mortgagee (plaintiff) provided that the mortgage was to be with possession and the plaintiff mortgagee claimed possession of the land, alleging that, at some time not stated, the mortgagee gave the land to the mortgagor to cultivate on payment of an annual *malikana* which had not been paid for the last 3 years, the suit held to be a revenue suit. 1

**Suits not under clause and cognizable by Civil Courts.**—(1) An occupancy tenant sold his occupancy rights to two brothers and the deed of sale recited that one of the vendees had purchased one-third and the other had purchased two-thirds of the holding. After the death of one of the vendees without issue the landlords sued to recover possession of his share in the holding. The descendants of the other vendee resisted the suit on the plea that the two vendees had become joint tenants of the holding and that after the death of one of them the descendants of the other succeeded to his share in the holding by survivorship, held that no question as to the existence of an occupancy tenancy required decision in the case and the suit was therefore cognizable by a Civil Court.2

(2) Where the mortgagor in possession had himself to pay the land revenue, though the annual payment made by him to the mortgagee was described as *malikana* the relation created between the mortgagee and the mortgagor is not that of landlord and tenant and hence the suit by mortgagee for possession is cognizable by Civil Courts.3

(3) Where the heirs of an occupancy tenant after the latter's death instituted a suit for possession of the occupancy holding sold by him to the landlord and the landlord in defence sets up the said sale, the suit is not ousted from the cognizance of Civil Courts.4

(4) Where the mortgage deed gave the mortgagee a right to possession and was silent as to any retention of cultivating possession by the mortgagor and the plaintiff admitted that he had never been placed in possession or obtained *dakhil kharij* a suit by the mortgagee for possession was held to be a civil suit.5

1. 46 P.E. 1894 F. B.  
2. 7 Lah 332.  
3. 1929 Lah. 489.

4. 4 Lah. 173.  
5. 46 P.R. 1894 F.B.

(5) Where the mortgage deed shows that the mortgage deed is with possession but contains no stipulation that the defendant mortgagor will hold the land as a tenant under the mortgage, nor is there any evidence on the record to prove the relationship of landlord and tenant between the mortgagee and the mortgagor a suit for ejectment of mortgagor by the mortgagee is a civil suit.<sup>1</sup>

(6) A suit for possession by the mortgagee against the mortgagor for the land mortgaged, where the land in suit is cultivated by certain occupancy tenants and the deed of mortgage recites that the possession was given to the mortgagee who was to pay the Government revenue and the mortgagors, were only to assist the mortgagee in recovering share of the produce from the tenants and make it over to the mortgagee is cognizable by a Civil Court as the mortgagor could not be said to be holding land under the mortgagee.<sup>2</sup>

(7) A suit by a mortgagee for possession of land mortgaged, brought on the mortgagor's failure to pay rent, the mere execution, years ago, of a mortgage deed not acted upon in any way and not even brought to the notice of revenue authorities to whom the mortgagee was bound to report, it was held to be a suit of a civil nature.<sup>3</sup> But this judgment is in principle in conflict with 19 P. R. 1893 and 46 P. R. 1894. F. B and has not been followed in 9 P. R. 1913, a decision by the Financial Commissioner.

(8) A suit for entry on the land, on proof of a proprietary title, after the plaintiff had failed to establish the existence of the relation of landlord and tenant in summary proceedings by notice of ejectment.<sup>4</sup>

(9) A suit by the alleged proprietors for proprietary possession of land on the ground that the defendants, the occupancy tenants, had stopped paying them rent for some years and had got plaintiffs' name removed from the Revenue Record as proprietors of the land and had their own names entered as proprietors.<sup>5</sup>

(10) Where landlord sued his tenant for possession on the ground that after service of a notice of ejectment on the tenant, he (the landlord) had been placed in possession of the land, but that subsequently the tenant had forcibly dispossessed, it was held assuming the allegations to be true that the suit was cognizable by a civil court.<sup>6</sup>

1. 211 P. L. R. 1915—168 P. W. R. 1914.

2. 60 P. R. 1912.<sup>c</sup>

3. 1 P. R. 1903 Rev.

4. 18 P. R. 1893

5. 84 P. L. R. 1901.

6. 110 P. R. 1889.

(11) A suit for possession of land based on the allegation that the defendant originally obtained the land as a tenant-at-will but refused to vacate it when called on and that the plaintiff suing in a revenue court was, on the defendant's pleading that he never took the land as a tenant from the plaintiff, referred to a civil suit, is cognizable by a Civil Court, it being a suit to recover land from one in wrongful possession thereof.<sup>1</sup>

(12) A suit based on a mortgage deed under which part of the mortgaged land was cultivated by the mortgagor and the rest was under tenants and the arrangement entered into was that a share of the produce and certain dues paid by the tenants to the mortgagor were to go to the mortgagee with the exception of a small share of the produce reserved for the mortgagor is not cognizable by the Revenue Court for the reason that the proprietary and cultivating possession was reserved for the mortgagor and the mortgagor never held the land under the mortgage, the payment referred to above not being rent.<sup>2</sup>

(13) Where the mortgagor, a *Lambardar* agreed to realise the produce from the tenants and to make over the surplus after payment of the Government revenue to the mortgagee and the cause of action was the denial of the mortgagee's right to possession and the assertion of the title of the mortgagor to possession through the subsisting tenants, the mortgagor was the mortgagee's agent and no relationship of landlord and tenant was established between the parties and the suit was consequently within the jurisdiction of a Civil Court.<sup>3</sup>

(14) Where D mortgaged certain lands to P for a term, purporting to be with possession and reciting that possession had been given to the mortgagee, but that the land was taken from the mortgagee for cultivation under a lease executed by the mortgagor agreeing to pay a certain fixed sum per annum on account of interest of mortgage money, and next day the lease deed was executed reciting the mortgage and agreeing to pay to the mortgagee the lease money by two instalments, and on default empowering the mortgagor to take action in accordance with the conditions of the mortgage deed and both the deeds were registered on one and the same day, it was held that both the documents were intended by the parties to be parts of one and the same transaction of mortgage and read together did not create any relationship of landlord and tenant between the par-

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1. 41 P R 1894  
2. 5 P. B 1897 Rev.

3. 32 P R. 1910.

ties, but that the lease was only intended to provide a mode for realising the interest due on the mortgage money and to secure an arrangement beneficial to both, under which cultivating possession was meant to remain with the mortgagor, so long as he paid interest on the mortgage money. Accordingly the suit was maintainable in a civil court.<sup>1</sup>

#### CLAUSE (f)

For purposes of Section 45 of the Act and the present clause that person is the landlord who styling himself landlord causes a notice to issue and that person is the tenant whom the landlord styles a tenant and causes to be served with notice and that in accordance with the terms of notice any such person must be allowed to come into Revenue Courts and contest it whether he admits that he is a tenant or claims some other status.<sup>2</sup> But a suit for declaration by a person entered in the revenue papers as a tenant-at-will under the defendants, that he was owner of the land in respect of which notice of ejectment had been served on him and that the relationship of landlord and tenant did not exist between plaintiff and the defendants, is maintainable in a civil court even after the dismissal of the suit brought in a Revenue Court and contest notice of ejectment.<sup>3</sup> Thus where a part of *shamilat* land fell to the share of B, who caused a notice of ejectment to be served on H, who was in occupation of the land and H unsuccessfully contested in the Revenue courts the notice on the ground that he was an occupancy tenant and consequently was ejected therefrom, it was held that a subsequent suit brought by H in a civil court for possession of the land on the ground that he was owner by adverse possession or otherwise did lie and was not barred by his previous suit in the Revenue Court.<sup>4</sup>

#### CLAUSE (g).

Sub-clauses (g) and (i) of Section 77 (3) cover all conceivable causes of litigation between a landlord and his tenant *qua* tenant and an extenant in that capacity can look for no relief outside the Revenue Courts.<sup>5</sup> Clause (g) refers to suits brought by a tenant against the landlord and not to those brought by a tenant against persons other than the landlord. The term landlord in this clause devotes all the landlords taken together and not one or more out of several landlords.<sup>6</sup>

1. 17 P. W. R. 1908.

2. 3 P. R. 1895.

3. 56 P. W. R. 1907.

4. 75 P. L. R. 1918=75 P. W. R.

1918-47 I O 93.

5. 92 I C 597.

6. 110 I. C 588.

A suit to recover possession by a plaintiff alleging that he is a tenant with a right of occupancy and that he has been illegally dispossessed of his holding, by a person other than the person admitted to be or recorded as plaintiff's landlord, is not cognizable by a Revenue Court but only by a Civil Court.<sup>1</sup> Similarly where a person ejected in execution of a Revenue Court's decree as a lessee, brought a suit for recovery of possession of certain lands, partly as occupancy tenant and partly as proprietor by long and adverse possession alleging that the land in suit was not leased but included in the Revenue Court's decree by mistake, it was held that claim as laid was cognizable by a Civil Court.<sup>2</sup> A suit by the collateral heirs of a deceased occupancy tenant to recover possession of his holding from the landlord on the ground of inheritance is quite distinct from a suit on wrongful dispossession or ejection such as is covered by Section 50 of the Tenancy Act and is cognizable by a Civil Court.<sup>3</sup> But where a collateral heir of a deceased occupancy tenant sued for the recovery of possession of his holding from the landlord on the ground that he had been forcibly dispossessed by the landlord, after he had entered into possession, it was properly held that the suit was covered by Sections 50 and 77 (3) (g) of the Act and was cognizable by a Revenue Court only.<sup>4</sup> Where a tenant rents land for a fixed term for agricultural purposes and pays up to the landlord the rent in advance and is subsequently ejected by the landlord before the expiry of the said term and on the ground of such ejection sues for the refund of a portion of the rent so paid, the suit is cognizable by a Civil Court.<sup>5</sup> It was observed by the Chief Court, "suits by a tenant for compensation falling under clause (g) refer to such claims for compensation as an agricultural tenant can make against his landlord under the provisions of the Tenancy Act Chapter VI and would not, we think, embrace a suit like the one before us for a refund of rent paid by a tenant in advance on being ejected, by his landlord before the termination of the period for which the rent had been paid. Clause (i) is also inapplicable because from the statement of the present case it is clear that the relationship of landlord and tenant had ceased between the parties by mutual consent at the date of the suit. Lastly, we think it is equally clear that clause (l) does not apply for the present case is not based on a claim arising out of an over, payment of rent, but for a sum of money which was rightly paid for rent in advance under the terms of the lease but which has become recoverable according to the plaintiff's allegation, by reason of the landlord ejecting the tenant (the plaintiff) before the

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1. 3 P. R. 1889.

2. 12 P. R. 1909=1 I. C. 321.

3. 160 P. R. 1890; 188 P. W. R.

1912.

4. 43 P. R. 1904.

5. 172 P. R. 1888.

expiration of the term for which the rent was paid."1

CLAUSE (h).

**Scope and application.**—Thus a suit to eject a sub-tenant on the death of an occupancy tenant without heirs who had granted the sub-lease is simply a suit in ejectment of a person holding under unexpired lease and is therefore beyond the purview of this clause.2 Only a landlord can bring a suit under this action. Thus where a suit is brought by the landlord under this clause, the reversioner cannot be added as plaintiff for he is not a landlord and has a separate remedy in a Civil Court if the landlord takes no action or widow abandons the land.3

**Suits under the clause.**—(1) A suit by a landlord of an occupancy holding to disposes a transferee from the occupancy tenant after the occupancy tenant's death falls under the clause and can only be entertained by a Revenue Court.4

(2) A suit by a landlord who after the death of the occupancy tenant who had mortgaged his holding to defendants, has entered into possession, for a declaration that the land has reverted to him free from any encumbrance is cognizable only by a Revenue Court.5

**Suits not under the clause.**—(1) Where a sale of occupancy rights in favour of one landlord had been definitely set aside by the Revenue Court in a suit framed for the purpose at the instance of another landlord and a suit for possession was subsequently brought in the Civil Court by the latter landlord against the former, it was held that the suit was cognizable by a Civil Court.6

1 172 P. R. 1888.

2 1 P. W. R.-1916 Rev.=34 I. C. 248

3 3 P. R. 1910 Rev=6 I C 942

4. 32 P. R. 1912-58 P. L R. 1911  
-8 I. C. 666; (3 P. R. 1910 which held that a suit by a landlord against the mortgagee of a

deceased occupancy tenant is cognizable by a Civil Court has been overruled); 112 I. C. 405

5. 83 P. R. 1894 (Ref. 92 P R. 1902 F. B 76 P R. 1809 Dist 9 P.R. 1910; Foll. 2 P.R. 1912=58 P.L. E 1911).

6. 76 P.R. 1909.

(2) A suit to eject a sub-tenant on the death of the occupancy tenant without heirs who had granted the sub-lease is simply a suit in ejectment of a person holding under time expired lease and does not fall under this clause. 1

**Limitation.**—The limitation for a suit by a landlord to dispossess a person to whom occupancy rights have been sold is 6 years from the date of the sale under Art. 120 of the Limitation Act and that Art. 144 has no bearing. 2 The *ratio decidendi* of the ruling is that the word “dispossession” as used in the present clause is not necessary the “possession” as used in Art. 144, for there is this important difference that the dispossession of the alienee does not necessarily connote the possession of the landlord. 3

#### CLAUSE (i).

**Scope and application.**—This clause must be taken to include suits *ejusdem generis* with those which are mentioned above it, and be confined to suits between parties *qua* landlord and tenant. 4 A suit, therefore, between a tenant and some body who may be a proprietor but not his landlord is not governed by this clause. 5 To bring a suit under this clause the claim must be directly referable to the lease or conditions on which the tenancy is held. 6 Accordingly it could not include a suit where the primary relationship between the parties was that of mortgagor and mortgagee and the relationship of landlord and tenant a sub-sidiary one, main object of the lease being to secure under the name of the rent the interest due on the mortgage debt. 7 Where liability to pay rent under a lease has been entirely superseded by a new contract, the relation between the parties becomes that of creditor and debtor instead of landlord and tenant and a suit on the basis of a new contract lies in a Civil Court. 8

#### SUITS UNDER THE CLAUSE.

(1) A suit for declaration that plaintiffs are not liable to pay rent as entered in Revenue Records falls under this section and is exclusively triable by a Revenue Court. 9

(2) A suit by an occupancy tenant against the landlord for possession of the land in suit, as a threshing floor is within the purview of the clause and therefore cognizable by a Revenue Court. 10

1. 1 P. W. E. 1916 Rev=34 I. C 249.

2. 1 P. R. 1916 Rev.

3. 1 P. R. 1916 Rev.

4. 126 P. R. 1906=98 P. L. R. 1907

5. 144 P. R. 1907.

6. 126 P. R. 1906=98 P. L. R. 1907 ; 1927 Lah. 517.

7. Ibid.

8. 7 Lah. 479.

9. 55 I. G. 739.

10. 44 P. R. 1914=254 P. L. R. 1914 =25 I. C. 502.

(3) A suit for the recovery of money from the defendant which the plaintiff was obliged to pay as land revenue where it was payable by the defendant, is not cognizable by a Civil Court. **1**

(4) A suit for the price of the trees cut by an occupancy tenant in contravention of the terms of this tenancy is cognizable by a Revenue Court. **2**

(5) A suit by a landlord for his share of the price of the trees cut and sold by the occupancy tenant in pursuance of an agreement in a case where land had been given to the tenant with a view to plant trees, is cognizable by a Revenue Court only. **3**

(6) A suit by an occupancy tenant against a landlord for a share out of the price of trees cut down by the latter from the tenancy land **4**

(7) A suit by the proprietors to recover the price of certain trees cut by a tenant at will based on the allegation that by custom the tenant is not entitled to cut timber is a suit arising out of the conditions on which the tenancy is held and is therefore cognizable by a Revenue Court. **5**

(8) A suit by proprietors against their occupancy tenants that the defendants were entitled to cut trees on their occupancy for agricultural implements only is a suit between landlord and tenant arising out of the conditions on which it is held and falls under the clause. **6**

(9) A suit by an occupancy tenant to declare that he is liable to pay cash rent. **7**

(10) A suit by a tenant for share of produce forcibly removed by landlord **8**

(11) A suit for a perpetual injunction that the defendants being plaintiff's occupancy tenants, be prohibited from building houses on land forming part of the occupancy tenancy. **9**

(12) Where plaintiffs, occupancy tenants had mortgaged the land and the proprietors by suit set aside the mortgage as against them and obtained possession of the land and the mortgagees having accepted bonds for the debt relinquished their claim as mortgagees and the plaintiffs brought a suit to recover

1. 45 P. W. R. 1912=73 P. L. R.  
1912=13 I. C. 401.  
2. 64 I. C. 152.  
3. 65 P. R. 1890.  
4. 45 P. L. R. 1905=9 P. R. 1904  
Rev.  
5. 105 P. R. 1890. °

6. P. L. R. 1900 p. 165.  
7. 2 P. W. R. 1916; 89 P. R. 1895  
8. 101 P. L. R. 1912=49 P. W. R.  
1912=13 I. C. 447 (30 P. R. 1891  
overruled).  
9. 31 I. C. 209=101 P. W. R. 1916  
=58 P. L. R. 1917.



possession from the proprietors, it was held that it was in consequence of a breach of the conditions against mortgaging that the plaintiffs were deprived of the possession which they now, under altered circumstances, sought to recover and thus the suit arose indirectly if not directly out of the conditions on which the tenancy was held and was therefore cognizable by a Revenue Court.<sup>1</sup>

**Suits not falling under clause.—**(1) Where an occupancy tenant has alienated his tenancy with possession and the landlord subsequently succeeds in a suit to declare such alienation void, a suit by the alienor tenant for re-entry on his holding lies in a Civil Court. The present clause cannot apply, as the alienor tenant neither has possession nor can be said to hold, under the landlord in any way; he is no longer a tenant.<sup>2</sup>

(2) Plaintiff's occupancy tenants sued for an injunction restraining defendants members of the proprietary body from preventing them using a certain site, held that as plaintiffs claimed to use the land not by reason of their having been enjoying the use of it for many years, the suit did not fall under this clause and was cognizable by a Civil Court.<sup>3</sup>

(3) A suit by the purchaser of fruit trees, from the landlord, against the occupancy tenants of the land on which they stand for the value of the produce, is not a suit between landlord and a tenant and is cognizable by a Civil Court.<sup>4</sup>

(4) A suit by an occupancy tenant for declaration as to right of grazing over the *shamilat* area and its being kept exempt from partition, and in fact for plaintiffs and all the residents of the village, is triable by a Civil Court.<sup>5</sup>

(5) A suit for possession by the usufructuary mortgagee of the occupancy rights against the landlord, where in proceedings under Section 53 of the Act an adjustment out of court had been arrived at between the landlord and occupancy tenant and the landlord put in possession by a Revenue Officer, the suit not being one between the landlord and tenant arising out of the conditions of the lease but being one for restoration of possession of occupancy rights is cognizable by a Civil Court.<sup>6</sup>

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1. 104 P. R. 1890 (44 P. R. 1891 F. B. 17 P. R. 1892 F. B. where such a suit was held to be Civil one.)  
 2. 1 P. E. 1911 Rev.—31 P. L. R. 1911—2 P. W. R. 1911—8 I. C. 733 (104 P. E. 1890 45 P. R. 1891 F. B. 17 P. R. 1892 F. B. Ref.)  
 3. 55 I. C. 720.  
 4. 119 P. E. 1890.  
 5. 144 P. R. 1907.  
 6. 32 P. R. 1906.

(6) A suit by an occupancy tenant alleging that the defendant proprietor had forcibly taken the produce, it being a suit not one to recover a sum wrongfully taken or paid as rent nor one arising out of the conditions of the tenancy but being a suit for damages for wrongful seizure of produce.<sup>1</sup>

(7) A suit by a person for possession under a lease is not a suit by a tenant against landlord and is, therefore, cognizable by a Civil Court.<sup>2</sup>

### Second Group

#### CLAUSE (j)

This clause relates to suits for sums payable on account of village cesses or expenses and must be construed as applying only to suits brought against the parties liable to pay such cesses.<sup>3</sup> It applies only to suits between persons claiming dues and cesses and the person by whom they are payable. Therefore a suit between parties each of whom claims to be entitled to collect such dues is not governed by the clause when the persons by whom such dues are payable are not parties thereto. Such a suit is cognizable by a Civil Court.<sup>4</sup>

**Suits under clause.—**(1) A suit for the recovery of *Haq Buha* is cognizable by a Revenue Court under this clause.<sup>5</sup>

(2) A suit for a declaration that the occupancy tenants are not liable to pay *Haq Buha* dues is cognizable by a Revenue Court and not by a Civil Court.<sup>6</sup>

(3) A suit for the recovery of *kamiana* is cognizable by a Revenue Court under this clause.<sup>7</sup>

(4) A suit to recover *puch bakri*, or dues on marriage payable by non-proprietors, comes under the provisions of this clause.<sup>8</sup>

(5) A suit for *atraf* dues, levied annually by the village proprietors from the *kamins* residing and carrying on their trade in the village is a revenue suit.<sup>9</sup>

(6) A suit to recover a sum of money equal to his share of the *kamiana* dues if realised, which according to plaintiff's allegation the defendant was entitled to collect but had wilfully neglected to do so falls within the purview of this clause, because it

1. 80 P.R. 1891; But see 101 P.L.E. 1912=49 P.W.R. 1912 where contrary has been held	5. 11 P.R. 1890.
2. 95 I.C. 855.	6. 33 P.E. 1903=83 P.W.R. 1908 F.B.
3. 204 P.R. 1889.	7. 49 P.R. 1891; 79 P.R. 191.
4. 30 P.L.R. 1913=110 P.R. 1912=17 I.C. 907.	8. 43 P.E. 1893; 55 P.R. 1893.
	9. 103 P.E. 1887; 81 P.R. 1888; 18 P.R. 1892.

involves the determination of the question whether the dues are or are not leviable against the *kamins* and is cognizable by Revenue Courts alone.<sup>1</sup> But had the defendant actually realised the amount and failed to pay the plaintiff his share of the dues, he might be sued in Civil Court for a sum had and received by defendant to the use of plaintiff.<sup>2</sup>

(7) *Kudhi kamini* or *kuri kamini* (hearth cess) is a village cess within the meaning of this clause and a suit for the recovery of such dues is excluded from the jurisdiction of Civil Courts.<sup>3</sup>

(8) A suit by *malikan gabza* and non-proprietary residents of a village for a declaration that they are not liable to pay *haq bakri* and *thana patti* is governed by the provisions of this clause.<sup>4</sup>

(9) A suit for the recovery of *haq tora*.<sup>5</sup>

(10) A suit for the recovery of a certain sum on the allegation that by custom all the residents of a certain *basti* except the descendants of the founder are liable on certain occasions, of which marriage is one, to pay proprietary dues (*haq malikana*) to the plaintiffs-descendants of the founder, is cognizable only by a Revenue Court.<sup>6</sup>

(11) A suit for the recovery of *rayatana* or *kadu* (dues leviable from occupiers of houses).<sup>7</sup>

**Suits not under the clause.**—(1) A suit for the recovery of *haq saqqa* (dues payable by the proprietary body of the village to a *saqqa*, i.e., water-carrier for personal services).<sup>8</sup>

(2) A suit for a sum due as *haq sep* at a rate fixed by the record of rights is a civil suit.<sup>9</sup>

(3) A suit for a sum payable, according to village custom as *dhart* on sale of grain to which the plaintiff is entitled but which has been paid to the defendant is not a suit for a sum payable on account of village cesses under this clause but one for money received by defendant to the use of the plaintiff and as such cognizable by a Civil Court.<sup>10</sup>

1. 128 P. R. 1903=117 P. L. R.

1909.

2. Ibid.

3. 95-P R 1907=120 P. L. R. 1908

21 P. R. 1868.

4. 79 P. R. 1911=65 P. L. R. 1912

5. 33 P. R. 1887; 125 P. R. 1888.

6. 125 P. R. 1888.

7. 14 P. R. 1879.

8. 74 P. R. 1917=44 P. W. R. 1917

=40 I. C. 487.

9. 41 P. R. 1908=178 P. L. R. 1908

=88 P. W. R. 1908.

10. 28 P. R. 1894; See also 23 P. R. 1908.

(4) A suit for a declaration that *kamiana* dues are not recoverable from the owners of their houses and cultivators in a village is a civil suit. 1

(5) Suits for a declaration that plaintiffs and not the defendants are entitled to collect *dhart*. 2

(6) A suit by a *Lambaradar* for his share in the collection of *dhart*. 8

(7) A suit for the recovery of *arhat* (a sum realised as a percentage on all articles sold in the village). 4

(8) A suit for declaration that the defendants were not entitled to *ala malkiyat* dues from the plaintiff was held to be a suit of a civil nature. 5

#### CLAUSE (k).

This clause must be taken to refer to suits by one or more co-sharers against another or others and not to suits against alleged trespassers, in which the other co-sharers have been impleaded only as nominal defendants. 6

**Suits under clause.**—(1) A suit against a co-sharer for share in the price of the trees sold, standing on the joint property is exclusively cognizable by a Revenue Court. The denial by the defendant of the plaintiff's right as co-sharer does not affect jurisdiction. 7

(2) A suit by a co-mortgagee of a holding to recover his share of the produce from another co-mortgagee is cognizable by a Revenue Court under this clause. 8

(3) A suit by a mortgagee for recovery of mesne profits, it being a suit by a co-sharer for a share in the profits of the holding. 9

(4) Where execution of a decree for possession of a share of certain land was stayed, pending appeal, on defendant's application and on their furnishing security, and the plaintiff after obtaining possession of the land, claimed recovery of the mesne profits for the period during which execution was stayed, from

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|-------------------------------------|---|
| 1. 67 P. R. 1905=113 P. L. R. 1905. | 6. 119 P. R. 1894.                                  |
| 2. 110 P. R. 1912=30 P. L. R. 1913  | 7. 52 P. R. 1910=139 P. L. R. 1910<br>=6 I. C. 939. |
| 3. 120 P. R. 1912.                  | 8. 106 P. R. 1890.                                  |
| 4. 204 P. R. 1889 <sup>a</sup>      | 9. 9 P. R. 1905.=65 P. L. R. 1906.                  |
| 5. C. A. 638 of 1894                |   |

the defendants, it was held that the claim so far as it concerned the judgment-debtor was a claim by a co-sharer for the share of the profits of an estate and was a revenue suit. But the claim against the surety was a claim based on a contract and was of a civil nature. **1**

(5) A suit by a person for his share of the produce of the land belonging to the defendant but cultivated in partnership by plaintiff under an agreement is due by a co-sharer for a share in the profits of the holding and is cognizable by a Revenue Court. **2**

(6) A suit by a plaintiff, a joint owner with defendants in certain *khatas* cultivated by tenants and by the defendants, for his share of the profits, against the defendants who had taken all the profits. **3**

(7) A suit by a mortgagee against the mortgagor and another person to whom the land was mortgaged jointly with the plaintiff for a share of mesne profits for several harvests. **4**

(8) Where P and D were brothers and P during father's life-time, had received a separate portion of the estate for his maintenance and the defendant and the father cultivated the residue jointly and on the father's death, inspite of the mutations in the joint names of P and D, the defendant continued to cultivate all the land he had previously held jointly with his father and took the entire produce thereof, and the plaintiff P thereupon sued for his share of the produce, it was held that suit fell under the clause and was triable by a Revenue Court. **5**

**Suits not under the clause and cognizable by Civil Courts.—**(1) A suit by a partner of a lessee against that lessee for refund of earnest money on the allegation that the latter had not given him his share of the produce of the land, is a suit cognizable by a Civil Court. **6**

(2) A suit for the value of a tree on the ground that it is plaintiff's own exclusive property, even though the finding is that it is joint property of plaintiff and defendant. **7**

(3) A claim for a share in profits of agricultural land which has been realised and entered in books as part and parcel of business. **8**

1. 81 P. E. 1904=135 P. L. E. 1904

2. 80 P. R. 1904

3. 88 P. R. 1891.

4. 47 P. R. 1891.

5. 78 P. E. 1903.

6. 108 I. C. 593 (1).

7. 10 P. R. 1911=81 P. L. R. 1911

=50 P. W. R. 1911=9 I. C. 685.

8. 97 P. E. 1910=142 P. W. E. 1910

=11 P. L. R. 1911.

(4) A suit by one of two mortgagees of a holding for declaration as to the amount of produce which he was entitled to receive from the other mortgagee for land cultivated by the latter as a mortgagee, has been held to be a civil suit.<sup>1</sup>

(5) A suit by one occupancy tenant against a co-sharer in the tenancy for a share of the produce does not fall under the clause and is cognizable by a Civil Court. The only recognised co-sharers of a holding are the land owners as defined in the Act and tenants are not land-owners.<sup>2</sup>

(6) Plaintiff filed a suit for the whole income of certain villages less a specific amount, alleging that the defendant's predecessors granted the whole income of the villages to his predecessors in consideration of services rendered subject to a fixed annual payment, the latter to take all risk of profit and loss, held that the suit filed being for the whole profits less an annual charge did not come under this clause and was of a civil nature.<sup>3</sup>

(7) Suit for compensation for improvement and disturbance by one co-sharer against another co-sharer.<sup>4</sup>

(8) A suit by a mortgagee to recover his share of the profits withheld by the defendant where the latter, a tenant with rights of occupancy, had mortgaged his land on the understanding that the mortgagor shall retain possession and the mortgagee receive half the net profits of the tenancy, is of a civil nature as a tenant was not a co-sharer in the holding.<sup>5</sup>

(9) Where plaintiff claiming to be owner of  $\frac{2}{5}$  in certain land, sued defendants, other than the owners of the remaining  $\frac{3}{5}$  for the price of reeds growing upon the said land and alleged to be forcibly cut and carried away by defendants, it was held that the suit was one of a civil nature as alleged trespassers could not be regarded as co-sharers.<sup>6</sup>

**Limitation.**—A suit by a co-sharer in a holding under this clause is governed by 6 years' limitation under Art. 120 of the Limitation Act.<sup>7</sup>

#### CLAUSE (7).

This clause relates to suits for the recovery of over-payments of revenue and does not apply where the suit is by the plaintiffs

1. 112 P. B. 1893

2. 44 P. R. 1895.

3. 55 P. R. 1900.

4. 3 P. R. 1902—70 P. L. R. 1902.

5. 70 P. R. 1892.

6. 119 P. R. 1894.

7. 5 P. R. 1915 Rev=7 P. W. R. 1915 Rev.=32 I.C. 102

to recoup themselves from the defendant who had to pay the land revenue wrongly recovered from the plaintiffs.<sup>1</sup> But, nevertheless, the claim being one arising out of the collection by the Government, of land revenue, Section 158 (2) of the Land Revenue Act applies and the suit is cognizable by a Revenue Court only, though not under this clause.<sup>g</sup> A suit for damages for wrongful seizure of produce is cognizable by Civil Courts, though the plaintiff be a tenant and the defendant a landlord where the suit is not one for over payment of rent or land revenue or one arising out of the lease or conditions on which a tenancy is held.<sup>3</sup> When a tenant rents land for a fixed term for agricultural purposes and pays up to the landlord the rent in advance and is subsequently ejected before the expiry of the said term, his suit for the refund of the portions of the advance does not fall under this clause.<sup>4</sup>

#### CLAUSE (m).

**Suits under the clause.**—(1) Where, plaintiff a *muafidar* of certain lands claimed to be entitled as such to take from the defendant 2/5 of the produce of certain lands for certain harvests and sued for a certain amount as damages or the money value of the share of the produce which the plaintiff ought to have received, it was held that the *muafi* grant being a family one, the suit was one for the emoluments of an *inamdar* and so fell under the clause.<sup>5</sup>

(2) A suit to recover possession of a certain land which plaintiff alleged was given to him revenue free as '*Ala lambarदार*' of the village and of which he had been dispossessed by the defendants was one relating to the emoluments of a village officer and, therefore, was covered by this clause.<sup>6</sup>

(3) Where plaintiffs claim possession of a certain land as proprietors and the claim was resisted by the defendant who was an *Ala Lambarदार* and claimed to hold it by virtue of his office, the suit was held to fall within the purview of this clause.<sup>7</sup>

**Not under the clause.**—(1) A claim for recovery of *panchotra*, it being a civil suit.<sup>8</sup>

(2) A suit based on the allegation that under the revenue rules, plaintiff as *Lambarदार* is entitled to levy from the *khewat-dars* revenue and certain dues called *inam* and that the defendant had wrongfully collected the *inam*, is a civil suit for damages.<sup>9</sup>

1. 73 P. L. R. 1912=45 P. W. R. 1912.

2. Ibid.

3. 80 P. R. 1891

4. 172 P. R. 1888.

5. 52 P. R. 1890.

6. 66 P. R. 1893; 104 P. R. 1894.

7. 28 P. R. 1895.

8. 50 P. R. 1886.

9. 2 P. R. 1887.

## CLAUSE (n).

**Suit by a landlord.**—Under this clause a suit for arrears of rent of land is barred from the cognizance of Civil Courts, even if before the institution of the suit, the landlord has sold the land to a third party.<sup>1</sup> The case, however, is different where the *right to recover the arrears of rent* is sold. Thus it has been held that a suit to recover arrears of rent in respect of agricultural land by a person to whom the landlord has sold *the right to recover the arrears* is a suit cognizable by a Civil Court, because the mere fact that the right to recover the said arrears has been sold to the plaintiff, does not make him the landlord.<sup>2</sup>

**Sums recoverable under Section 14.**—A suit by a mortgagee with possession against the mortgagor for compensation for forcible possession and wrongful cultivation of the mortgaged land, is one for a sum due under Section 14 and is, therefore, exclusively triable by a Revenue Court under this clause.<sup>3</sup> Where however there is no allegation that the defendants occupied the land and cultivated it, but that they forcibly cut and took from the land its produce, the suit is one cognizable by a Civil Court.<sup>4</sup> Where however the mortgagors cultivate the land in contravention of an agreement and without the consent of the mortgagee, the terms of Section 14 are attracted and a suit for compensation would be barred from the cognizance of a Civil Court under this clause.<sup>5</sup>

**Mesne profits.**—A suit for mesne profits of the land by a person entitled to possession of it, falls under this clause and is, therefore, solely cognizable by a Revenue Court.<sup>6</sup>

**Suit on bond.**—A suit based on a bond executed in consideration of arrears of rent, is cognizable by a Civil Court, the claim for rent having been discharged by the bond.<sup>7</sup>

**Other suits cognizable by Revenue Courts.**—(1) A suit by a mortgagee to recover a sum due from the mortgagor who had based the mortgaged land, the suit being one for rent.<sup>8</sup>

(2) Suit by a first mortgagee to recover sums from the 2nd mortgagee for use and occupation of the mortgaged land.<sup>9</sup>

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1. 112 I. C. 495.

2. 61 P. L. R. 1912.

3. 19, 68 P. R. 1891.

4. 119 P. R. 1894.

5. 80 P. R. 1917, o.

6. 53 P. R. 1918.

7. 96 I. C. 275 2); 41 P. B. 1907.

8. 41 P. R. 1893.

9. 1 P. R. 1893 Rev.



(3) A suit by a mortgagee to recover a sum due from the mortgagor who had leased the mortgaged land, the suit being one for rent. 1

(4) A suit by a first mortgagee to recover sums from the 2nd mortgagee for use and occupation of the mortgaged land. 2

(5) The defendants who mortgaged their lands with possession to the plaintiffs, had been holding cultivating possession of the land under the plaintiffs' mortgages. By an agreement entered into between the plaintiffs and the defendants, the defendants agreed to surrender possession to the plaintiffs and not to cultivate it in future. According to the agreement possession was actually given up by the defendants to the plaintiffs and it was agreed that in the event of defendants resuming possession and cultivating the land in future, they would pay Rs. 80. in lump sum as the value of the produce for one year. The plaintiffs sued for the recovery of Rs. 160. on the allegation that the defendants cultivated the land for 2 years in contravention of the agreement. Held that the suit as laid, fell within the purview of this clause. 3

(6) A suit for mesne profits of the land of which the plaintiff was the landlord under S. 14 of the Act during the period for which he claimed mesne profits, but of which he had not obtained possession at the time of the institution of the suit. 4

(7) A suit for damages by plaintiff sub-mortgagee alleging to have obtained possession under the mortgage, but prevented by the defendant from sowing it on the strength of a fictitious lease from the widow of the original owner, fell under S. 14 of the Act and was excluded from the cognizance of Civil Courts by cl. 3, (n) of S. 77 of the Act. 5

(8) Where plaintiffs alleged that certain land, the property of a widow was mortgaged to them with possession, that the defendants prevented plaintiffs from cultivating the land, and they claimed compensation based on the computation of what the crops would have been, had they cultivated the land personally; it was held that the plaintiffs were the landlords as regards the defendants who were in possession of land occupied without the consent of the plaintiffs and the suit fell under the present clause and was triable by the Revenue Court only. 6

1. 41 P. R. 1893.

2. 1 P. R. 1893 Rev.

3. 30 P. R. 1917=41 P. W. R. 1917  
=38 L. C. 580 (82 P. R. 1894  
Ref)

4. 53 P. R. 1918=46 L. C. 437.

5. 26 P. R. 1895

6. 82 P. R. 1894.

(9) Where P the proprietor of the land, put in D to cultivate at a rent of Rs. 22. for which plaintiff brought a suit, and there was a subsidiary agreement that P and D were to cultivate jointly. P giving three ploughings and D one ploughing and they were to share the produce proportionately, it was held that the plaintiff and defendant were landlord and tenant and the claim was for rent falling under the present clause. 1

**Other suits not under the clause.**—(1) A suit for declaration that the sale of a right to realise rent by one person to another is valid, or is not valid, is cognizable by a Civil Court. 2

(2) A suit by the mortgagee of a revenue paying land for recovering from one of the representatives of the original mortgagor its income on the ground that the latter agreed to pay it to the former after realising its rents from the tenants, is a suit of a civil nature. 3

(3) A suit brought by a landlord against his occupancy tenant for damages on the allegation that the defendant who pays to him rent in kind, has without sufficient cause failed to cultivate a part of the land comprised in his tenancy, a suit of a civil nature. 4

(4) A claim by an occupancy tenant based on the ground that he has been prevented by force from cultivating his holding is a suit of a civil nature. 5

(5) A suit by an owner of land for damages from a person who has agreed to buy a growing crop and clear the land of such crop within a stipulated time and who has failed to do so, is purely one for damages for breach of contract and is cognizable by a Civil Court. 6

(6) A suit for damages for the unlawful possession by the defendants of a water mill. 7

(7) A suit to recover arrears of rent in respect of agricultural land by a person, to whom the landlord has sold the right to recover the arrears, is a suit of a civil nature. 8

#### CLAUSE (O).

**Suits under the clause.**—(1) A suit by a *tirni* contractor on account of grazing dues in respect of certain camels from the

1. 106 P. R. 1906.

2. 1428 Lah. 908.

3. 128 P. L. R. 1916.

4. 59 P. L. R. 1917=90 P. W. R. 1917; 42 I. C. 279.

5. 55 P. W. R. 1908=114 P. L. R. 1908.

6. 14 P. R. 1894.

7. 41 P. R. 1892.

8. 67 P. W. R. 1912=13 I. C. 511.

defendant who had undertaken to pay the amount, falls under the provisions of this clause. 1

(2) A suit for money due for the use of masonry outlet or *moga*, made by plaintiff for the irrigation of defendant's land; it being a suit for the recovery of a sum in the nature of rent. 2

**Suits not under the clause.**—(1) A suit by a lessee of Government parade ground for money due on account of grazing dues, the parade ground not being an estate within the meaning of Punjab Land Revenue Act, is cognizable by a Civil Court. 3

(2) A suit by a superior landlord, by virtue of his being the owner of a certain canal which irrigated the defendant tenant's land, for a certain share of the produce of such land in addition to the '*abiana*' or water rate as compensation for his cleaning out and repairing the canal year by year, is in effect a suit to enforce a special kind of customary payment in connection with a peculiar local custom of canal irrigation and is, therefore, cognizable by a Civil Court. 4

CLAUSE (p).

**Scope.**—This clause refers to suits for sums payable on account of land revenue as such, *i. e.*, suits for land revenue or arrears of land revenue by a person entitled to receive it. It does not cover a claim as to money advanced to a person to pay land revenue and not repaid by borrower which is certainly cognizable by a Civil Court. 5

**Suits under the clause.**—(1) A suit for the recovery of the amount due on account of date revenue as is assessed in Dera Ghazi Khan District. 6

(2) A suit for damages or value of share of produce in kind due to a *muafidar*. 7

(3) A suit for a declaration of a right to recover dues in kind; is one arising out of the conditions of a tenancy and is cognizable by a Revenue Court only. 8

(4) A suit for a declaration that the defendants are not entitled to levy *ala milkiyat* dues. 9

1. 30 P. R. 1895.

2. 164 P. R. 1888.

3. 13 P. R. 1895.

4. 103 P. R. 1887.

5. 126 P. R. 1906=98 P. L. R. 1907.

6. 109 P. R. 1890.

7. 52 P. R. 1890.

8. 73 I. C. 260 (N. W. F. P.)

9. 1 P. Ad. No. 10.

**Suits not under the clause.**—(1) Where A, a *Lambardar* sued K, on a *ruqa* drawn by G on K and signed by way of acceptance by K for money due by G and his brother by way of land revenue and mutation fees, it was held that the liability of K, being on the *ruqa* and not under the present clause, the suit was one of a civil nature.<sup>1</sup>

(2) Where plaintiffs and the defendants were, according to the plaint, lessees of the *tirni* or Government grazing tax for a certain period and the plaintiffs who had paid into the Government treasury the full price of the lease, claimed from the defendant his share of the amount, the suit was held to be a civil suit.<sup>2</sup>

#### ADMINISTRATIVE CONTROL.

##### *Superintendence and control of Revenue Officers and Revenue Courts.*

S. 78. (1) The general superintendence and control over all other Revenue Officers and Revenue Courts shall be vested in, and all such officers and Courts shall be subordinate to the Financial Commissioner.

(2) Subject to the general superintendence and control of the Financial Commissioner, a Commissioner shall control all other Revenue Officers and Revenue Courts in his division.

(3) Subject as aforesaid and to the control of the Commissioner a Collector shall control all other Revenue Officers and Revenue Courts in his district.

##### *Power to distribute business and withdraw and transfer cases.*

S. 79. (1) The Financial Commissioner or a Commissioner or Collector may by written order distribute, in such manner as he thinks fit, any business cognizable by any Revenue Officer or Revenue Court under this control.

(2) The Financial Commissioner or a Commissioner or Collector may withdraw any case pending before any Revenue Officer or Revenue Court under his control, and

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1. 9 P. R. 1896.

2. 33 P. R. 1894.

either dispose of it himself, or by written order, refer it for disposal to any other Revenue Officer or Revenue Court under his control.

(3) - An order under sub-section (1) or sub-section (2) shall not empower any Revenue Officer or Revenue Court to exercise any powers or deal with any business which he or it would not be competent to exercise or deal with within the local limits of his or its own jurisdiction.

#### APPEAL, REVIEW AND REVISION.

##### *Appeals.*

S. 80. Subject to the provisions of this Act and the rules there-under, an appeal shall lie from an original or appellate order or decree, made under this Act by a Revenue Officer or Revenue Court, as follows, namely,—

- (a) to the Collector when the order or decree is made by an Assistant Collector of either grade ;
- (b) to the Commissioner when the order or decree is made by a Collector ;
- (c) to the Financial Commissioner when the order or decree is made by a Commissioner ;

##### Provided that—

- (i) an appeal from an order or decree made by an Assistant Collector of the first grade specially empowered by name in that behalf by the Local Government in a suit mentioned in the first group of sub-section (3) of Section 77, shall lie to the Commissioner and not to the Collector ;
- (ii) when an original order or decree is confirmed on first appeal, a further appeal shall not lie ;
- (iii) when any such order or decree is modified or reversed on appeal by the Collector, the order or decree made by the Commissioner on further appeal, if any, to him shall be final.

## NOTES.

**Second appeal.**—The combined effect of clauses (ii) and (iii) of proviso to Section 80 may be stated in the shape of six propositions as given below.—

(1) If a suit is dismissed or decreed and on appeal the decree of the trial court is confirmed in its entirety, no second appeal is competent.

(2) If a suit is dismissed or decreed and on appeal the decree of the trial court is reversed or modified in its entirety, a second appeal would be at the instance of the aggrieved party.

(3) If a suit is dismissed by the trial court but on appeal by the plaintiff is partly decreed, no second appeal is competent in respect of the part of the suit dismissed by both the courts.

(4) But in the above noted case, it would be competent to the defendants to file a second appeal with regard to the part of the claim decreed by the appellate court.

(5) If a suit is decreed by the trial court and on defendants appealing, the appeal is partly accepted and the decree is consequently modified in favour of the defendant, a second appeal by the defendant is not competent.

(6) But in the above noted case it is open to the plaintiff to file a second appeal with regard to the part of the claim dismissed by the appellate court.

To bar a second appeal the concurrence of the two courts must be absolute or else clause (iii) would be applicable and a second appeal will be competent. 1 Thus where the first court found that the plaintiff was entitled to rights of occupancy under Section 5 of the Act, and the appellate court found that he came under Section 8, it was held that the decree of the first court was modified by the appellate court and that the second appeal did lie. 2 The correction of an error and consequent modification of the decree of a court of 1st instance by the Collector gives a right of further appeal. 3 Modification of a decree or order gives the right of appeal not only against the modified part of it, but against the whole of it. 4 The reversal by the first appellate court of the part of the decree for possession of land awarding compensation to defendant for a building thereon, by giving the defendant an option to remove the materials in lieu of compensation

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1. 76 P. R. 1869 See also 23 and 3. 3 P. R. 1891 Rev.  
63 P. R. 1879; 12 P. R. 1860. 4. Ibid.  
2. 11 P. R. 1876.

is a modification or reversal within the meaning of this section and gives a right of second appeal.<sup>1</sup> In 12 P. R. 1880 it was laid down that reversal against two of several defendants by the first appellate court of a decree passed against all defendants was a reversal contemplated by clause (iii) and conferred a right of appeal on other defendants. But in 1 P. R. 1890. (Rev.) it has been laid down that if the effect of an appellate decree is to cancel the original decree so far as it affects some tenants, while it maintains the decree against others, the reversal of the decree against the former, does not give a right of further appeal to the latter whose interests are distinct or separate. It is, however, clear that where a suit is dismissed by the trial court but is partly accepted by the appellate court, no second appeal is competent with regard to the part of the suit dismissed by both the courts.<sup>2</sup> Where however, a suit is decreed by the trial court on defendants appealing, the appellate court modifies the decree in favour of the defendants, a second appeal by the defendants will not lie.<sup>3</sup>

If a Collector on an appeal as a Revenue Court, passes an order of remand under O. 41, rule 23, C.P.C. 1908, further appeal from such an order of the Collector lies to the Commissioner and not to the Financial Commissioner.<sup>4</sup>

*Limitation for appeals.*

S. 81. The period of limitation for an appeal under the last foregoing section shall run from the date of the order or decree appealed against, and shall be as follows, that is to say,—

- (a) when the appeal lies to the Collector—thirty days ;
- (c) when the appeal lies to the Commissioner—sixty days ;
- (b) when the appeal lies to the Financial Commission er—ninety days.

NOTES.

This section prescribing limitation for appeals as it does, is to be read with Ss. 5 and 12 of Limitation Act (IX of 1908), the former laying down that an appeal may be admitted after the period of limitation prescribed therefore has expired when the appellant can satisfy the court that he had sufficient cause for not filing the appeal within the proper period and the latter requiring that the time requisite for obtaining a copy of the judgment or order on which appeal is founded shall be excluded.<sup>5</sup>

1. 57 P. R. 1878.

2. 1931 Lah. L. T. 13.

3. 1931 Lah. L. T. 12.

4. 1 P. R. 1905 Rev. - 35 P. L. R. 1906.

5. 92 P. R. 1886.

*Review by Revenue Officers.*

S. 82. (1) A Revenue Officer, as such, may either of his own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm any order passed by himself or by any of his predecessors in office:

Provided as follows :—

- (a) when a Commissioner or Collector thinks it necessary to review any order which he has not himself passed, and when a Revenue Officer of a class below that of Collector purposes to review any order whether passed by himself or by any of his predecessors in office; he shall first obtain the sanction of the Revenue Officer to whose control he is immediately subject ;
- (b) an application for review of an order shall not be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue Officer that he had sufficient cause for not making the application within that period ;
- (c) an order shall not be modified or reversed unless reasonable notice has been given to the parties effected thereby to appear and be heard in support of the order ;
- (d) an order against which an appeal has been preferred shall not be reviewed.

(2) For the purposes of this section the Collector shall be deemed to be the successor in office of any Revenue Officer of a lower class who has left the district or has ceased to exercise powers as a Revenue Officer, and to whom there is no successor in office.

(3) An appeal shall not lie from an order refusing to review, or confirming on review, a previous order.



NOTES

**Scope.**—This section applies only to Revenue officers and not to Revenue Courts. It applies only when a Revenue Officer who is not sitting as a Revenue Court, wishes to modify or revise an order passed by another Revenue Officer who was also not acting as a Revenue Court.<sup>1</sup>

*Computation of periods limited for appeals and applications for review.*

S. 83. In the computation of the period for an appeal from, or an application for the review of, an order under this Act, the limitation therefor shall be governed by the Indian Limitation Act, 1908.

*Power to call for, examine and revise proceedings of Revenue Officer and Revenue Courts.*

S. 84. (1) The Financial Commissioner may at any time call for the record of any case pending before, or disposed of by, any Revenue Officer or Revenue Court subordinate to him.

(2) A Commissioner or Collector may call for the record of any case pending before, or disposed of by, any Revenue Officer or Revenue Court under his control.

(3) If in any case in which a Commissioner or Collector has called for a record he is of opinion that the proceedings taken or the order or decree made should be modified or reversed, he shall submit the record with his opinion on the case for the orders of the Financial Commissioner.

(4) If, after examining a record called for by himself under sub-section (1) or submitted to him under sub-section (3), the Financial Commissioner is of opinion that it is inexpedient to interfere with the proceedings or the order or decree, he shall pass an order accordingly.

(5) If, after examining the record, the Financial Commissioner is of opinion that it is expedient to interfere with the proceedings or the order or decree on any ground on which the High Court in the exercise of its revisional jurisdiction may under the law for the time being in force interfere with the proceedings or an order or decree of a Civil Court, he shall fix a day for hearing the case, and may, on that or any subsequent day to which he may adjourn the hearing or which he may appoint in this behalf, pass such order as he thinks fit in the case.

(6) Except when the Financial Commissioner fixes under sub-section (5) a day for hearing the case, no party has any right to be heard before the Financial Commissioner when exercising his powers under this section.

#### NOTES.

**Grounds on which High Court may interfere on revision.**—The law relating to powers of the High Court to interfere in revision in the orders or decrees of the lower courts is embodied in S. 44 of the Punjab Courts Act, 1918. The section runs as follows:—

The High Courts may call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies thereto, and if such subordinate court appears—

- (a) to have exercised a jurisdiction not vested in it by law; or
- (b) to have failed to exercise a jurisdiction so vested; or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity; the High Court may make such order in the case as it thinks fit.

The leading cases on the revisional power of High Courts are 11 C. 6 P.C., and 40 Mad. 793 P. C. The following passage from 40 M. 793 P. C. will illustrate the scope of such powers. "Section 115 of Civil Procedure Code" observed their lordships of the Privy Council, "enables the High Court, in a case in which no appeal lies, to call for the record of any case if the court by which the case was decided appears to have acted in the exercise of a jurisdiction not vested in it by law, or to have failed to have exercised a jurisdiction vested in it or to have exercised its jurisdiction illegally or with material irregularity and further enables it to pass such an order in the case as the court may think fit. It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved." The courts have jurisdiction to decide wrong as well as right and the mere fact that a conclusion erroneous in law or fact has been arrived at, does entitle a person to move the High Court in revision.<sup>1</sup> It is a well established practice that where another remedy exists to an aggrieved party, the High Court will not interfere in revision.<sup>2</sup> This rule though

1 9 Lah 308

2 21 P. R. 1898 F. B; 76 P. R.

1903; 99 P. R. 1915; 72 P. R. 1918.

usual is not invariable and there is nothing in law which prohibits a court from interfering when grave injustice would result from interference even though another remedy might be open to the petitioner.<sup>1</sup> So far at least the Lahore High Court is concerned, the law is definitely settled that an interlocutory order does not amount to a decision of a case and is, therefore, not revisable.<sup>2</sup> It is discretionary with the High Court to interfere in revision and it will not exercise its powers merely because the lower court has erred on a technical point, if it appears that the lower court's decision does substantial justice between the parties.<sup>3</sup> In other words the High Court will not interfere in revision, even if the lower court has acted without jurisdiction unless a failure of justice has resulted from such a defect.<sup>4</sup> When interference is likely to work not in the interests of justice but against it, a revision will not be allowed.<sup>5</sup>

**Examples of interference by High Court in revision.**—(1) Findings of fact based on conjectures and not supported by evidence on record, must be set aside on revision where no appeal is allowed by law. The Court has to bear in mind the pleadings of the parties and a judgment based on an entire misapprehension of the case set up by a party cannot be allowed to stand.<sup>6</sup>

(2) If a document on which the finding of fact is principally based is definite, a court in misconstruing it, commits an irregularity which renders a revision competent.<sup>7</sup>

(3) Omission to determine a question of fact on which the decision as to limitation depends is a material irregularity, for which a revision lies.<sup>8</sup>

(4) Wrong decision of the lower court when no appeal lies, the High Court has power to interfere with.<sup>9</sup>

(5) Wrong allocation of the burden of proof constitutes a material irregularity justifying the interference of the High Court in revision.<sup>10</sup> But a contrary view was taken in 92 I. C. 46.

(6) A revision is competent when it can be shown that a suit has been erroneously held to be either within time or barred by limitation, owing to the application to it of an article of the Limitation Act which cannot apply to the facts.<sup>11</sup>

(7) An order passed under O. XXIII, rule 1 C.P.C. giving the plaintiff permission to withdraw the suit with liberty to bring a fresh one if open to inference in revision.<sup>12</sup>

1. 4 L. L. J. 71; 118 I. C. 393.

2. 5 Lah. 288 F. B.

3. 59 P. W. R. 1912

4. 36 P. R. 1902 F. B.; 2 L. L. J.

673

5. 127 I. C. 215 (2)

6. 22 P. L. R. 1919; See also 108

P. B. 1890; 41 P. R. 1898.

7. 3 P. W. R. 1919.

8. 37 P. L. R. 1919

9. 2 P. W. R. 1919.

10. 3 Lah. L. J. 417; See also 41

P. R. 1898.

11. 50 P. L. R. 1918 (39 C. 473; 20.

A 78 Ref.) See 129 P. W. R.

12. 117 P. W. R. 1918=46 I. C.

181.

(8) Misunderstanding and misapplication of law by lower court resulting in an erroneous decision is, a material irregularity justifying revision.1

(9) Framing an incorrect issue or giving an incorrect statement of the points for determination in an appeal.2

(10) The grant of a decree on a compromise entered into on behalf of a minor by the guardian *ad litem* without making any enquiry as to whether the compromise is beneficial to the minor or not.3

(11) (i) Starting a new ground of defence not pleaded by the defendant, (ii) absence of finding on material points, (iii) wrong allocation of *onus* of proof, (iv) failing to notice a presumption, and (v) indulging in generalities and conjectures about plaintiff's general bad conduct instead of giving definite findings on the evidence as regards specific misbehaviour, are material irregularities justifying a revision.4

(12) Omission to state points for determination or reasons for the decision on the part of the appellate court was held to justify reversal in revision.5

(13) Where a plaintiff has in truth no cause of action and a court decrees his claim, it exercises jurisdiction not vested in it by law, and a revision is competent.6

(14) Where a plaintiff files a plaint stating facts, which, if true constitute in law a cause of action and the court of 1st instance rejects the plaint or dismisses the suit merely on the ground that these facts constitute no cause, the court fails to exercise a jurisdiction vested in it by law and a revision lies.7

(15) Material irregularity in framing the issues and a complete misapprehension of the case presented for decision by the parties to the court would call for interference in revision.8

(16) Omission on the part of a court to bring its mind to bear on the question whether the evidence adduced is admissible or not is a good ground for revision.9

(17) An error of procedure due to a misapprehension of the law substantive or adjective.10

1. 146 P. W. R 1918=46 I. C. 777.  
2. 206 P. R. 1889  
3. 105 P. R. 1889.  
4. 41 P. E. 1898; 1930 Lah. 80.  
5. 72 P. E. 1890.  
6. 75 P. R. 1890.

7. *Ibid.*  
8. 108 P. R. 1890; 5 I. C. 294 (1)  
9. 68 P. R. 1897 (Ref. 6 P. R. 1901  
Rev  
10. 34 P. R. 1897.

(18) Omission to raise and try an issue of fact which if decided in defendant's favour would have been a complete answer to the claim.<sup>1</sup>

(19) Where the trial court did not dismiss the suit or the first occasion when default was made and the plaintiffs absence on the second occasion had been accounted, the lower appellate court's refusal to accept the appeal is a material irregularity justifying interference in revision.<sup>2</sup>

(20) The preliminary decision as to appeal being not duly authorised by the appellant is an adjudication on a question relating to jurisdiction over the case and wrong decision on the point is open to revision.<sup>3</sup>

(21) Declining jurisdiction to release certain property from attachment under the impression that the application before the court was barred by authority and coming to no finding on facts furnishes a ground for revision.<sup>4</sup>

(22) The misrepresentation of a fact apparent on the record or the erroneous assumption of a fact, or the applicability of a rule, or a failure to appreciate the true points for determination raised by a general issue, such as one of *res judicata* or limitation are material irregularities furnishing ground for revision. An irregularity is material when it results in the dismissal of a suit on technical ground apart from the merits, which can be shown to be erroneous.<sup>5</sup>

(23) Reversal by an appellate court of a decree of a subordinate court merely by reason of an irregularity not affecting the merits of the case or the jurisdiction of the court.<sup>6</sup>

(24) Where an appeal is rejected under O. 41, rule 11 it is a decree appealable as such. But where no decree is drawn up & revision would lie. When the order of the lower court proceed on a mistake of fact, a petition to revise the same lies.<sup>7</sup>

(25) A finding of fact not based on evidence is liable to be upset in revision.<sup>8</sup>

(26) Where an application for amendment of plaint was filed before framing of issues but was rejected, the High Court interfered in revision and allowed amendment. High Court is competent to interfere in revision with an interlocutory order though it will do so sparingly.<sup>9</sup>

1. 19 P. R. 1894  
2. 60 P. R. 1897.  
3. 54 P. R. 1896.  
4. 8 P. R. 1897.  
5. 26 P. R. 1892.

6. 65 P. R. 1891  
7. 191 P. L. R. 1914=23 I. C. 902=  
116 P. W. R. 1914.  
8. 93 P. L. R. 1917.  
9. 76 P. R. 1917=40 I. C. 65.

(27) Appellate court's omission to consider the question of estoppel was a material irregularity which justifies interference in revision.

(28) An appellate court cannot set up an entirely new case for a party and if it does so, it acts with material irregularity justifying interference in revision.1

(29) When the lower court refused to amend the decree on the ground that it was in conformity with the judgment while in fact it was not, the High Court could interfere with in revision.2

(30) Staying execution proceedings by wrong application of S. 10 C. P. C. is open to revision.3

(31) A judge acts with material irregularity in following a ruling which has become obsolete and a revision is competent.4

(32) A court acts without jurisdiction in referring a matter to arbitration where a party interested in the dispute does not join in making the reference and with material irregularity in not affording an opportunity to a party to file objections within the statutory period, the order is revisable.5

(33). Where the lower Court passes an obviously wrong order in that it overlooks the express possessions of a surety bond and exonerates the surety, the order can be rectified in revision.6

**Examples of refusal to interfere in revision.**—(1) Interlocutory orders dealing with the decisions on question of jurisdiction, are not open to revision.7

(2) Ordinary no revision lies to the High Court from an interlocutory order where the final decree to be passed by the court of 1st instance would be appealable.8

(3) A decree based on private award filed in court is not open to revision partly where there is no *prima facie* material irregularity or illegality in the award.9

(4) Even where revision lies, it will be rejected if there is another remedy open to the applicant.10

(5) It was held that the Chief Court would not entertain an application for revision made on the ground that the lower appellate court has taken wrong view of law in making the petitioners respondents, liable to the claim if it appeared that their conduct was most reprehensible and they had in fact received the money claimed which was ordered to be refunded by them to the plaintiff.11

1. 98 I. C. 867 (2).

2. 115 I. C. 542

3. 1929 Lah 694.

4. 1929 Lah 824.

5. 1929 Lah. 171.

6. 81 P. L. R. 105.

7. 149 P. W. R. 1916=8 P. L. R. 1917=35 I. C. 608.

8. 76 P. L. R. 1916=36 I. C. 57.

9. 114 P. L. R. 1914

10. 72 P. R. 1918=31 P. L. R. 1918

=148 P. W. R. 1918=46 I. C.

589; 120 P. W. R. 1918=46 I. C.

189; 15 P. R. 1901.

11. 88 P. L. R. 1917.

(6) Where on the objection of the defendant that the court has no jurisdiction to entertain the suit, the court decides that it has jurisdiction, the order of the court does not amount to a decision of a case and no revision lies against it.**1**

(7) Where an applicant had delayed in appealing to the proper court till his appeal was barred by time, the Chief Court refused to entertain his application for revision.**2**

(8) An order based on wrong inference drawn from admitted facts is not open to revision.**3**

(9) The erroneous construction of a judgment and decree is not a material irregularity and forms no ground for revision.**4**

(10) Erroneous decision by the appellate court that the court of first instance had jurisdiction to hear the suit is no ground for revision.**5**

(11) Declining to order rateable distribution of part of the property of the debtor under an erroneous impression as to the extent of the lien of a decree holder.**6**

(12) Hearing an appeal on an adjourned date without fresh notice to a respondent.**7**

(13) An appellate court remanding a case under Section 566 C. P. C. 1882 (O. 41, r. 25, C. P. C. 1908) to a court other than the court which tried the case, was held not to have exercised a jurisdiction not vested in law.**8**

(14) An erroneous decision on merits whether it be in conclusion drawn from the evidence or in the application of the law to the facts, is not an irregularity furnishing ground for revision.**9**

(15) A decision by the lower court that the arbitrators were not bound to take all the evidence produced, but only so much as they considered necessary for the purposes of justice though wrong, did not furnish any ground for revision.**10**

(16) An appellate judgment deciding though erroneously that the court of 1st instance had jurisdiction to hear the case, is not open to revision as the appellate court cannot be said to have exercised a jurisdiction not vested in it by law, simply because it came to a wrong finding.**11**

(17) A decree in a suit for recovery of possession under Section 9, Specific Relief Act, in favour of the plaintiff, is not open to revision on the ground that the court below has misapprehended and misrepresented the evidence, oral and documentary, on the

1. 40 P.W.R. 1921. See also 31 P.E. 1902; 64 P.R. 1905; 43 P.W.R. 1910	Dist 23 P.R. 1906. Ref. 144 P.R. 1908 64 P.R. 1911)
2. 71 P.R. 1884.	7. 34 P.R. 1890.
3. 6 P.R. 1889	8. 11 P.R. 1886.
4. 60 P.R. 1891.	9. 9 P.R. 1894.
5. 46 P.R. 1886.	10. 58 P.R. 1889.
6. 65 P.R. 1905 (70 P.R. 1904 fol.	11. 46 P.R. 1886.

record where, on the allegations contained in the plaint, the plaintiff had a cause of action and the court had jurisdiction to entertain the suit and the errors attributed by the petitioner to the court below, were intrinsic to the inquiry and decision.<sup>1</sup>

(18) The decision as to limitation does not open the way to revision, where the court below has not acted with material irregularity in the exercise of jurisdiction vested in it.<sup>2</sup>

(19) No revision lies against an order refusing permission to withdraw a suit.<sup>3</sup>

(20) No revision is competent against an order refusing amendment of plaint.<sup>4</sup>

(21) A wrong decision by a lower appellate court on a point of limitation is not an illegality or material irregularity justifying interference in revision.<sup>5</sup>

(22) Where a party has accepted a lower court's order, the High Court will not interfere in revision.<sup>6</sup>

**Financial Commissioner's revisional powers.**—The exercise of revisional powers by the Financial Commissioner is discretionary and quite unfettered, the broad principle to follow being to interfere only where a refusal to interfere would result in injustice or failure of justice.<sup>7</sup> He is not bound to interfere even where there is a defect of jurisdiction unless he is satisfied that his declining to interfere would lead to an injustice or failure of justice.<sup>8</sup> The Financial Commissioner will exercise his powers under this section (within the limits set by the C. P. C. to the revisional jurisdiction of the High Court) only where interference is necessary in order that substantial justice may be done.<sup>9</sup>

Though a court of revision need not interfere where substantial justice has been done even if there has been defect of jurisdiction, there is no authority for the converse proposition that a court of revision can interfere to do substantial justice even if there has been no defect of jurisdiction.<sup>10</sup> A Financial Commissioner can no more revise the order of a past Financial Commissioner under Section 84, Punjab Tenancy Act than he can revise an order of his colleague.<sup>11</sup>

Financial Commissioner's revisional powers under the Tenancy Act are smaller than those he possesses under the Land Revenue

1. 13 P. B. 1903.

2. 123 I. C. 571.

3. 31 P. L. R. 456 (1).

4. *Ibid.*

5. 93 I. C. 855.

6. 96 I. C. 420.

7. 2 P. R. 1910 Rev.=6 I. C. 735.

8. 5 P. B. 1903 Rev. 1 P. R. 1911

Rev.=31 P. L. R. 1971

9. 198 P. L. R. 1915=25 I. C. 867;

Lah. Lr vol. II p. 1.

10. 1923 L. L. T. p. 51.

11. 1926 L. L. T. p. 27.



Act. The Financial Commissioner, however, will always exercise his powers under this section where flagrant injustice would be done if the order of the Court below is allowed to stand.<sup>1</sup>

A technical irregularity is not a good ground for interference on the revision side.<sup>2</sup> The circumstances which would justify the court of the Financial Commissioner on its revision side, in holding that a subordinate court had acted either without jurisdiction or illegally or with material irregularity would have to be of a very exceptional kind, though absolute perversity in the finding or a serious misapplication of law of evidence in arriving at it, might justify such interference.<sup>3</sup>

**Held to be good grounds for Revision.**—(1) Where the Collector and the Commissioner ignored a previous decision between the predecessors in interest of the present parties which constituted *res judicata*, held that it amounted to material irregularity and authorised the Financial Commissioner to interfere in revision.<sup>4</sup>

(2) A judgment of the appellate court which does not deal with the points raised in the memorandum of appeal must be regarded as defective and irregular and is liable to be set aside in revision. Similarly a judgment which does not dispose of the pleas raised by the defendant but is based on conjectures and far-fetched theories, is a defective judgment.<sup>5</sup>

(3) Application of the rule of limitation which in fact does not apply to the case at all, amounts to a material irregularity.<sup>6</sup>

(4) Not dealing with the question of compensation in a suit whether for ejection by the landlord or to contest the notice of ejection by the tenant, amounts to a material irregularity warranting interference on the revision side.<sup>7</sup>

(5) In a case in which the Commissioner did not fix a date for hearing the appeal, but disposed it of on merits on a day of which notice had not been given to the appellant, it was held that the Commissioner had acted with material irregularity.<sup>8</sup>

(6) It is a material irregularity if a court of first instance omits in a suit to contest a notice of ejection to call upon the tenant to file a statement of his claim, if any, to compensation for improvements or for disturbance and of the grounds thereof, in pursuance of the directions contained in Section 70 of the Act.<sup>9</sup>

1. 1826 Lah. L. T. 19.

2. 198 P. L. E. 1915...25 I. C. 867;  
Lah. L.T. vol. II p. 1.

3. 1 P. E. 1914 Rev.

4. 2 Lah. L. T. 7.

5. 4 P. W. R. 1916 Rev.

1929 Lah. L. T. 38; 1931 Lah.  
L. T. 7.

6. 6 P. R. 1901 Rev.

7. 13 P. R. 1890 Rev.

8. 7 P. R. 1883 Rev.

9. 6 P. R. 1892 Rev.

(7) It is a material irregularity to dispose of a suit by a tenant to contest his liability to ejection without determining the question of compensation in accordance with the provisions of Section 70 of the Act.1

(8) It is a material irregularity to decree occupancy rights of a higher kind than those sued for.2

(9) A wrong decision as to *res judicata*, if it prevents a case being heard on the merits.3

(10) Failure to exercise jurisdiction to grant relief against the forfeiture for non-payment of rent.4

(11) Ignoring the distinction made by law between different classes of tenants and to fix rent without regard to the section under which they come.5

(12) Omission to determine the status of a tenant in a suit for enhancement of rent. 6

(13) Disposal of an appeal by a Collector in camp without giving notice of the place of hearing.7

(14) Holding back a reference to arbitrators or attaching thereto, a condition that certain costs should be paid.8

(15) Omission in a suit to contest a notice of ejection, to frame and decide the issue whether the plaintiff is entitled to the occupancy rights as claimed or not.9

(16) Disposal of a claim to occupancy rights without reference to the new Tenancy Act.10

(17) Decreeing on vague grounds rights of occupancy under Section 8 of the Act without considering the test laid down in 4 P. R. 1875 Rev. 11

(18) Dismissal in *toto* of a suit to contest a notice of ejection, on the ground that in order to succeed under Section 5 (1) (a), the tenant must show a continuous possession of his entire holding and not merely of a fraction thereof 12

(19) Non-specification of precise land in a decree—(a) in a suit for ejection, (b) declaring a tenant to have acquired occupancy rights.13

1. 4 P. R. 1891. Rev.

2. 1 P. B. 1892 Rev.

3. 2 P. R. 1910 Rev.

4. 6 P. R. 1912 Rev.  
1929 Lah L. T. 19

5. 12 P. R. 1890 Rev.

6. 5 P. R. 1893 Rev.; 5 P. R. 1895  
Rev.

7. 7 P. B. 1892 Rev.

8. 11 P. R. 1885 Rev.

9. 2 P. R. 1891 Rev.

10. 16 P. R. 1892 Rev.

11. 17 P. R. 1892 Rev.

12. 5 P. R. 1891 Rev.

13. 6 P. R. 1891 Rev.

(20) The dismissal in default of appeal where no previous notice is given to the appellant.<sup>1</sup>

(21) Refusal by lower courts to consider the defendant's claim to an occupancy status under Section 5 because his predecessor in interest had been recorded as a Section 6 tenant in 1879 and had taken no steps to claim a higher status, is a material irregularity.<sup>2</sup>

(22) If a tenant claims occupancy rights under Section 5 and that claim is not decreed, the courts would be acting with material irregularity, if they did not consider whether with reference to the facts in the case, plaintiff was not entitled to occupancy rights of a class inferior to that specially set forth in the plaint.<sup>3</sup>

(23) Deciding an appeal without being able to examine the record.<sup>4</sup>

(24) Referring to Civil Court the party in whose favour the entry in the revenue papers stood and disregarding the presumption of truth attached to revenue papers.<sup>5</sup>

(25) The inclusion in the notice of ejectment and in the subsequent delivery of possession, of a particular field held in previous judicial proceedings to be a part of the land from which the tenants were not liable to ejectment, was a material irregularity.<sup>6</sup>

(26) A failure on the part of the court to determine the question of compensation, in a suit for enhancement of rent, for improvements effected by the tenant, is an illegality justifying interference in revision.<sup>7</sup>

(27) A decision whether a document is or is not properly stamped, is not a decision as to jurisdiction. It is a decision taken in the exercise of jurisdiction. But the consequences of decision may involve a question of jurisdiction. When a document is insufficiently stamped, it is properly presented to the extent to which it is stamped and if the court finds that it is altogether improperly stamped and consequently rejects it *in toto*, on account of the period of limitation having expired, it irregularly refuses jurisdiction.<sup>8</sup>

(28) Financial Commissioner is competent to interfere in revision with concurrent findings of the courts below where the

1. 19 P. R. 1892 Rev.  
2. 3 P. R. 1893 Rev.  
3. 3 P. R. 1898 Rev  
4. Ibid.

5. 54 P. L. R. 1912.  
6. 198 P. L. R. 1915—4 P. R. 1914 Rev.  
7. 1926 Lah. L. T. 37.  
8. 1928 Lah. L. T. 19.

order sought to be revised if allowed to stand, would result in a miscarriage of justice.1

(29) Where an appellate court dismisses an appeal wrongly on the ground that the court fee paid on the memorandum of appeal is insufficient, the order is open to revision.2

(30) An application under Section 50, Tenancy Act, for recovery of possession of occupancy holding or for compensation or both, is to be treated like a regular suit. Failure to adopt procedure prescribed for suits, amounts to a material irregularity justifying revision.3

(31) Passing an order in a summary fashion without hearing the opposite party, is *ultra vires* and open to revision.4

(32) Where an appellate court hears an appeal on merits knowing it to be time-barred, it commits material irregularity.5

(33) When the court of appeal writes an entirely exiguous and unsatisfactory judgment, it is liable to be set aside on revision.6

(34) Failure to consider question of limitation and entertain a time-barred appeal without considering the application of Section 5, Limitation Act, is a material irregularity that would support an interference in revision.7

**Held not to be good ground for revision.**—(1) The fact that the ejectment proceedings were twice in succession decided otherwise than upon merits, does not justify interference upon the revision side in the absence of any indication of material irregularity.8

(2) The omission of the direction for ejectment from the order of dismissal of the suit to contest liability to ejectment, is only a technical irregularity.9

(3) A defect of jurisdiction is not sufficient ground for interference, unless it is shown that refusal to interfere would lead to injustice or failure of justice.10

(4) An erroneous decision on a question of law or fact where it has been arrived at in a perfectly legal way, is not open to revision.11

1. 1931 Lah. L. T. 9

2. 1931 Lah. L. T. 24.

3. 1927 Lah. L. T. 81.

4. 1925 Lah. L. T. 2

5. 1924 Lah. L. T. 26.

6. 1929 Lah. L. T. 49.

7. 1980 Lah. L. T. 32.

8. 198 P. L. R. 1915-4 P. R. 1914  
Rev.; 25 L. O. 831.

9. Ibid.

10. 5 P. R. 1903; 144 P. R. 1903; 1 P. R. 1911.

11. 1929 Lah. L. T. 3; 1928 L. L. T. 51.

(5) A wrong decision on a question of limitation made in the exercise of jurisdiction is only an error of law and is, therefore, not open to revision.<sup>1</sup>

(6) Where a relevant provision of law has been taken into consideration, the mere omission to specifically mention it, is not an irregularity that would call for interference in revision.<sup>2</sup>

**Right to be heard.**—Sub-section 6 read with sub-sections (4) and (5) makes it clear that in case the Financial Commissioner does not intend to interfere, he may pass orders, if he likes without calling the parties. But in case he intends to interfere, the parties have a right to be heard.

**Restoration of revision.**—An application for re-hearing of an application for revision which has been dismissed in default, is not the correct mode of procedure; a fresh application for revision should be put in.<sup>3</sup>

## PROCEDURE.

### *Procedure of Revenue Officers.*

**S. 85.** (1) The Local Government may make rules consistent with this Act for regulating the procedure of Revenue Officers under this Act in cases in which a procedure is not prescribed by this Act.

(2) The rules may provide, among other matters, for the mode of enforcing orders of ejectment from, and delivery of possession of immoveable property, and rules providing for those matters may confer on a Revenue Officer all or any of the powers in regard to contempts, resistance and the like which a Civil Court may exercise in the execution of a decree whereby it has adjudged ejectment from, or delivery of possession of, such property.

(3) The rules may also provide for the mode of executing orders as to costs, and may adapt to proceedings under this Act all or any of the provisions of the Punjab Land Revenue Act, 1887, with respect to arbitration.

(4) Subject to the rules under this section, a revenue Officer may refer any case which he is empowered to

1. 1923 L. L. T. 20; 1923 L. L. T. 1.

2. 1929 Lah. L. T. 25.

3. 75 P. R. 188; 54 P. R. 1910.

dispose of under this Act to another Revenue Officer for investigation and report, and may decide the case upon the report.

*Persons by whom appearances may be made before Revenue Officers as such and not as Revenue Courts.*

**S. 86.** (1) Appearances before a Revenue Officer as such, and applications to and acts to be done before him, under this Act may be made or done—

- (a) by the parties themselves, or
- (b) by their recognized agents or a legal practitioner :

Provided that the employment of a recognized agent or legal practitioner shall not excuse the personal attendance of a party to any proceeding in any case in which personal attendance is specially required by an order of the officer.

(2) For the purposes of sub-section (1), recognized agents shall be such persons as the Local Government may by notification declare in this behalf.

(3) The fees of a legal practitioner shall not be allowed as costs in any proceeding before a Revenue Officer under this Act unless that officer considers, for reasons to be recorded by him in writing, that the fees should be allowed.

*Costs.*

**S. 87.** (1) A Revenue Officer may give and apportion the costs of any proceeding under this Act in any manner he thinks fit.

(2) But if he orders that the costs of any such proceeding shall not follow the event, he shall record his reasons for the order.

#### NOTES.

**Successful party's right to costs.**—Satisfactory reasons must be given for depriving a successful party of the costs in the case. Therefore where a defendant fights the case hard all the way through and causes unnecessary adjournments and pays in the

amount sued for at the last stage, he must be burdened with costs and the fact that he is a pleader and a Sardar Sahib and has been attending the court, is no ground for ex-emption.<sup>1</sup>

*Procedure of Revenue Courts.*

**S. 88. (1)** The Local Government may make rules consistent with this Act for regulating the procedure of Revenue Courts in matters under this Act for which a procedure is not prescribed thereby, and may by any such rule direct that any provisions of the Code of Civil Procedure shall apply, with or without modification, to all or any classes of cases before those Courts.

(2) Until rules are made under sub-section (1) and subject to those rules when made and to the provisions of this Act,—

- (a) the Code of Civil Procedure shall, so far as it is applicable apply to all proceedings in Revenue Courts whether before or after decree; and
- (b) the Financial Commissioner shall, in respect of those proceedings, be deemed to be the High Court within the meaning of that Code, and shall, subject to the provisions of this Act, exercise, as regards the Courts under his control, all the powers of a High Court under the Code.

NOTES.

**Procedure in Revenue Courts.**—Revenue Judicial Courts are bound in matters of fixing dates and places for hearing of suits and appeals, by the same rules as Civil Courts.<sup>2</sup> Thus if a Collector is on tour and unable to make a programme of dates and places to which he can adhere for hearing judicial cases, he should postpone their hearing till his return to the *sadar*.<sup>3</sup> An order reversed in appeal without giving the other side an opportunity of being heard is quite irregular and liable to be set aside.<sup>4</sup> If an appellant is unable to satisfactorily account for his default, the appellate court is bound to dismiss his appeal in default of appearance by him.<sup>5</sup> A petition of appeal deposited in a box kept for

1. 1929 Lah L. T. 49.

2. 7 P. R. 1892.

3. *Ibidi*.

4. 8 P. R. 1890 Rev.; 10 P. R. 1895 Rev.

5. 4 P. R. 1892 Rev.

the reception of petitions and taken out some days after, cannot be dismissed in default without fixing a date for the hearing of the appeal and without duly warning the appellant to appear on that date.<sup>1</sup> The judgment of the appellate court shall be in writing and shall state (a) the points for determination, (b) the decision thereon, (c) the reasons for the decision and (d) where the decree appealed from is reversed or varied the relief to which the appellant is entitled; and shall at the time that it is pronounced be signed and dated by the judge or by the judges concurring therein.<sup>2</sup>

**Proceedings before Revenue Officers.**—Though there is no explicit rule of procedure which obliges a Revenue Officer, when entertaining an appeal to give notice to the opposite party to appear in order that he may have an opportunity of being heard in support of the order, but the principle which obtains in regard to revenue cases, which are governed, unless otherwise provided, by the Code of Civil Procedure, has generally been followed in Revenue Officer's cases.<sup>3</sup> But it has been held by the Chief Court that the proceedings under Section 53, Punjab Tenancy Act, being not before a Revenue Court but a Revenue Officer, Section 88 (2) (a) of the Act does not apply to such proceedings.<sup>4</sup>

*Power of Revenue Officer or Revenue Court to summon persons.*

S. 89. (1) A Revenue Officer or Revenue Court may summon any person whose attendance he or it considers necessary for the purpose of any application, suit or other business before him or it, as a Revenue Officer or Revenue Court.

(2) A person so summoned shall be bound to appear at the time and place mentioned in the summons in person or, if the summons so allows, by his recognized agent or a legal practitioner.

(3) The person attending in obedience to the summons shall be bound to state the truth upon any matter respecting which he is examined or makes statements, and to produce such documents and other things relating to any such matter as the Revenue Officer or Revenue Court may require.

*Mode of service of summons.*

S. 90. (1) A summons issued by a Revenue Officer or Revenue Court shall, if practicable, be served (a) personally on the person to whom it is addressed, or failing him

1 19 P. R. 1892 Rev.

2 O. XXI, rule 31 C. P. C.; 2 P. R. 1893 Rev.

3 10 P. R. 1895 Rev.

4 32 P. R. 1906.



on (b) his recognised agent or (c) an adult male member of his family who is residing with him.

(2) If service cannot be so made, or if acceptance of service so made is refused, the summons may be served by posting a copy thereof at the usual or last known place of residence of the person to whom it is addressed, or, if that person does not reside in the district in which the Revenue Officer is employed or the Revenue Court is held, and the case to which the summons relates, has reference to land in that district, then by posting a copy of the summons on some conspicuous place in or near the estate wherein the land is situate.

(3) If the summons relates to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, it may, if the Revenue Officer or Revenue Court so directs, be served by delivery of a copy thereof to such of those persons as the officer or court nominates in this behalf and by proclamation of the contents thereof for the information of the other persons interested.

(4) A summons may, if the Revenue Officer or Revenue Court so directs, be served on the person named therein 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 person registered under Part III of the Indian Post Office Act, 1866.

(5) When a summons is so forwarded in a letter and it is proved that the letter was properly addressed and duly posted and registered, the officer or Court may presume that the summons was served at the time when the letter would be delivered in the ordinary course of post.

*Mode of service of notice, order or proclamation for copy thereof.*

S. 91. A notice, order or proclamation, or copy of any such document, issued by a Revenue Officer or Revenue Court for service on any person shall be served in the manner provided in the last foregoing section for the service of a summons.

*Additional mode of publishing proclamation.*

S. 92. When a proclamation relating to any land is issued by a Revenue Officer or Revenue Court, it shall, in addition to any other mode of publication which may be prescribed by any enactment for the time being in force, be made by beat of drum or other customary method, and by the posting of a copy thereof on a conspicuous place in or near the land to which it relates.

*Joinder of tenants as parties to proceedings relating to rent.*

S. 93. (1) Any number of tenants cultivating in the same estate may, in the discretion of the Revenue Officer or Revenue Court and subject to any rules which the Local Government may make in this behalf, be made parties to any proceeding under Chapter III.

(2) But a decree or order shall not be made in any such proceeding unless the Revenue Officer or Revenue Court is satisfied that all the parties thereto have had an opportunity of appearing and being heard.

(3) A decree or order made in any such proceeding shall specify the extent to which each of the tenant is affected thereby.

*Exception of suits under this Act from operations of certain enactments.*

S. 94. Nothing in section 424 of the Code of Civil Procedure, or in Section 36 of the Punjab Municipal Act, 1884, shall be construed to apply to a suit of a class mentioned in Section 77 of this Act.

*Payment into Court of money admitted to be due to a third person.*

S. 95. (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, except for special reasons to be recorded by it, 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 of the money, it shall be paid to the plaintiff on his application to the Court therefor.

(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).

(5) When a defendant pays money into Court under this section, 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.

*Execution of decrees for arrears of rent.*

S. 96. A Court passing a decree for an arrear of rent may, on the oral application of the decreeholder, order execution thereof against the moveable property of the tenant, and against any uncut or ungathered crops on the tenancy in respect of which the arrear is decreed.

*Prohibition of imprisonment of tenants in execution of decrees for arrears of rent.*

S. 97. A tenant shall not during the continuance of his occupancy be liable to imprisonment on the application of his landlord in execution of a decree for an arrear of rent.

*Power to refer party to Civil Court.*

S. 98. (1) If, in any proceeding pending before a Revenue Court exercising original, appellate, or revisional jurisdiction, it appears to the Court that any question in issue is more proper for decision by a Civil Court, the Revenue Court may, with the previous sanction of the Court, if any, to the control of which it is immediately subject, require, by order in writing, any party to the proceeding to institute, within such time as it may fix in this behalf, a suit in the Civil Court for the purpose of obtaining a decision on the question and, if he fails to comply with the requisition may decide the question as it thinks fit.

(2) If, the party institutes the suit in compliance with

the requisition, the Revenue Court shall dispose of the proceeding pending before it in accordance with the final decision of the Civil Court of first instance or appeal, as the case may be.

#### NOTES.

**Civil Court.**—Where a Revenue Court refers parties to a Civil Court under Section 98, the Civil Court does not thereby acquire jurisdiction to hear a suit which it would otherwise be incompetent to entertain under other provisions of law.<sup>1</sup>

**Appeal.**—In an appeal from the order of Collector granting sanction under the Punjab Tenancy Act, Section 98, to refer a party to a Civil Court, the Commissioner must confine himself to the propriety or otherwise of the sanction, and cannot go into the merits of the case.<sup>2</sup> Where the order actually referring the party to the Civil Court was passed by the Assistant Collector, it was doubtful if an appeal lay to the Commissioner from the sanction given by the Collector under this section.<sup>3</sup> However the sanction could be revoked on revision by the Financial Commissioner.<sup>4</sup>

**Suit for Declaration-Limitation.**—Where the Revenue Authorities refuse to sanction mutation of the land in suit in plaintiff's name, limitation begins to run from that date for obtaining declaration of title and is not postponed by any reason of compliance with any requisition made by the Revenue Authorities under this section.<sup>5</sup>

*Power to refer to High Court questions as to jurisdiction.*

S. 99. (1) If the presiding officer of a Civil or Revenue Court in which a suit has been instituted doubts whether he is precluded from taking cognizance of the suit, he may refer the matter through the District Judge or Commissioner, or, if he is a District Judge or Commissioner, directly to the High Court.

(2) On any such reference being made, the High Court may order the presiding officer either to proceed with the suit or to return the plaint for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit.

1. 73 I C. 760 (N. W. F. P. per Pilon J C.)

2. 2 P. R. 1905 Rev.

3. Ibid.

4. Ibid.

5. 71 P. L. R. 1916=91 P. W. R. 1916=311 C. 958.

(3) The order of the High Court on any such reference shall be conclusive as against persons who are not parties to the suit as well as against persons who are parties thereto.

NOTES

**Scope**—Provisions enacted for the settlement of doubts as to the jurisdiction of Civil and Revenue Courts of original jurisdiction, should be freely used.<sup>1</sup> The proper course for a Civil Court on presentation of a plaint which has been returned by a Revenue Court on the ground of want of jurisdiction is, if it does not agree and considers that the suit is not triable by a Civil Court, not again to return the plaint, but to refer the matter at once under Section 99 of the Act for orders and the Revenue courts should follow the same procedure.<sup>2</sup> When one Subordinate Court has already passed an order as to jurisdiction in this connection, another Subordinate Court should not pass a conflicting order without reference to superior authority.<sup>3</sup>

**Power of Revenue Court to re-open matter decided by Civil Courts**—It is not permissible by Revenue Courts to go behind the decision of Civil Courts and to re-open matters already decided by competent judicial authority and where the claim is based on a Civil Court decree, it is altogether wrong to enter on enquiries which substantially involve the issue whether that decree has been rightly given or not. The Revenue Courts should always accept a civil decree and act upon it.<sup>4</sup>

*Power of High Court to validate proceedings made under mistake as to jurisdiction.*

S. 100. (1) In either of the following cases, namely,—

(a) if it appears to a Civil Court that a Court under its control has determined a suit of a class mentioned in Section 77 which under the provisions of that section should have been heard and determined by a Revenue Court, or

(b) if it appears to a Revenue Court that a Court under its control has determined a suit which should have been heard by a Civil Court,

1. 40 P. R. 1893.

2. 63 P. R. 1904; 101 P. L. R. 1912

3. *ibid*

4. 13 P. R. 1901 Rev.—41 P. L. R. 1902.

the Civil Court or Revenue Court, as the case may be, shall submit the record of the suit to the High Court.

(2) If on perusal of the record, it appears to the High Court that the suit was so determined in good faith, and that the parties have not been prejudiced by the mistake as to jurisdiction, the High Court may order that the decree be registered in the Court which had jurisdiction.

(3) If it appears to the High Court, otherwise than on submission of a record under sub-section (1), that a Civil Court under its control has determined a suit of a class mentioned in Section 77, which under the provisions of that section should have been heard and determined by a Revenue Court, the High Court may pass any order which it might have passed, if the record had been submitted to it under that sub-section.

(4) With respect to any proceeding subsequent to decree, the High Court may make such order for its registration in a Revenue Court or Civil Court as in the circumstances appears to be just and proper.

(5) An order of the High Court under this section shall be conclusive as against persons who were not parties to the suit or proceeding as well as against persons who were parties thereto, and the decree or proceeding to which the order relates shall have effect as if it had been made or had by the Court in which the order has required it to be registered.

(6) The provisions of this section shall apply to any suit instituted on or after the first day of November, 1884, and to proceedings arising out of any such suit.

#### NOTES.

**Scope.**—The only suit in which it is competent for Civil Courts to make a reference to the High Court under this section are suits of a class mentioned in Section 77 of the Act.<sup>1</sup> For exercise of powers of registration under this section by the High Court, two preliminary conditions have necessarily to be fulfilled; (1) that the suit was determined by the Court in good faith and (2) that the parties have not been prejudiced by the mistake as to jurisdiction.<sup>2</sup>

1. 24 P. R. 1907; 73 P. R. 1888.

2. Vide sub-section (2); 25 P. R. 1909=70 P. L. R. 1909=39 P. W. R., 1909=1 I. C. 465; See

also 56 P. R. 1914=335 P. L. R. 1914=154 P. W. R. 1914=25 I. C. 506.

Where the presiding officer passing the decree is invested with both civil as well as revenue powers, the decree should not be registered under this section, if the suit is cognizable by a Court of a jurisdiction higher than that of the Court which passed the decree.<sup>1</sup> Thus where a suit falling under Section 77 (3) of the Act and triable by an Assistant Collector, 1st grade, was tried as a civil suit by a *tahsildar* (Assistant Collector, second grade,) as *munsif*, it was held that to register his decree as one of a Revenue Court would be practically to sanction the trying by a *tahsildar* of a case beyond his powers.<sup>2</sup> The proper procedure in such cases is to return the plaint to be presented to the proper Court.<sup>3</sup> There is no general rule of practice prohibiting the registration of a decree under this section on the sole ground that it has not been upheld on the merits by a superior Court and if the High Court finds that the suit was determined by a Court without jurisdiction in good faith and the parties have not been prejudiced by the mistake as to jurisdiction it may order that the decree be registered.<sup>4</sup>

**Decree**—The word decree includes original as well as appellate decrees, and there is nothing in the section to prevent the registration of appellate decrees.<sup>5</sup>

**Prejudice to the parties.**—Loss of a right to a party to a suit such as that of appeal, is a prejudice within the meaning of this section.<sup>6</sup> Thus where an Assistant Collector had dismissed a claim as being of civil nature and the Collector decreed on appeal but the Commissioner holding it to be a suit of a civil nature made the reference to the Chief Court for registration of the decree as a civil decree, the Chief Court apart from its decision that the suit was a revenue suit held that there was a prejudice to the parties in registering it as civil decree, as it involved the loss of right of appeal as on the civil side the decree would be a small cause decree.<sup>7</sup> Likewise in 95 P. R. 1907=120 P. L. R. 1908, the Chief Court refused to register the decree of a Small Cause Court as one of a Revenue Court.

**Pecuniary jurisdiction.**—Where a *munsif*, second, class has no jurisdiction over a suit apart from its nature the suit being one beyond the pecuniary limits of his powers, the civil decree could not be registered in the Revenue Court as having jurisdiction.<sup>8</sup> Similarly where a suit triable by an Assistant Collector, 1st grade, was tried by a *tahsildar* (an Assistant Collector, 2nd grade) as a civil suit in the capacity of his being a *munsif*, it was

1. 25 P. R. 1909=70 P. L. R. 1909  
=39 P. W. R. 1109 I. C. 465;  
52 P. R. 1910.

2. *Ibid.*

3. 282 P. L. R. 1914; 73 P. L. R.  
1912.

4. 53 P. R. 1893.

5. 34 P. R. 1501=92 P. L. R. 1904  
53 P. R. 1893.

6. 56 P. R. 1914=225 P. L. R. 1914  
=154 P. W. R. 1914=25 I. C.  
506.

7. *Ibid.* See also 119 I. C. 721.

8. 104 P. R. 1890.

held that the decree could not be registered under the section because the effect of it would be to sanction the trying of a case by a *tahsildar* beyond his powers.<sup>1</sup>

**Reference to High Court**—A reference under Section 100, Tenancy Act, by a Collector should be made to the High Court direct and not through the Commissioner as under Section 99 of the Act.<sup>2</sup> The same view has been expressed by the Financial Commissioner in a more recent ruling wherein he has held that if the Collector thinks the case is one which should be dealt with by a civil court, he should take action under Section 100 and should not send the case to the Financial Commissioner for that purpose.<sup>3</sup>

**Power of the High Court**—The jurisdiction vested in the High Court under Section 100 of the Punjab Tenancy Act is discretionary. Where a case has been dismissed by the Revenue Court only on a preliminary objection, the High Court will not register the decree as a decree of a Civil Court.<sup>4</sup> Where a suit triable by a Revenue Court has been entertained and decided by a Civil Court or a suit triable by a Civil Court has been decided by a Revenue Court in good faith and the defect in jurisdiction has not prejudiced either of the parties, the High Court may take action under Section 100 of the Tenancy Act and may direct that the decree be registered as the decree of a Revenue Court or a Civil Court as the case may be.<sup>5</sup>

The High Court has power to order that a decree passed by a Civil Court be registered as a decree of a Revenue Court. Therefore where a decree has passed by a Civil Court in a suit cognizable by a Revenue Court, the memorandum of appeal was directed to be sent to a Revenue Appellate Court after the registration of decree of that Court as a decree of a Revenue Court.<sup>6</sup> Where a claim, on the allegations in the plaint, is triable by a Revenue Court and is heard and dismissed by a competent Court, the High Court is not competent to entertain a reference made under this section by the appellate Court on the ground that on the facts as proved, the plaintiff could have brought a suit on a different cause of action which would be cognizable by a Civil Court, for there is no mistake as to jurisdiction in such a case.<sup>7</sup> The plaintiff may bring a suit on different allegations in a Civil Court if so advised.<sup>8</sup> Where a plaintiff brings in a Civil Court a single suit comprising two claims on different causes of actions, one of which is cognizable by a Civil and the other by a Revenue Court

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|-----------------------------------|-------------------------------------|
| 1. 25 P. R. 1909=70 P. L. R. 1909 | 5. 119 I. C. 721; 112 I. C. 1       |
| =39 P. W. R. 1909=1 I. C. 465,    | 6. 4 L. 127=5 L. L. J. 335=73 I. C. |
| See also 52 P. R. 1910.           | 673=1923 Lahore 405.                |
| 2. 90 P. R. 1918 F. B.            | 7. 45 P. R. 1907=202 P. L. R. 1908  |
| 3. 1927 Lah. L. T. 11.            | 8. Ibid.                            |
| 4. 112 I. C. 464.                 |                                     |



and the decree of the Civil Court deals with both on merits, the High Court is not competent to take action under this section and register the civil decree as the decree of a Revenue Court, there being no power given to the High Court under that section to deal with part of a decree, but only power to deal with the decree as a whole.<sup>1</sup> Where in a suit for ejection by a mortgagee against the mortgagor, the Financial Commissioner finding that the relation of landlord and tenant did not exist between the mortgagee and mortgagor dismissed the suit and the plaintiff then sued for possession in the Civil Court and the Chief Court found that the parties stood to each other in the relation of landlord and tenant, action under this section could not be taken, the proper order being to dismiss the civil suit and the only remedy open to the plaintiff being to apply for a review of the Financial Commissioner's judgment.<sup>2</sup>

**Punjab Government Tenants Act**—The Punjab Government Tenants Act III of 1912 which merely adds a provision to Section 77 (3) of the Tenancy Act is not a bar to an action under Section 100 of the Tenancy Act by the High Court which is competent to direct a decree of a subordinate Civil Court to be registered as a decree of a Revenue Court in a suit instituted after the enforcement of the Act III of 1912.<sup>3</sup>

**Sub section (5)**—The sub-section prescribes the effect of a decree ordered to be registered and the date when the decree is registered in pursuance of the High Court's order, is the real date from which time begins to run for an appeal to a higher Revenue Court against a decree of a lower Revenue Court.<sup>4</sup>

#### MISCELLANEOUS.

##### *Place of sitting.*

**S. 101. (1)** An Assistant Collector may exercise his powers under this Act at any place within the limits of the district in which he is employed.

(2) Any other Revenue Officer or Revenue Court may only exercise his or its powers under this Act within the local limits of his or its jurisdiction.

##### *Holidays.*

**S. 102. (1)** The Financial Commissioner, with the

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|------------------------------------|----------------------------|
| 1. 28 P. R. 1894; 78 P. R. 1900.   | =64 P. W. R. 1915=29 I. C. |
| 2. 150 P. L. R. 190=110 P. W. R.   | 778.                       |
| 1910=7 I. C. 1001.                 |                            |
| 3. 73 P. R. 1915=111 P. L. R. 19.5 | 4. 68 P. R. 1891.          |

approval of the Local Government, shall publish in the local Official Gazette before the commencement of each calendar year, a list of days to be observed in that year as holidays by all or any Revenue Officers and Revenue Courts.

(2) A proceeding held before a Revenue Officer or Revenue Court on a day specified in the list as a day to be observed by the officer or Court as a holiday shall not be invalid by reason only of its having been held on that day.

*Discharge of duties of Collector dying or being disabled.*

**S. 103.** Where a Collector dies or is disabled from performing his duties, the officer who succeeds temporarily to the chief executive administration of the district under any orders which may be generally or specially issued by the Local Government in this behalf shall be deemed to be a Collector under this Act.

*Retention of powers by Revenue Officers on transfer.*

**S. 104.** When a Revenue Officer of any class who, either as such or as a Revenue Court, has under the foregoing provisions of this Act any powers to be exercised in any local area is transferred from that local area to another as a Revenue Officer or Revenue Court of the same or a higher class, he shall continue to exercise those powers in that other local area, unless the Local Government otherwise directs or has otherwise directed.

*Conferment of powers of Revenue Officer or Revenue Court.*

**S. 105.** (1) The Local Government may by notification confer on any person—

- (a) all or any of the powers of a Financial Commissioner, Commissioner or Collector under this Act, or
- (b) all or any of the powers with which an Assistant Collector of either grade is, or may be, invested thereunder,

and may by notification withdraw any powers so conferred.

(2) A person on whom powers are conferred under sub-section (1) shall exercise those powers within such local limits and in such classes of cases as the Local Government may direct, and, except, as otherwise directed by the Local Government, shall for all purposes connected with the exercise thereof, be deemed a Financial Commissioner, Commissioner, Collector or Assistant Collector, as the case may be.

(3) Before conferring powers on the Judge of a Civil Court under sub-section (1), the Local Government shall consult the High Court.

(4) If any of the powers of a Collector under section 78, section 79, section 80 or section 82 are conferred on an Assistant Collector, they shall, unless the Local Government by special order otherwise directs, be exercised by him subject to the control of the Collector.

*Power for Financial Commissioner to make rules.*

**S. 106.** (1) The Financial Commissioner may, in addition to the other rules which may be made by him under this Act, make rules consistent with this Act and any other enactment for the time being in force, -

- (a) determining, notwithstanding anything in any record-of-rights, the number and amount of the instalments and the times by and at which rent is to be paid ;
- (b) for the guidance of Revenue Officers in determining, for the purposes of this Act, the amount of the land revenue of any land;
- (c) prescribing, for all or any of the territories to which this Act extends, the periods during which, in proceedings held under this Act, a Revenue Officer or Revenue Court is not, except for reasons of urgency to be recorded, to issue any process of arrest against a tenant or against a landowner who cultivates his own land ;
- (d) regulating the procedure in cases where persons are entitled to inspect records of Revenue Offices or Revenue Courts, or to obtain copies of the same, and prescribing the fees payable, for searches and copies ;
- (e) prescribing forms for such books, entries ; statis-

tics and accounts as the Financial Commissioner thinks necessary to be kept, made or compiled in Revenue Offices or Revenue Courts or submitted to any authority.

- (f) declaring what shall be the language of any of those Offices and Courts, and determining in what cases persons practising in those offices and Courts shall be permitted to address the presiding officers thereof in English ; and
- (g) generally for the guidance of Revenue Officers and other persons in matters connected with the enforcement of this Act.

(2) Until rules are made under clause (a) of subsection (1), rent shall be payable by the instalments and at the times by and at which it is now payable.

(3) Rules made by the Financial Commissioner under this or any other section of this Act shall be made subject to the control of the Local Government.

*Rules to be made after previous publication.*

S. 107. The power to make any rules under this Act is subject to the condition of the rules being made after previous publication.

*Powers exercisable by Financial Commissioner from time to time.*

S. 108. All powers conferred by this Act on the Financial Commissioner may be exercised from time to time as occasion requires.

## CHAPTER VIII.

### EFFECT OF THIS ACT ON RECORDS-OF-RIGHTS AND AGREEMENTS.

#### *Nullity of certain entries in record-of-rights.*

**S. 109.** An entry in any record-of-rights providing—

- (a) that a landlord may prevent a tenant from making, or eject him for making, such improvements on his tenancy as he is entitled to make under this Act, or
  - (b) that a tenant ejected from his tenancy shall not be entitled to compensation for improvements or for disturbance in any case in which he would under this Act be entitled to compensation therefor, or
  - (c) that a landlord may eject a tenant otherwise than in accordance with the provisions of this Act,
- shall be void to that extent.

#### *Nullity of certain agreements contrary to the Act.*

**S. 110.** (1) Nothing in any agreement made between a landlord and a tenant after the passing of this Act shall—

- (a) override any of the provisions of this Act with respect to the acquisition of a right of occupancy or the reduction, remission or suspension of rent, or the enhancement of the rent of a tenant having a right of occupancy under section 5, or section 6, or
- (b) take away or limit the right of a tenant as determined by this Act to make improvements and claim compensation therefor, or, where compensation for disturbance can be claimed under this Act, to claim such compensation, or
- (c) entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

(2) Nothing in clause (a) of sub-section (1) shall apply to an agreement by which a tenant binds himself to pay an enhanced rent in consideration of an improvement which has been, or is to be, made in respect of his tenancy by, or at the expense of, his landlord, and to the benefit of which the tenant is not otherwise entitled.

## NOTES

**Scope.**—Provisions of this section are intended for the protection of tenants only. Therefore where two persons between whom the relationship of landlord and tenant does not exist, enter into a contract of lease and the contract provides that the lessee shall be entitled to compensation for planting trees at a particular rate, the lessee cannot invoke the provisions of the section and avoid the contract as limiting his right to compensation. **1**

**Res judicata.**—This section cannot be construed as superseding the usual doctrine of *res-judicata* or the usual consequences of dismissals in default. The provisions relating to agreements are not to be extended to decrees passed by the consent of parties. Accordingly where tenants sued for occupancy rights and in default of the same for compensation, and the cases ended by their formally withdrawing their claims or allowing them to be dismissed in default, it was held that the occupancy rights could not be the subject of fresh litigation and were barred by the rule of *res-judicata*. **2**

**Clause (1) Retrospective effect.**—Retrospective operation to this clause is expressly forbidden, and it cannot be held that a tenant who would otherwise have acquired occupancy rights under S. 6, was before the date of this Act, incapable of surrendering by agreement his right of occupancy to his landlord. **3** In 1 P. R. 1909 Rev. also it was held that S. 110 of the present Act is not retrospective and until the Act of 1887 came into force, tenants could divest themselves of their occupancy rights by agreement with their landlords.

*Saving of other agreements when in writing.*

**S. 111.** Save as expressly provided in this Act, nothing in this Act shall affect the operation of any agreement between a landlord and a tenant, when the agreement either is in writing or has been recorded in a record-of-rights before the passing of the Punjab Land Revenue Act, 1887, or been entered by order of a Revenue Officer in a record-of-rights or annual record under the provisions of that Act.

## NOTES.

**Scope.**—Except in so far as the Act deliberately declares certain agreements and entries to be void of effect, agreements be-

1 1927 Lah. L. T. 12.

2 6 P. R. 1904 Rev.

3 10 P. R. 1901 Rev.—44 P. L. R. 1901.

tween landlords and tenants opposed to its provisions, are upheld by this section.<sup>1</sup>

**Record of rights.**—This section does not require that the record-of-rights to which it refers shall have been sanctioned by the Local Government. Therefore a record-of-rights of summary settlement is as much within the purview of this section as that of a regular settlement.<sup>2</sup> A tenant who fails to prove his claim under S. 6 may, nevertheless, have the benefit of this section if he can prove the relevant facts.<sup>3</sup>

**Agreements.**—A statement made by a tenant and his landlord at the settlement before an officer appointed to enquire into the rights of the tenants amounts to an agreement.<sup>4</sup> Agreements entered in settlement papers stand on the same footing as other agreements known to law and are subject to the ordinary rules applicable to contracts.<sup>5</sup> Therefore these agreements must be made by the free consent of the parties competent to contract for a lawful consideration and for a lawful object and should not be declared void by any provision of law relating to contracts.<sup>6</sup> An agreement must necessarily be a bilateral one. Thus where an entry in the *wajib-ul-arz* relating to a matter dealt with in Chapter VI (compensation for tenant's improvements) of the Tenancy Act, 1868, which professed only to be an agreement by the proprietors and did not profess to embody an agreement by the tenants by whom it was not in any instance signed, was held not to amount to an agreement between a landlord and a tenant recorded by the proper officer within the meaning of the Act.<sup>7</sup> A landowner seeking to bind his tenants by the settlement proceedings, should show distinctly that they were parties to the enquiry held by the Collector into the nature and extent of their holding.<sup>8</sup> Unless an agreement is supported by consideration it will not be upheld.<sup>9</sup> Defendants were hereditary cultivators and during the settlement operations being in doubt as to whether their status would be maintained; signed a lease for 10 years in which payment of rent in kind was provided for, the lease being recorded by the settlement officer. They had paid rent in cash up to the execution of the said lease. Plaintiff sued for rent in kind due under the lease. The suit being dismissed by the courts below, it was held by the Chief Court that the suit had been properly dismissed there being no consideration for defendant's promise to pay rent in kind.<sup>10</sup> An agreement will not be binding if one of the parties to it was incompetent to contract at the time it was entered into

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<p>1. 3 P. R. 1897 Rev; 10 P. R. 1901 Rev.—44 P. L. R. 1901: See also 63 P. R. 1918—26 P. L. R. 1918—26 P. W. R. 1918—44 L. C. 266; 53 I. C. 1919—2 P. R. 1919 Rev.</p> <p>2. See 4 P. R. 1896 Rev; 2 P. R. 1876 Rev.</p> <p>3. Ibid.</p>	<p>4. 24 P. R. 1888.</p> <p>5. 81 P. R. 1876; 17 B 407.</p> <p>6. See section 10, Indian Contract Act, IX of 1872.</p> <p>7. 3 P. R. 1888 Rev.</p> <p>8. 23 W. R. 430.</p> <p>9. 16 P. R. 1872</p> <p>10. 16 P. R. 1872.</p>
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Consequently it has been held that the plaintiffs could not be affected by the *wajib-ul-arz* entry which was drawn up when they were minors and altogether ignorant of its contents.<sup>1</sup> Where it is intended to bring an agreement under this section to override the provisions of S. 59, the language of the agreement must be clear and the intention unmistakable.<sup>2</sup> The agreement must be interpreted in a reasonable manner and as a whole with due deference to all the provisions it contains.<sup>3</sup> An entry in a record-of-right, cannot be supported as an agreement if there is uncertainty in it.<sup>4</sup> Therefore an entry in a settlement record which declared that tenants should go on paying rent as before, was held to be an agreement which was void for uncertainty.<sup>5</sup> But where there is no uncertainty the agreement is binding.<sup>6</sup> A mere entry in the record-of-rights does not amount to an agreement. Therefore the mere fact that a tenant has voluntarily admitted himself to be a tenant-at-will, does not operate to deprive him of his occupancy right and the courts should satisfy themselves that there has been actual and valid agreement to relinquish the right.<sup>7</sup> Thus where on the facts stated by the tenant and admitted by the landlord, he is under Section 5 of the Act entitled to occupancy rights, the mere entry in record-of-rights of his erroneous statement that he is a tenant-at-will, does not amount to an agreement constituting waiver of rights on the part of the tenant.<sup>8</sup>

Held to be agreements within the meaning of the section—

(1) An entry in *tarmim khawat* indicating that a certain tenant is an occupancy tenant, such an entry *prima facie* operating to confer occupancy rights.<sup>9</sup>

(2) *Iqrar-i-malikan* portion of the *wajib-ul-arz* has been held to be an agreement.<sup>10</sup>

(3) The *wajib-ul-arz* on the part of the proprietors declared that as long as the hereditary cultivators paid the rent fixed they should not be ousted and that their lineal male heirs should succeed on the same condition. There was another paper signed by the cultivators to the same effect. But this paper and the *wajib-ul-arz* formed part of the record of the summary settlement. It was held that there was an agreement in writing between the proprietors and the tenants.<sup>11</sup>

(4) An entry in a settlement record to the effect that if a tenant dies, then his descendants (*aulad*) or if he dies sonless

1. 87 P. R. 1891.

2. 70 P. L. R. 1913; 2 P. R. 1919 Rev. ; 19 P. R. 1917

3. 2 P. R. 1919 Rev = 1 L. L. T. p. 31=53 L. C. 531.

4. 81 P. R. 1876.

5. Ibid.

6. 1 P. R. 1880. \*

7. 10 P. R. 1901 Rev. = 44 P. L. R. 1901; 3 P. R. 1919 Rev. (10 P. R. 1901 Rev; Fol. 18 P. R. 1882; 24 P. R. 1883 Dist)

8. 3 P. R. 1919 Rev.

9. 4 P. R. 1896 Rev.

10. 49 P. L. R. 1904.

11. 2 P. R. 1876.



his collaterals (*qarabtiyan*) will be entitled to cultivate the land on above conditions, *i. e.*, as occupancy tenants.<sup>1</sup>

Held to be no agreement :—

(1) A mere voluntary admission by a tenant does not operate to deprive him of his rights as an agreement under the section.<sup>2</sup>

(2) Where lease offered by the Government was not accepted but the tenants agreed to pay enhanced rent, it did not operate as an agreement under the section.<sup>3</sup>

(3) An entry in the *wajib-ul-arz* relating to compensation for tenant's improvements which professes only to be an agreement by the proprietors and does not profess to embody an agreement by the tenants, is not an agreement under this section.<sup>4</sup>

(4) A clause in the *wajib-ul-arz* to the effect "*is bandobast men tangih muzarian maurusi nahin hua, jo muzarian hain unke nam khawat khatauni me likhae gae. Baad marne muzarian maurusi ke uska beta ya bhai ya qarabti kasht karega*" does not amount to an agreement conferring a right of succession on the nephew of the deceased apart from Section 59 of the Act.<sup>5</sup>

(5) A new entry, which is merely a repetition of the entry in the old settlement record.<sup>6</sup>

*Effect of certain entries made in record-of-rights before November 1871.*

S. 112. An entry made with respect to any of the following matters before the eighteenth day of November 1871 and attested by the proper officer, in the record of a regular settlement sanctioned by the Local Government, namely—

- (a) the enhancement or abatement of the rent of a tenant having a right of occupancy, or the commutation of rent in kind into rent in money or of rent in money into rent in kind, or the taking of rent in kind by division or appraisal of the produce or other procedure of a like nature, or

1. 20, P. R. 1896.

2. 10 P. R. 1901 Rev.=44 P. L. R. 1901.

3. 4 P. R. 1904=82 P. L. R. 1904.

4. 3 P. R. 1888.

5. 185 P. W. R. 1913=20 I. C. 528 =2 P. L. R. 1914.

6. 16 P. R. 1915 =64 P. L. R. 1915=21 P. W. R. 1915=26 I. C. 404.

- (b) the letting or under-letting of land in which there is a right of occupancy by the tenant having that right, or the alienation of or succession to land in which such a right subsists.

shall be deemed to be an agreement within the meaning of the last foregoing section.

#### NOTES.

**Scope.**—The wording of the section makes it clear that an entry in a Revenue Record is binding as a contract under this section only if (1) it is made before 18th November 1871, (2) at a regular settlement sanctioned by the Local Government, (3) and is attested by the proper officer and (4) relates to enhancement, abatement or commutation of rent or appraisalment of produce or to letting or alienation of or succession to land in which rights of occupancy subsist. The present and the foregoing section maintain the validity given by law of 1868 (Section 2, Tenancy Act) to entries in settlement records prior to 1871 and the right of persons in future to contract themselves out of the terms of the Act, except in regard to certain specified matters as regards rent ejection and compensation, has been declared. Therefore the parties can by a written agreement either prior or subsequent to 1871, settle on a law of succession different from the succession prescribed in the Act.1 In regard to rent ejection and compensation the intention of the present Act is on the whole to curtail the right of the persons to contract themselves out of the terms of the Act.2 Though a proprietor cannot acquire occupancy rights in *shamilat* land under the provisions of the Tenancy Act there is nothing to prevent his acquiring such rights by agreement entered at settlement, as will, on his death pass to his heirs.3

**Entry in Record of a Regular Settlement.**—For purposes of this section a *wajib-ul-arz* of the revised settlement alone, is to be considered. Where the *wajib-ul-arz* was a part of the Settlement Record taken up in 1872 and not attested by the Settlement *Tahsildar* till 1873, it was held that it did not fulfil the conditions of the section.4 But where the latter *wajib-ul-arz* is silent or omits to make any mention on the points in dispute we have to look at the intention of the parties as expressed in the former *wajib-ul-arz*.5

1. 130 P. R. 1907=76 P. L. R. 1908  
=98 P. W. R. 1907.  
2. Ibid  
3. 155 P. R. 1889.  
4. 12 P. L. R. 1914=212 P. W. R.

1913=31 I. C. 813.  
5. 16 P. R. 1915=64 P. L. R. 1915  
=26 I. C. 401=21 P. W. R.  
1915.

ENTRY RELATING TO ENHANCEMENT, ABATEMENT OR 183  
COMMUTATION OF RENT ETC.

**Entry of parties' statements in naqsha mudakhlat.**—A statement made by a tenant at settlement to the officer appointed to enquire into the rights of the tenants in regard to the terms on which such tenant holds his land from the landlord, and the counterpart statement made at the time by the landlord that what the tenant has stated is true, has been held to amount, where recorded in the *naqsha mudakhlat* before the passing of the Land Revenue Act, 1871, and duly attested by the proper officer, to an agreement within the meaning of this section.<sup>1</sup>

**Entry relating to enhancement, abatement or commutation of rent etc.**—Where the *wajib-ul-arz* provided that the hereditary tenants were of two classes, one paying at the same rate as proprietors and the other paying at the fixed rates, it was held that the whole spirit of the *wajib-ul-arz* was opposed to the levy by the proprietors of anything in the shape of rent not expressly provided for and therefore the plaintiff's suit for enhancement failed.<sup>2</sup> Where an entry provided that certain specified rates were to be paid for even by the tenants, it was held that no enhancement could be allowed.<sup>3</sup> Where the *wajib-ul-arz* provided that occupancy tenants should enjoy all the powers of proprietors except the power of sale and while making special provisions for enhancement of rent of non-occupancy tenants made no provision for such enhancement in case of occupancy tenants, it was laid down that it would be repugnant to the spirit of the document that the rent should be enhanced.<sup>4</sup> Where provisions in the *wajib-ul-arz* said nothing in regard to enhancement of rent but provided that certain tenants will continue to pay at the rate at which revenue falls on owners together with cesses the said provisions were construed to indicate an intention that the rent payable by the tenant there described should remain fixed for the term of settlement.<sup>5</sup> Similarly an entry that an occupancy tenant shall hold at landlord's rates paying only revenue and cesses is valid and precludes enhancement during the period of current settlement.<sup>6</sup> An entry to the effect that the tenant undertook to pay and the proprietor to receive *malikana* at the rate of 20 per cent on whatever sum might be fixed as revenue, is a valid agreement precluding enhancement.<sup>7</sup> But an agreement merely stating the rate of the *malikana* rent to be 16 per cent which is in substance nothing more than an arrangement for the distribution of revenue and expressed to be subject to change, does not operate as a bar to a suit for enhancement of rent.<sup>8</sup> An entry in the *wajib-ul-arz* of previous settlement to the effect that the tenants would not be ejected by their landlords so long as they paid the land revenue and cesses due on lands in their occupation

1. 24 P. R. 1883; See also 18 P. R. 1882.	32 P. R. 1882
	5 42 P. R. 1881.
2. 36 P. R. 1880; 183 P. R. 1882	6. 1 P. R. 1880 R.—4 P. R. 1880 R. ev.
3. 50 P. R. 1873.	7. 50 P. R. 1883.
4. 37 P. R. 1880; 43 P. R. 1881;	8. 110 P. R. 1887.

which entry was not, however, repeated in the later settlement record, could not be held to constitute an agreement debarring the landlords from enhancing their tenant's rents for ever.<sup>1</sup> A suit for enhancement of rent which is ordinarily barred during the period of settlement by an agreement between the landlord and the tenant, is not maintainable if instituted after the new assessment is announced, but before the record-of-rights has, with the sanction of the Government, been handed over to the Deputy Commissioner of the District.<sup>2</sup>

**Entry relating to alienation of land.**— An entry in the *wajib-ul-arz* of a village that the occupancy tenants of the place have an unrestricted power of alienation is a valid and binding agreement within the meaning of this section.<sup>3</sup> But such an entry in the *wajib-ul-arz* giving the tenant power of alienation cannot be construed to confer on the widow who has a life interest, an unlimited power of alienation.<sup>4</sup> A provision in *wajib-ul-arz* to the effect that "the hereditary tenants shall not leave the holding to any one; they may give their lands to their sons; they shall not give any portion of it to a son-in-law nor to near relatives; if they do, such donee shall be a tenant-at-will", simply means that no hereditary tenant should have the power to alienate his rights except to his son.<sup>5</sup>

**Entry relating to Succession—Agreement—How to be proved—** Where an occupancy tenant died without leaving any male lineal descendants or a widow, and his collaterals sued to succeed to the occupancy rights as against the landlord, it was held that there being no evidence to prove that the common ancestor of the last occupancy tenant and his collaterals ever occupied the land, the plaintiffs had no right of inheritance under S. 59 of the Act. But they could succeed if they could prove an agreement under S. 111 or 112 of the Act.<sup>6</sup> But a collateral who bases his claim to succeed to the tenancy of a deceased occupancy tenant must prove it in one of the three following ways :—(1) he may produce a document which contains the terms agreed upon between the parties; (2) he may put forward an entry made before 18th November 1871 and attested by the proper officer in the Record of a Regular Settlement sanctioned by the Local Government or (3) he may rely on an entry in a Record-of-Rights made after the above mentioned date or on an entry in annual record prepared under the provisions of the Punjab Land Revenue Act, 1887. <sup>7</sup> An entry which comes under (2) is by law deemed to be an agreement and nothing beyond its mere production is required, while the

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| 1. 5 P. R. 1895 Rev. (Appr. 3 P. R. 1900 Rev.)                    | 87 P. B. 1901.   |
| 2. 9 P. B. 1886 F. B. See also 21 P. B. 1884; 161 P. R. 1884.     | 4. 1 P. R. 1897 Rev.   |
| 3. 68 P. B. 1918=26 P. L. R. 1918 =53 P. W. R. 1918=44 I. C. 266; | 5. 20 P. R. 1873.  |
|   | 6. 64 P. L. R. 1915=16 P. B. 1915 =21 P. W. R. 1915=26 I. C. 404 |
|   | 7. Ibid.   |

entry coming under (3) does not *proprio vigore* amount to an agreement and the party relying upon it has to prove that it embodies the terms of an agreement arrived at between the parties.1 An entry in the *wajib-ul-arz* giving the right of succession to collaterals without the reservation that they must be descended from a common ancestor is an agreement within the meaning of this section.2 But a provision in the *wajib-ul-arz* that unless the occupancy tenants or their heirs voluntarily surrendered their holding, the proprietors were not at liberty to eject them or their heirs, is not so.3 Where the provision in the *wajib-ul-arz* is that on the death of occupancy tenants their sons or if they have no sons their brothers and nephews would succeed, the nephew is entitled to succeed irrespective of the fact that the common ancestor did not occupy the land.4 Where the *wajib-ul-arz* provided that in the case of *maurusis* in default of a son or brother the *karabtis* are to succeed, it was held that under the *wajib-ul-arz* the *karabtis* are entitled to succeed even though the common ancestor may not have occupied the land.5 An occupancy tenant cannot by will, postpone the succession of his sons until after the death of his widow and unless there be an agreement to that effect between him and his landlord.6

**Agreements in *wajib-ul-arz*—How long binding.**—Where the provisions of a *wajib-ul-arz* amounting to an agreement are expressly limited to the term of settlement, they cannot persist through a later settlement.7 The omission of the entry amounting to an agreement in the subsequent settlement on the point will imply that the agreement is no longer in force.8 Even where an entry in a previous record expressly limited to the term of that settlement is repeated in a subsequent settlement without clearly showing that persons concerned were questioned about it and that they gave their consent, it has been laid down that there is no agreement binding during the term of the subsequent settlement within the meaning of the section.9 In the absence of an express intention to the contrary agreements recorded in a Settlement Record are not intended to take effect after the expiry of the period of settlement.10 The question whether an agreement in an administrative paper would operate for the term of settlement only or not is one of intention and anything intended to remain in force beyond the

1. 64 P.L.R. 1915=16 P.R. 1915  
=21 P.W.B. 1915=26 I.C. 404.  
2. 49 P.L.R. 1904; See also 47 P.  
R. 1877; 64 P.R. 1877; 22 P.R.  
1882; 121 P.R. 1883.  
3. 90 P.R. 1883; See also 104 P.  
R. 1885.  
4. 121 P.R. 1883.  
5. 47 P.R. 1877; 64 P.R. 1877; 22  
P.R. 1883.  
6. 137 P.R. 1882.  
7. 64 P.L.R. 1915=16 P.R. 1915  
=21 P.W.B. 1915=26 I.C.  
404; 97 P.R. 1909=166 P.W.B.

1909=10 P.L.R. 1910.  
8. 97 P.R. 1909=166 P.W.B.  
1909=10 P.L.R. 1910 c.f. 14  
P.L.R. 1913=2 P.W.R. 1913  
Rev.  
9. 64 P.L.R. 1915=16 P.R. 1915  
=21 P.W.B. 1915=6 I.C. 404  
2 P.L.R. 1914=185 P.W.R.  
1913=20 I.C. 528.  
10. 64 P.L.R. 1915=16 P.R.  
1915=26 I.C. 404=21 P.W.  
R. 1915; See also 97 P.R. 1909;  
22 P.R. 1914.

settlement would continue to operate unless set aside by anything done at settlement.<sup>1</sup> Therefore where the 1847 record-of-rights contained a *wajib-ul-arz* entry providing that tenants cultivating from 20 to 25 years shall be entitled to occupancy rights and no such entry appeared in the *wajib-ul-arz* of 1856, it was held that the non-repetition of 1847 entry in the *wajib-ul-arz* of 1856 did not amount to cancellation of the agreement of the former year.<sup>2</sup> The agreements about succession are generally intended to operate permanently,<sup>3</sup> while the entries in the Settlement Record relating to questions of rent are ordinarily only binding during the currency of the settlement in which they are made.<sup>4</sup> A right acquired under an agreement in the old *wajib-ul-arz* is not affected by anything in the new *wajib-ul-arz* which does not even purport to operate retrospectively.<sup>5</sup> A settlement does not end with the expiry of the period for which it is sanctioned but it continues till a new assessment is announced.<sup>6</sup>

### THE SCHEDULE.

*[Repealed by the Amending Act, 1891 (XII of 1891), S. 2  
(1) and first Schedule.*

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- |  |   |
|--|---|
| 1. 148 P. L. R. 1913=2 P. W.R.<br>1913 Rev. 121 P. R. 1883; 8 P.<br>R. 84. | 4. 78 P. R. 1884.<br>5 P. R. 1895 Rev. 3 P. R. 1889<br>Rev. |
| 2. 148 P. L. R. 1913=2 P. W.<br>R. 1913 Rev.                               | 5. 87 P. R. 1891 (160 P. R. 1890<br>overruled.)             |
| 3. 20 P. R. 1879; 121 P. R. 1883;  | 6. 161 P. R. 1884.  |

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## SUMMARY

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# Summary of Punjab Tenancy Act, 1887.

## CHAPTER I.

### PRELIMINARY.

The Punjab Tenancy Act was made to extend to the whole of the Punjab with the exception of the Hazara district and came into operation on the 1st November 1887. (Section 1) Section 4 gives definitions of various important terms employed in the Act which are reproduced below :—

1. **'Land'** means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural, or for purposes subservient to agriculture, or for pasture and includes the sites of buildings and other structures on such land.

2. **'Pay'** with its grammatical variations and cognate expressions, includes when used with reference to rent, deliver and render, with their grammatical variations and cognate expressions.

3. **'Rent'**, means whatever is payable to a landlord in money, kind or service by a tenant on account of the use or occupation of land held by him.

4. **'Arrears of rent'** means rent which remains unpaid after the date on which it becomes payable.

5. **'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 other person; but it does not include :—

(a) an inferior landowner, or

b) a mortgagee of the rights of a landowner, or

(c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land Revenue Act, 1887, for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear, or



- (d) a person who takes from the Government a lease of unoccupied land for the purpose of subletting it.
6. 'Landlord' means a person under whom a tenant holds land, and to whom the tenant is, or but for a special contract would be, liable to pay rent for that land.
7. 'Tenant' and 'landlord' include the predecessors and successors in interest of a tenant and landlord respectively.
8. 'Tenancy' means a parcel of land held by a tenant of a landlord under one lease or one set of conditions.
9. 'Estate', 'landowner', and 'holding' have the meanings respectively assigned to these words in the Punjab Land Revenue Act 1887.
10. 'Land Revenue' means land revenue assessed under any law for the time being in force or assessable under the Punjab Law Revenue Act 1887, and includes—
- (a) any rate imposed in respect of the increased value of land due to irrigation, and
  - (b) any sum payable in respect of land, by way of quit rent or of commutation for service, to the Government or to a person to whom the Government has assigned the right to receive payment.
11. 'Rate and cesses' means rates and cesses which are primarily payable by landowners and includes—
- (a) Repealed by Act XII of 1891;
  - (b) the local rate, if any, payable under the Punjab District Boards Act, 1883, and any fee leviable under Section 33 of the Act from landowners for the use of or benefits derived from such work as are referred to in Section 20, clauses (i) and (j) of the Act;
  - (c) any annual rate chargeable on owners of land under Section 50 of the Northern India Canal and Drainage Act, 1873;
  - (d) the *zaildari* and village officers' cesses; and
  - (e) sums payable on account of village expenses.
12. 'Village Cess' includes any cess, contribution or due which is customarily liable within an estate and is neither a

payment for the use of private property or for personal service nor imposed by or under any enactment for the time being in force.

13. 'Village officer' means a chief headman, headman or patwari.

14. 'Revenue Officer' or 'Revenue Court' in any provision of this Act, means a Revenue Officer or Revenue Court having authority under this Act to discharge the functions of a Revenue Officer or Revenue Court, as the case may be, under that provision.

15. 'Jagirdar' includes any person other than a village servant, to whom the land revenue of any land has been assigned in whole or in part by the Government or by any Officer of the Government.

16. 'Legal practitioner' means any legal practitioner within the meaning of the Legal practitioners Act, 1879, except a mukhtar.

17. 'Agricultural year' means the year commencing on the sixteenth day of June, or on such other date as a Local Government may by notification appoint for any local area.

18. 'Notification' means a notification published by authority of the Local Government in the Official Gazette.

19. 'Improvement' means with reference to a tenancy, any work which is suitable to the tenancy and consistent with the conditions on which it is held, by which the value of the tenancy has been and continues to be increased and which if not executed on the tenancy, is either executed directly for its benefit, or is, after execution, made directly beneficial to it :

*Explanation I*—It includes among other things—

- (a) the construction of wells and other works for the storage or supply of water for agricultural purposes ;
- (b) the construction of works for drainage and for protection against floods ;
- (c) the planting of trees, the reclaiming, enclosing, levelling and terracing of land for agricultural purposes and other works of a like nature ;
- (d) the erection of buildings required for the more convenient or profitable cultivation of a tenancy ; and

- (e) the renewal or reconstruction of any or any of the foregoing works or such alteration therein, or additions thereto, as are not of the nature of mere repairs and as durably increase their value.

But it does not include such clearances, embankments, levelings, enclosures, temporary wells and water channels as are made by tenants in the ordinary course of cultivation and without any special expenditure or any other benefit accruing to the land from the ordinary operations of husbandry :

*Explanation II.*—A work which benefits several tenancies may be deemed to be, with respect to each of them, an improvement.

*Explanation III.*—A work executed by a tenant is not an improvement if it substantially diminishes the value of any other part of his landlord's property.

20. 'Muqarridar' means any person who holds land in the Attock district and who on the date of the commencement of the Punjab Tenancy (Amendment) Act, 1925, was recorded in the revenue records as muqarridar in respect of such land or who, after the said date was so recorded with his consent and the consent of the proprietor of such land and includes the successor in interest of a muqarridar.

## CHAPTER II

### RIGHT OF OCCUPANCY.

The Act deals with mutual rights and obligations of landlords and tenants. The Act classifies tenants under two heads, (1) occupancy or hereditary tenants and (2) non-occupancy tenants or tenant-at-will. Occupancy tenants are of three kinds, (1) tenants under Section 5, (2) tenants under Section 6 and (3) tenants under Section 10 of the Act. Tenants under Section 5 are subdivided into 4 heads, namely tenants under Section (1) (a), tenants under Section 1 (b), tenants under Section 5 (1) (c) and tenants under Section 5 (1) (d).

**Tenants under Section 5 (1) (a).**—A tenant is entitled to the status of an occupancy tenant under Section (1) (a) if he can establish that at the commencement of the Act he has for more than two generations in the male line of descent through a grandfather or granduncle and for a period of not less than twenty years, been occupying the land, paying no rent therefor beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon. (See Section 5 (1) (a).)

It is clear that to establish a right of occupancy under Section 5 (1) (a) the tenant has to prove 3 things :—(1) non-rendering of service by the tenant and non-payment of rent beyond the land revenue and village cesses chargeable on the land for the time being ; (2) two preceding generations in the male line of descent through a grandfather or granduncle must have occupied the same land on the same term ; (3) the period of such occupation must not be less than 20 years.

It must be remembered that Section (1) (a) lays down a very hard rule of substantive law the fulfilment of which entails a good deal of hardship. The legislature has given a practical relaxation to a very rigid rule of substantive law by adopting an elastic rule of evidence by enacting that a tenant who can establish that on the date of his suit he has been continuously occupying the land for 30 years paying no rent therefor beyond the land revenue and rates and cesses will be deemed to have satisfied the conditions mentioned in Section 5 (1) (a). (See Section 5 (2) ). The presumption under Section 5 (2) however is only a rebuttable one. Relationship by adoption where it is sanctioned by custom or personal is as good for purpose of conferring occupancy rights as natural relationship. (See Section 5 (3) ).

**Tenants under Section 5 (1) (b).** A tenant is entitled to be declared as a tenant under Section (1) (b) if he can show that he once owned the land and after ceasing to be owner thereof otherwise than by forfeiture to the Government or than by any voluntary Act, has since such cessation continuously occupied the land. (See Section 5 (1) (b) )

To establish a right of occupancy under Section 5 (1) (b) three conditions have to be fulfilled, *i e.* (1) that the tenant once owned the land (2) that he ceased to the owner thereof otherwise by forfeiture or voluntary act, and (3) that he has been since then continuously occupying the land. When however only a part of the land has been in continuous occupation of the tenant occupancy rights could be acquired in that part only.

**Tenant under Section 5 (1) (c).** A tenant is entitled to occupancy rights under Section 5 (1) (c) if he can establish that he settled in the village along with the founder or was settled by the latter in the village as a cultivator and was in occupation of land on the 21st October 1868 and since that date has continuously occupied the land unless the landlord can establish that the tenant was settled on land previously cleared and brought under cultivation by or at the expense of the founder. (See Section 5 (1) (c) ).

It is not necessary that the representative of a person who settled along with the founder of the village should be in occupation of the very land cultivated by the settler. He is entitled to occupancy rights in respect of all lands in which he was in possession otherwise than under special agreement on 21st October 1868.

**Tenants under Section 5 (1) (d).**—To constitute a valid claim under Section 5 (1) (d) a tenant must prove that (1) he is either a jagirdar or has been a jagirdar in the estate or in the part of the estate in which the land occupied by him is situate and (2) that he is holding land continuously for the last twenty years from the date of the suit. (See Section 5 (1)(b)).

**Occupancy tenants under Section 6.** To establish occupancy rights under Section 6, a tenant has to prove (1) that he or his predecessor was entered as an occupancy tenant in a record of rights sanctioned by the Local Government before 31st day of October 1868 and (2) that he has been in continuous possession of the land since the date of the preparation of that record. (See Section 6)

**Tenants under Section 8.** Section 8 of the Act is a residuary section for occupancy rights and permits a tenant to establish occupancy rights on grounds other those mentioned in Section 5 or Section 6. Some of the grounds on which the rights of occupancy have been granted under Section 8 are (1) custom, (2) agreement and (3) conduct of the parties (See Section 8)

If a tenant has voluntarily exchanged the land or any portion of the land formerly occupied by him for other land belonging to the same landlord the land taken in exchange shall be held to be subject to the same right of occupancy as that to which the land given in exchange would have been subject if the exchange had not taken place. (See Section 7).

A tenant who before the commencement of this Act had acquired occupancy rights under any section of the previous Act will be deemed to have the same rights under the corresponding section of this Act. (Section 11).

No tenant can acquire a right of occupancy by mere lapse of time (Section 9) nor can a joint owner in the absence of a custom to the contrary acquire a right of occupancy in the land jointly owned by the co-owners. (Section 10).

## CHAPTER III

## RENT

**Rent generally.** Rent payable in respect of a tenancy in the first charge on the produce thereof. A tenant is entitled to tend, cut, and harvest the produce of his tenancy without any interference on the part of the landlord and is entitled to exclusive possession of the produce. But where the rent is payable in kind by division the tenant is entitled to exclusive possession of the produce till the division and the landlord is entitled to be present at the time of division and to take into his possession the share of the produce that falls to his share. (Section 12). Where rent is payable in any of the 5 methods mentioned in Section 13 of the Act no alteration in the method can be effected without the consent of both the landlord and the tenant. Further if a rent is payable in any of the methods mentioned in Section 13 (1) (a), (b) (c) and (d) the tenant is not liable to pay rent at a higher rate than that paid in the preceding year unless there is a decree or order of a competent authority or an agreement by the parties authorising an enhanced rent. (Section 13) A person in possession of land without the consent of the landlord is liable to pay rent in respect of such land at the rate of rent payable in the preceding year and if no rent was payable in that year at a fair and equitable rate. (Section 14). In case there are two or more landlords payment of rent to one of them is a good payment and discharges the tenant of his liability. (Section 15).

**Produce rent.** In a case where rent is payable by division or appraisement if the tenant removes any portion of the produce so as to prevent due division or appraisement the produce will be deemed to have been as full as the fullest crop of the same description on similar land in the neighbourhood for that harvest. (Section 16). If either the landlord or the tenant neglects to attend the division or appraisement or there is a dispute between the parties regarding it revenue officer may on the application of either party appoint a referee to effect the division or appraisement of the produce (Section 17) The referee so appointed shall make the division or appraisement in accordance with the instructions of the revenue officer and shall submit the record of the result of division or appraisement to such officer who after considering the same will either confirm or vary it. (Sections 18 and 19) Produce rent payable by an occupancy tenant is liable to enhancement if the land or any part thereof previously not irrigated or flooded becomes irrigated or flooded. Similarly if the land which was previously irrigated or flooded ceases to be so the rent is liable to reduction. (Sections 20 and 21)

**Cash rents.**--In case an occupancy tenant pays a cash rent, his rent is liable to be enhanced in the following manner :--

- (1) If the tenant is one under Section 5 (1) (a), the rent may be enhanced upto two annas per rupee of the land revenue.
- (2) In case of tenants under Section 5. (1) (b) (c) and (d) the rent may be enhanced upto 6 annas per rupee of the land revenue.
- (3) In case of tenants under Sections 6 and 8, the maximum limit for enhancing the rent is 12 annas per rupee of the land revenue.

These above mentioned amounts are payable by the tenants in addition to land revenue and the rates and cesses (Section 24) Section 23 gives the tenant a corresponding right to reduction of rent on the ground that the productive powers of his tenancy have been decreased by a cause beyond his control

**Suits for enhancement or reduction of rent.**—A Revenue Court on a suit by a landlord or his tenant may, subject to the provisions of the Act, enhance or reduce the rent of the tenant. A suit for enhancement of rent is not maintainable if it is brought within 10 years from a previous suit for commutation or enhancement of rent decided on merits, unless the new suit is based on the ground that the tenancy which was formerly unirrigated or unflooded has become irrigated or flooded. (Section 24) In enhancing or reducing the rent the court shall within the presented limit, enhance or reduce the rent to such an amount as it considers fair and equitable but shall not reduce the rent to an amount less than the land revenue and rates and cesses. (Section 25). Unless the court directs otherwise the enhancement shall take effect from the commencement of the agricultural year following the decree. The order regarding reduction shall take effect from the date specified in the decree.

**Adjustment of rent expressed in terms of land revenue.**—Where the rent of a tenancy is the whole or a share of the land revenue thereof, with or without an addition in money, kind or service and the land revenue of the holding in which the tenancy is situate is altered a Revenue officer having authority to determine the land revenue payable in respect of the several holdings comprised in the estate in which the tenancy is situate, shall also determine the amount of the land revenue of the tenancy or the proportionate share thereof, payable by the tenant as rents. (Section 27). Where in the case of an occupancy tenant or *muqarridar* in the Attock district paying wholly or

partly in cash a rent not within the scope of Section 27, the land revenue of the holding comprising the tenancy is altered, the Revenue officer competent to determine the land revenue of the estate in which the tenancy is situate may, either at the instance of landlord or of the tenant or of his own motion, increase or diminish such rent to such an extent as appears to him to be proper. In increasing or diminishing the rent of a tenancy the Revenue Officer shall take into consideration (i) the land revenue and rates and cesses chargeable on the tenancy before the alteration of the land revenue of the holding in which the tenancy is situate, (ii) the land revenue and rates and cesses chargeable on the tenancy after such alteration, and (iii) the methods by which the assessment of the land revenue in force before and after such alteration were calculated and distributed over the several holdings comprised in the estate in which the tenancy is situated. (Section 27-A).

**Alteration of rent on alteration of area.**—A tenant is liable to pay rent for area actually under him. He is liable to pay additional rent for all land proved to be in excess of the area for which rent has been previously paid by him. Similarly he is entitled to an abatement of rent in respect of any deficiency proved to exist in the area of his tenancy as compared with the area for which rent has been previously paid by him. In adding to or abating rent the court shall add to or abate the rent to such an amount as it seems to be fair and equitable and shall specify the date on and from which the addition or abatement is to take effect. (Section 28.)

**Remission**—If in a suit for arrears of rent it appears to the court that the area of the tenancy has been so diminished by diluvion or otherwise or its produce has been so diminished by causes beyond his control that it would not be just to decree the full amount, it may with the previous sanction of the Collector grant such remission from the rent as may appear to be just. (Section 29). If the payment of the whole or any part of the land revenue is remitted or suspended the Revenue Officer may proportionately remit the rent in cases where the rent is payable in cash is payable in kind of which the amount is fixed. Provided that in case of an occupancy tenant a remission or suspension of the payment of the whole or a part of the land revenue payable for the tenancy shall always carry with it a remission or suspension of the payment of the whole or proportionate part of the rent. Tenants would be entitled to this remission or suspension of rent if the land revenue assessed on the tenancy has been released, compounded for or redeemed. An order regarding remission or suspension of rent is not liable to be contested by a suit in any court, nor does a suit lie for the recovery of rent remitted or suspended. If however a landlord realises from the tenant rent



so remitted or suspended, the Revenue Officer may recover from the landlord the amount or value of the rent so recovered and if he thinks fit a penalty amounting to this sum along with it and refund to the tenant the same. (Section 30).

**Deposits** --When a landlord refuses to receive rent in cash from the tenant or when the tenant himself is in doubt as to the person entitled to receive the rent, the tenant may deposit the rent due with the leave of the Revenue Officer in his office and such a deposit has the effect of discharging the tenant of his liability to pay rent to the landlord. The Revenue Officer after enquiry may pay the amount to the person entitled to it or may retain the deposit pending the decision of a competent court as to the person so entitled. No suit lies against the Secretary of State in respect of such a payment made by the Revenue Officer but a suit against the person who has received the payment is competent. Sections (31, 32).

**Recovery of rent from attached produce**---If the produce of a tenancy or a part of it has been attached by any court, the landlord has the first lien upon such produce for the rent due for the current harvest and for the arrears of rent, if any which has fallen due in the preceding year and the Revenue Officer shall satisfy the landlord's claim by sale of produce provided the latter has established his claim. (Section 33).

**Leases for period exceeding term of assessment of land revenue**---Where a lease has been granted by a landowner in respect of any land assessed to land revenue for a period exceeding the term for which the land revenue has been assessed, the lease may be avoided

- (a) at the option of the landlord if the land revenue of the land has been enhanced and the lessee refuses to pay such rent as a Revenue Court on landlord's suit determines to be fair and equitable, and
- (b) at the option of the tenant if the land revenue has been reduced and the landlord refuses to accept such a rent as a Revenue Officer on the suit of the tenant determines to be fair and equitable. An agreement regarding the occupation, rent profits or produce of any land which has been made for the term of assessment shall unless a contrary intention appears from the agreement or the agreement is terminated, continue in force until a revised assessment takes place. (Section 34).

## CHAPTER IV.

## RELINQUISHMENT, ABANDONMENT AND EJECTMENT.

**Relinquishment.**—A tenant holding for a fixed term can relinquish his tenancy without notice at the end of that term. (Section 35) A tenant who is not for a fixed term can relinquish his tenancy at the end of agricultural year then current by giving notice to his landlord either verbally or in writing on or before the 15th January of any year. A tenant may give notice either directly himself or through a Revenue Officer. A failure to give such notice renders the tenant liable to pay rent to the landlord for the period for which the tenancy is not let to any other person or is not cultivated by the landlord himself. (Section 36) A tenant cannot without the consent of his landlord relinquish a part only of his tenancy. (Section 37.)

**Abandonment.**—If an occupancy tenant fails for more than one year without sufficient cause to cultivate his tenancy either himself or through another person and to arrange for payment of rent, the right of occupancy shall be extinguished from the end of that year. (Section 38.)

**Ejectment, grounds for.**—An occupancy tenant is liable to be ejected.—

- (a) if he has used the land in a manner which renders it unfit for the purposes for which he held it, or
- (b) if he has, where rent is payable in kind, not properly cultivated the land without sufficient cause, or
- (c) if he fails to satisfy a decree for rent passed against him. (Section 39.)

A tenant holding for a fixed term is liable to be ejected from his tenancy at the expiration of the term or on any of the grounds mentioned in (a) and (b) above or any ground which would justify ejectment under the contract, decree or order under which he holds the tenancy (Section 43). (1) Non-occupancy tenant who does not hold for a fixed term may be ejected at the end of any agricultural year. (Section 41).

**Ejectment, procedure.**—A tenant shall not be ejected otherwise than in execution of a decree for ejectment, excepting—

- (a) when a decree for arrears of rent against him remains—

unsatisfied ;

- (b) when the tenant is a non-occupancy tenant and does not hold for a fixed term. (Section 42).

In a case falling under clause (a) above the tenant may be ejected by a Revenue Officer on the application of the landlord and in a case under clause (b) above a notice of ejectment has to be served on the tenant. (Section 43). The Revenue Officer on receiving an application when the case falls under clause (a) above, shall serve a notice on the tenant requiring him to pay the arrear of rent within 15 days from the receipt of the notice and if the tenant fails to comply with this requisition an order for his ejectment shall be passed. (Section 44.) If an application is made in a case falling under clause (b) for issue of a notice of ejectment, the Revenue after satisfying himself that the application is in proper order shall serve a notice of ejectment on the tenant requiring him to vacate the tenancy before the 1st May following and informing him that if he means to contest his liability to be ejected he should institute a suit for that purpose within two months from the receipt of that notice and that in case he does not mean to contest his liability to ejectment but has some claim for compensation he should within two months from the receipt of notice prefer his claim to the Revenue Officer effecting his ejectment. Notice of ejectment must be served before the 15th of November. If the tenant does not file a suit contesting his liability to ejectment the Revenue Officer by his order shall direct his ejectment, and if the tenant files the said suit fails, the court trying the suit by its decree shall direct his ejectment. (Section 45).

**General provisions respecting ejectment.**—A decree or order of the ejectment of a tenant shall be executed only between the 1st May and 15th June unless the order or the decree directs otherwise (Section 47). If in a suit for ejectment on grounds mentioned in clauses (a) and (b) of Section 39 or of Section 40 it appears to the court that the injury caused to the landlord can be remedied or that compensation would sufficiently recompense for the injury the court may instead of passing a decree for ejectment, order the tenant to remedy the injury or to pay compensation within a specified period and if the tenant complies with the order the decree for ejectment shall not be made. (Section 48). Where at the time of the proposed ejectment of a tenant his uncut or ungathered crops are standing, he shall not be ejected until the crops have ripened and he has been allowed a reasonable time to harvest them. If the tenant holds tenancy longer than what is necessary, the Court or the Revenue Officer may award a fair and equitable amount of rent to the landlord for the period for which the tenant has held over. Or if the landlord

pays to the court or the Revenue Officer value of the tenant's uncut and ungathered crops as determined by the said Court or the Officer, the ejection of the tenant may be effected forthwith. If a tenant against whom ejection proceedings have been taken has prepared for sowing the land of his tenancy but has not sown or planted crops he is entitled to compensation to be determined by the court or the Revenue Officer for his labour and expense before ejection. (Section 49.)

**Relief for wrongful dispossession.**—If a tenant has been dispossessed of his tenancy without his consent or otherwise than in accordance with the provisions of the Act or not having instituted a suit under Section 45 has been ejected in pursuance of an order under that section, he may within one year from the date of his dispossession bring a suit for recovery of possession or for compensation or for both. (Section 50). No one whose ejection has been ordered by a Revenue Court under Section 45 (6) or whose suit has been dismissed under Section 50 can bring a suit in a civil court to contest his liability to ejection or to recover possession of tenancy or compensation (Section 50-A). Nor can a dispossessed tenant recover possession of the tenancy under Section 9 of the Specific Relief Act. (Section 51) The Local Government may by means of notification change the dates mentioned in Sections 36, 45 and 47.

## CHAPTER V.

### ALIENATION OF, AND SUCCESSION TO RIGHT OF OCCUPANCY.

**Alienation.**—An occupancy tenant under S. 5 is competent to transfer his right by sale, gift or mortgage subject to the right of the landlord to buy those rights in preference to all others. If such a tenant intends to transfer his right by sale, gift, mortgage by conditional sale or usufructuary mortgage, he shall cause notice of his intention to be served on his landlord through a Revenue Officer and will postpone the transfer for a period of one month from the date of the service of the notice. Within the said period of one month the landlord may claim to purchase the right at such a value as a Revenue Officer may fix and if the landlord pays such value within the period allowed by the Revenue Officer he shall be deemed to have purchased the right and the right of occupancy shall be extinct. Where there are several landlords, notice has to be served on all of them and any one or more of them may exercise the preferential right of purchase. (S. 53). The provisions of S. 53 will apply *mutatis mutandis* where a mortgage of a right of occupancy under Section 5 proposes to foreclose his mortgage or otherwise enforce his lien. (Section 54). A right of occupancy under Section 5 is saleable in

execution of a decree or order of a court and the landlord has been given a right of pre-purchase in respect of such a sale also. (Section 55). Rights of occupancy under Sections 6 and 8 are not liable to attachment and sale in execution of a decree or order of any court. Nor can they be transferred by the tenant privately, without the previous consent in writing of the landlord (Section 56). A transferee of the right of the rights of occupancy other than the landlord has the same rights and obligations as the original tenant (Section 57). An occupancy tenant may subject the provisions of this Act and any contract in writing between him this landlord sublet his tenancy or any part thereof for a period not exceeding seven years and the sub-tenant jointly with the tenant is subject to all the liabilities of the tenant under this Act. (Section 58). An occupancy tenant may, with the consent of his landlord transfer his land to all the members of a Co-operative Society for the consolidation of holdings of which both he and his landlord are members and obtain from them any other land in exchange in which he shall have the same right of occupancy as in the land given for it in exchange. (Section 58-A).

**Succession.**—When an occupancy tenant dies, his right shall devolve:—

- (a) on his male lineal descendants, if any, in the male line of descent, and,
- (b) failing such descendants on his widow if any, and,
- (c) failing such descendants and widow or if the deceased tenant left a widow when her rights terminate by death or otherwise, on his male collateral relatives in the line of descent from the common ancestor of the deceased tenant and these relatives provided the common ancestor occupied the land. (Section 59).

Section 59 is conclusive on the question of succession to occupancy rights. In other words succession to occupancy rights is governed by the provisions of this Section and not by custom applicable to the parties or by their personal law. But the provisions of Section 59 may be overridden by an agreement valid according to the provisions of Sections 111 and 112 of the Act.

**Irregular transfers.**—Any transfer of a right of occupancy in contravention of the provisions of this Act is voidable at the instance of the landlord. (Section 60).

## CHAPTER VI.

## IMPROVEMENTS AND COMPENSATION.

**Improvements by landlords.**—A landlord can not make an improvement on the tenancy of an occupancy tenant without the previous permission of the Collector. (Section 61). Where however a landlord makes an improvement with the previous permission of the Collector, he can claim enhancement which can be granted in accordance with the provisions of the Act governing the enhancement of rent and when the improvement ceases to exist, the collector on the application of the tenant may reduce the rent (Section 62).

**Improvement by tenants.**—An occupancy tenant is entitled to make improvements on his tenancy. (Section 63.) But a non-occupancy can do so only with the assent of his landlord either express or implied (Section 64) Improvements made by a tenant before the commencement of this Act shall be deemed to have been made in accordance with this. Act But not so the improvements effected by a non-occupancy tenant in contravention of a written agreement between him and the landlord. (Section 65) A tenant is not entitled to any compensation for any improvement begun after the institution of the suit for ejection or service of the notice which resulted in his ejection. (Section 66). If a tenant has effected improvements on the tenancy and the landlord tenders to him a lease of this tenancy for a term of not less than 20 years at the rent then paid by the tenant or such rent as may be agreed upon, the tender if accepted by the tenant shall bar a claim for compensation by the tenant in respect of improvements. (Section 67). Subject to the foregoing provisions of this chapter a tenant who has lawfully made any improvement shall not be ejected and the rent payable by him shall not be enhanced until he has received compensation for the improvement (Section 68).

**Compensation for disturbance of clearing tenants.**—A tenant who has cleared and brought under cultivation waste land in which he has not a right of occupancy shall if ejected from that land be entitled to receive from the land as compensation for disturbances apart from compensation for improvement, a sum to be determined by a Revenue Court or Revenue Officer not exceeding 5 years' rent, But if the tenant is joint owner of the land he is not entitled to any compensation for disturbance on ejection from the land. (Section 69).

**Procedure in determining compensation** --In every suit by a tenant to contest his liability to ejection or by a landlord for ejection or enhancement of rent, the court shall direct the

tenant to file a statement of his claim to compensation for improvements or for disturbance and of the grounds therefor. If the court decrees the ejection or enhancement of rent, it shall determine the amount of compensation if any and shall stay the execution of the decree until the landlord pays that amount minus arrears of rent or costs due to him from the tenant. (Section 70) Similarly a tenant on whom a notice under S. 44 or S. 45 has been served and who has not filed a suit contesting his liability to ejection, on his application to that effect, to a Revenue Officer before whom the ejection proceedings are pending, be awarded by that officer compensation for improvement or disturbance or for both and the order of ejection against him shall not be executed until the landlord satisfies his claim. (Section 71). In determining compensation for improvement the Revenue court or the Revenue Officer shall have regard to—

- (a) the amount by which the value or produce of tenancy or the value of that produce is increased by the improvement,
- (b) the condition of the improvement and the probable duration of its effects,
- (c) the labour and capital required for the improvement,
- (d) any reduction or remission of rent or other advantage allowed to the tenant in consideration of improvement,
- (e) in case of reclamation or of conversion of unirrigated into irrigated land, the length of time during which the tenant has had the benefit of the improvement. (Section 72).

The compensation shall be made by payment in money unless the parties agree to some other arrangement (Section. 73)

**Relief in case of ejection before determination of compensation.**—If the amount of compensation payable to a tenant for improvements or disturbance or for the value of uncut or ungathered crops or the preparation of land for sowing has not been determined before the tenant has been ejected, the ejection will stand good but the Court or the Revenue Officer which decreed, or ordered ejection may on application of the tenant within one year from the ejection order the payment to him by the landlord such compensation as the court or the officer may determine the tenant to be entitled to.

## CHAPTER VII.

## JURISDICTION AND PROCEDURE.

**Jurisdiction.**—Section 75 of the Act enacts that there shall be the same classes of the Revenue Officers under this Act as under the Punjab Land Revenue Act and an officer shall be of the same class under both the Acts. Section 6, Punjab Land Revenue Act says that Revenue Officers are of five classes namely.

- (1) the Financial Commissioner
- (2) the Commissioner
- (3) the Collector
- (4) the Assistant Collector of the 1st grade, and
- (5) the Assistant Collector of the 2nd grade. (Section 75).

Section 76 enacts that applications and proceedings given below in 3 groups can be disposed of only by Revenue Officers noted against each group and no court can take cognizance of any dispute or matter with respect to which any such application or proceeding might be made or had :—

Groups.	Application or proceeding.	Revenue Officers competent to entertain and dispose of application or proceeding.
I	<p>(a) Proceedings under Section 27 for adjustment of rent expressed in terms of land revenue.</p> <p>(aa) Proceedings under Section 27-A for adjustment of rents of occupancy tenants in the Attock district.</p> <p>(b) Proceedings relating to remission and suspension of rents under Section 30.</p>	<p>(i) A Collector (ii) an Assistant Collector 1st grade.</p> <p>Ibid.</p> <p>Ibid.</p>



Groups.	Application or proceeding.	Revenue Officer competent to entertain and dispose of application or proceeding.
I	<p>(c) Applications under Section 43 for the ejectment of a tenant against whom a decree for arrears of rent has remained unsatisfied.</p> <p>(d) Applications under Section 45 (5) for ejecting a tenant not contesting his liability to ejectment but claiming compensation under Section 71.</p> <p>(e) Applications under Section 53 or Section 54 fixing value of a right of occupancy.</p> <p>(f) Applications under Section 53 or Section 54 by landlords for possession of land, the right of occupancy in which has become extinct.</p> <p>(g) Proceedings under Chapter VI with respect to award of compensation for improvements or disturbance.</p>	<p>Ibid.</p> <p>Ibid.</p> <p>Ibid.</p> <p>Ibid.</p> <p>Ibid.</p>
II	<p>(h) Applications under Section 17 with respect to the division or appraisal of produce.</p> <p>(i) Applications under Section 45 (5) for ejecting a tenant not contesting his liability to ejectment and not claiming compensation under Section 71.</p>	<p>Collector or Assistant Collector 1st grade or A. C. 2nd grade not being Naib Tahsildar.</p> <p>do.</p>

Groups.	Application or proceeding.	Revenue Officers competent to entertain and dispose of application or proceeding.
II	<p>(i) Application for the determination of:—</p> <p>(1) under Section 49 of the rent payable for land occupied by crops uncut or ungathered at the time of an order being made for the ejection of a tenant, or</p> <p>(2) under Section 49 or Sec. 74 the value of such crops or the sum payable to the tenant for labour and capital expended by him in preparing land for sowing.</p>	
III	<p>(k) Applications under Section 31 by tenants to deposit rent.</p> <p>(l) Applications under Section 36 for service of notice of relinquishment.</p> <p>(m) Applications under Section 43 for service of notice of ejection.</p> <p>(n) Applications under Section 53 or Section 54 for service of intended foreclosure or other enforcement of lieu.</p>	A Collector, A. C. 1st or 2nd grade.

**Revenue Court**—A Revenue Officer dealing with a suit under Section 77 (3) or an appeal or other proceeding arising out of such suit is called a Revenue Court. A Revenue Court is simply a Revenue Officer acting in judicial instead of an executive capacity. (Section 77 (1)). Revenue Courts are of the same classes

as Revenue Officers and a Revenue Officer of any class having jurisdiction within any local limits is a Revenue Court of the same class having jurisdiction within the same local limits. (Section 77 (2) ).

**Cognizance of certain suits by Revenue Courts.**—The suits included in the groups given below shall be instituted in, heard and determined by Revenue Courts noted against each group and on other courts shall take cognizance of any dispute or matter with respect to which any suit might be instituted :—

Groups.	Suits.	Courts having jurisdictions.
I	<p>(a) Suits for enhancement or reduction of rent under Sec. 24 ;</p> <p>(b) Suits for addition to or abatement of rent under Section 28, or for commutation of rent ;</p> <p>(c) Suits under Section 34 for the determination of rent or other sum on the expiration of the term of an assessment of land revenue and suit relating to the rent to be paid under a mortgage made in accordance with form (c) as prescribed by Section 6 Punjab Alienation of Land Act.</p>	<p>(i) Collector (ii) Assistant Collector 1st grade specially empowered by Local Government.</p>
II	<p>(d) A suit by a tenant to establish or by the landlord to disprove a right of tenancy.</p> <p>(e) Suits by a landlord to eject a tenant.</p> <p>(f) Suits by a tenant under Section 45 to contest liability to ejection when notice of ejection has been served.</p>	<p>(i) Collector (ii) Assistant Collector 1st grade.</p>

Groups.	Suits.	Courts having jurisdictions.
II	<p>(g) Suits by a tenant under Section 50 for recovery of possession of tenancy or for compensation or for both.</p> <p>(h) Suits by a landlord to set aside a transfer of occupancy rights or to dispossess the transferee or for both purposes.</p> <p>(i) Any other suit between landlord and tenant arising out of lease or conditions of the tenancy.</p> <p>(j) Suits for sums payable on account of village cesses or village expenses.</p> <p>(k) Suits, by a cosharer in an estate or holding for a share of the profits thereof or for a settlement of accounts.</p> <p>(l) Suits for the recovery of over payments of rent or land revenue or of any other demand for which a suit lies in a Revenue Court under this sub-section.</p> <p>(m) Suits, relating to the emoluments of <i>kanungos</i>, <i>zaildars</i>, <i>inamdars</i>, or village officers.</p>	
III	<p>(n) Suits by a landlord for arrears of rent or the money equivalent of rent, or for sums recoverable under Section 14.</p> <p>(o) Suits by a landowner to recover moneys claimed as due for the enjoyment of rights in or over land or in water, including</p>	

Groups.	Suits.	Courts having jurisdictions.
	<p>rights of irrigation, rights over fisheries, right of pasturage and forest rights.</p> <p>(p) Suits for sums payable on account of land revenue or of any other demand recoverable as an arrear of land revenue under any enactment for the time being in force, and by a superior landowner for other sums due to him as such.</p>	

Where in a suit before a Civil Court it becomes necessary to decide any matter which can be heard and determined only by a Revenue Court, the Civil Court shall endorse upon the plaint the nature of the matter for decision and return the plaint for presentation to the Collector who shall either hear it himself or send it to some other Revenue Court of competent jurisdiction according to the value and nature of the matter involved. (Proviso to S. 77 (3)).

**Administrative Control.**—The general superintendence and control over all other Revenue Officers and courts vests in the Financial Commissioner and subject to general control of Financial Commissioner, Commissioner controls all other Revenue Officers and courts and under him Collector has the control of all other Revenue Officers and Courts. (S. 78). The Financial Commissioner or a Commissioner or a Collector may by a written order distribute business cognizable by any Revenue Officer or Revenue Court under his control and may withdraw any case pending before any Revenue Officer or Revenue Court under him and either dispose it of himself or send it for disposal to some other competent Revenue Court or Officer under him. (S. 79).

**Appeals.**—Subject to the provisions of the Act, an appeal shall form an original or appellate order or decree of a Revenue Officer or Court as follows :—

- (a) to the Collector within 30 days from the date of the decree or order when it is made by an Assistant Collector of either grade;

- (b) to the Commissioner within 60 days from the date of the decree or order when it is made by a Collector;
- (c) to the Financial Commissioner within 90 days from the decree or order when it is made by a Commissioner

Provided that—

- (i) an appeal from an order or decree of an Assistant Collector 1st grade specially empowered by Local Government to try a suit in first group of S. 77 (3) shall lie to the Commissioner and not to the Collector ;
- (ii) when an original order or decree is confirmed on first appeal, a further appeal shall not lie;
- (iii) when any such order or decree is modified or reversed on appeal by the Collector, the order or decree made by the Commissioner on further appeal, if any, to him shall be final. (Sections 80, 81).

**Review.**— A Revenue Officer may either of his own motion or on the application of any party interested, review, and on so reviewing modify reverse or confirm any order passed by himself or by any of his predecessors in office :

Provided that—

- (a) a Commissioner or Collector shall not review an order not passed by himself without the previous sanction of his immediate superior authority. A Revenue Officer of a class below that of a Collector can not review an order whether passed by himself or by any of his predecessor in office without the previous sanction of Collector,
- (b) the application is made within 90 days from the passing of the order or the applicant satisfies the court that he had sufficient cause for not making the application within that period :
- (c) an order shall not be modified or reversed unless reasonable notice to appear has been given to the parties affected ;
- (d) an order against which an appeal has been preferred shall not be reviewed. (Section 82 (1)).

The Collector shall be deemed to be the successor in office, for purposes of review, of any Revenue Officer of a lower class who has left the district without a successor. (Section 82 (2)).

An order passed on review is not open to appeal. (S. 82 (3).)

In computing the period for appeal or review the provisions of the Indian Limitation Act, 1908 shall apply.

**Revision.**—The Financial Commissioner, a Commissioner or a Collector may call for the record of any case pending before or disposed by any Revenue Officer or Court under him. If the Commissioner or the Collector who has called a record thinks that an interference with the order or proceedings is expedient he shall submit the record with his opinion for the orders of the Financial Commissioner. The Financial Commissioner if after examining the record whether called for by himself or submitted to him for orders is of opinion that no interference is needed shall pass an order to that effect. On the other hand if he is of opinion that it is expedient to interfere with the decree, order or proceedings he will fix a date for hearing of the parties and after hearing them shall pass such orders as he thinks fit. The power of interference of the Financial Commissioner is confined to the grounds on which the High Court can interfere in revision, *i.e.* the grounds mentioned in S. 115, C.P.C. (Section 84).

### PROCEDURE.

**Procedure of Revenue Officers.**—The Local Government may make rules regulating procedure of Revenue Officers in cases in no procedure is prescribed by the Act. The rules may, among other matters, provide for the mode of enforcing orders of ejection from and delivery of possession of immovable property and confer on a Revenue Officer powers in regard to contempts and resistance to orders. The rules may also provide for execution of orders relating to costs and for permitting the use of provisions in Punjab Land Revenue Act, 1887 relating to arbitration. A Revenue Officer may, if the rules permit, refer any case which he is competent to dispose of to another Revenue Officer for investigation and report. (S. 85). Appearances before or applications to Revenue Officer may be made by the parties personally or their recognised agents or counsel. But a party must appear personally if so required. The fees of the counsel can not be allowed as costs unless the Revenue Officers for reasons to be recorded specially allows them. (S. 86). The costs of the proceedings are in the discretion of the Revenue Officer. But when he orders that costs will not follow the event he shall have to record his reasons for the order. (S. 87).

**Procedure of Revenue Courts.**—The Local Government may make rules for regulating procedure of Revenue Courts in matters for which the Act prescribes no procedure and may by such rules direct the application of any of the provisions of Civil Procedure Code. Until such rules are framed the Code of Civil Procedure shall, so far as it is applicable, apply to all proceedings before Revenue Courts and the Financial Commissioner would be deemed to be High Court within the meaning of that Code and shall exercise as regards Courts under him all the powers of the High Court under the Code. (Section 88). A person summoned by a Revenue Officer or Court in connection with any proceeding pending before him or it is bound to appear as directed in the summons and to state the truth upon any matter respecting which he is examined or makes the statement and to produce documents or other things if so required. (Section 89). A summons issued by a Revenue Officer or Court shall, if practicable be served personally on the person concerned or failing him on (b) his recognised agent or (c) an adult male member of his family residing with him. If service can not be so effected or its acceptance is refused, the summons may be served by posting a copy at the usual or the last known place of residence of the person concerned or if that person does not reside in the district in which the Revenue Officer or the court exercises jurisdiction and the land in dispute is situate in that district by posting a copy of the summons on some conspicuous place in or near the estate wherein the land is situate. If summons relate to a case in which parties are too numerous to be served personally the Revenue Officer or the Court may direct that a few of them may be served personally and a proclamation be made for the information of others. If the Revenue Officer or the court so directs, a summons may be served in addition to, or in substitution for any other mode of service by forwarding the summons by post under a registered cover. If the letter containing summons is properly addressed, and duly posted and registered, the court may presume that the summons was served at the time when the letter would be delivered in the ordinary course of post. (Section 90.) These provisions regarding service shall apply also to the service of a notice, order or proclamation issued by the Revenue Officer or the court. (Section 91) When a proclamation relates to land, it shall, in addition to any other mode of publication be made by beat of drum and by posting thereof in or near that land. (Section 92).

Suits under Section 77 of the Act are not affected by Section 424, C.P.C. 1882 (Section 8) C.P.C. 1903 or Section 36 Punjab Municipal Act 1884 (Section 49 Punjab Municipal Act 1911). (Section 94.) If a defendant admits his liability to pay rent to a person other than the plaintiff and pays the amount into Court, his liability will be discharged and the court shall cause a notice of payment to be served on such third person and unless



such third person within 6 months institutes a suit against the plaintiff and obtains therein an order restraining payment, it shall be paid to the plaintiff. (Section 95) A decree for an arrear of rent may, on the oral application of the decree-holder, be executed against the immovable property of the tenant and against any uncut or ungathered crops on the tenancy in respect of which the arrear is decreed. (Section 96). But during the continuance of occupancy a tenant is not liable to imprisonment in the execution of such decree. (Section 97).

If in any proceeding pending before a Revenue Court exercising original, appellate or revisional jurisdiction it appears to the Court that any question in issue is more proper for decision by a Civil Court, the Revenue Court may with the previous sanction of immediate superior authority require any party to institute a suit in the Civil Court for obtaining a decision on the question. If the said party obtains a decision of the Civil Court, the Revenue Court shall dispose of the proceeding in accordance with the decision of the Civil Court. But if no decision of Civil Court is obtained the Revenue Court may decide the question as it thinks fit. (Section 98). If the presiding officer of a Civil or Revenue Court is doubtful about its competency to try the suit it may refer the matter through the District Judge or Commissioner or if he is a District Judge or Commissioner directly to the High Court. The High Court may order the presiding officer either to proceed with the suit or to return the plaint for presentation in such other Court as it may declare competent to try the suit. The order of the High Court will be conclusive against all person whether parties to suit or not. (Section 99)

If it appears to a Civil Court that a court under its control has determined a suit which should have been heard and determined by a Revenue Court or if it appears to a Revenue Court that a court under its control has determined a suit triable by Civil Court, it shall submit the record of the suit to the High Court. If it appears to the High Court that the suit was so determined in good faith and that the parties have not been prejudiced by the mistake, the High Court may order that the decree be registered in the Court which had jurisdiction and the decree shall have effect as if it had been made by the High Court. If it appears to the High Court otherwise than on submission of record that a Civil Court under its control has tried a suit cognizable by a Revenue Court it may pass an order which it might have passed if the case had been submitted to it. (Section 100).

**Miscellaneous.**—An Assistant Collector may exercise his power at any place within the district in which he is employed and an other Revenue Officer or court may exercise powers only within local limits of his or its jurisdiction. (Section 101).

The Financial Commissioner, with the previous approval of Local Government, shall publish in the Local Official Gazette a list days to be observed as holidays by Revenue Officers and Courts. But a proceeding held on a holiday will not be invalid simply for that reason. (Section 102).

On the death or disability from performing his duties, of a Collector, the officer who succeeds him temporarily as executive administrator of the district under the orders of the Local Government shall be deemed to be a collector under the Act. (Section 103).

A Revenue Officer who as such or as a Revenue Court is exercising powers under the Act in any local area is transferred from that local area to another he shall retain those powers in that area. (Section 104)

The Local Government may by notification confer on any person all or any of the powers of a Financial Commissioner, Collector or Assistant Collector either grade and may also by notification withdraw any power so conferred. When powers of a Financial Commissioner, Commissioner or Collector are to be conferred on the judge of a Civil Court the Local Government shall consult the High Court. (Section 105). The Financial Commissioner may, subject to the control of the Local Commissioner may, make rules consistent with this and other Acts.

- (a) determining the number and amount of the instalments and the times by and at which rent is to be paid;
- (b) for the guidance of Revenue Officers in determining the amount of the land revenue of any land;
- (c) prescribing the periods during which in proceedings under the Act Revenue Officer except in emergent cases is not issue process of arrest against a tenant or a landowner who cultivates his own land;
- (d) regulating the procedure for inspecting records of Revenue Officers or Courts or to obtain copies of the same and prescribing the fees for searches and copies;
- (e) prescribing forms for such books, entries, statistics and accounts as the Financial Commissioner thinks necessary to be kept made or compiled in Revenue Offices or Courts or submitted to any authority;
- (f) declaring the language of the Revenue Officers and Courts;

- (g) generally for the guidance of Revenue Officers and other persons in matters connected with the enforcement of the Act. (Section 146).

The power to make rules under the Act is subject to the condition of the rules being made after previous publication. (Section 107).

## CHAPTER VIII.

### EFFECT OF THIS ACT ON RECORDS OF RIGHTS AND AGREEMENTS

An entry in the record of rights:—

- (a) authorising a landlord to prevent a tenant from making or eject for making such improvement as allowed by this Act,
  - (b) disentitling a tenant ejected from his tenancy to compensation for improvements or disturbance allowed under this Act, or
  - (c) authorising a landlord to eject a tenant otherwise than in accordance with the provisions of this Act,
- shall be void to that extent.

An agreement made between a landlord and a tenant after the passing this Act shall not:—

- (a) override the provisions of the Act relating to acquisition of occupancy right or reduction remission suspension of rent or enhancement of rent of an occupancy tenant under Section 5 or Section 6,
- (b) deprive the tenant of his right under the Act to make improvements and claim compensation therefor or for disturbances, or
- (c) entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

But an agreement by which a tenant binds himself to pay an enhanced rent in consideration of an improvement effected by landlord on the tenancy is not invalid. (Section 110)

In absence of a specific provision to the contrary in this Act an agreement between landlord and a tenant when it is in writing or has been recorded in a record of rights before the passing of the Punjab Land Revenue Act, 1887, or has been entered by order of a Revenue Officer in a record of rights or annual record will be binding on parties. (Section 111).

An entry respecting any of the following matters made before the 18th November 1871 and attested by the proper officer in the record of a regular settlement sanctioned by the Local Government namely—

- (a) the enhancement or abatement of the rent of an occupancy tenant or the commutation of rent in kind into cash rent and *vice versa* or the taking of rent in kind by division or appraisement or other procedure of a like nature, or
- (b) the letting or underletting of by an occupancy tenant, or the alienation of or succession to occupancy rights,

shall be deemed to be an agreement binding on parties under Section 111. (Section 112).

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