



Government of Bengal
Legislative Department

Act VIII of 1885

The Bengal Tenancy Act 1885.

as modified up to the 1st September, 1933

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STATEMENT OF REPEALS AND AMENDMENTS.

<p>REPEALED IN PART AND AMENDED ..</p>	<p>..</p>	<p>..</p>	<p>{ Ben. Act I of 1907 ; E. B. & A. Act I of 1908 ; Act XXXVIII of 1920 ; Ben. Act IV of 1928 ; Ben. Act II of 1930.</p>
<p>AMENDED</p>	<p>..</p>	<p>..</p>	<p>{ Act VIII of 1886 ; Ben. Act III of 1898; Ben. Act I of 1903 ; Ben. Act III of 1913; Ben. Act II of 1918 ; Ben. Act III of 1919; Ben. Act X of 1923 ; Ben. Act I of 1925.</p>
<p>SUPPLEMENTED ..</p>	<p>..</p>	<p>..</p>	<p>.. Ben. Act III of 1895, ss. 20, 28 to 32, 36(c).</p>

Note—In reprinting this Act,—

- (1) matters repealed by later Acts have been omitted, explanatory notes being inserted ;
- (2) the amendments made by later Acts have been inserted in their proper places with explanatory foot-notes ;
- (3) some further foot-notes have been added for convenience of reference ;
- (4) the marginal notes to sections have been revised, wherever this was necessary, in order to bring them into harmony with the amendments made in the sections ;
- (5) the number and year of Acts referred to in the text have been uniformly printed in the margin ;
- (6) words belonging to the Oriental languages have, as a rule, been printed in italics; and
- (7) the headings to the pages have been amplified.

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ACT VIII OF 1885.¹

THE BENGAL TENANCY ACT, 1885.

(As modified up to the 1st September, 1933.)

14th March, 1885.

*An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.*²

WHEREAS it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Gazette of India*, 1883, Pt. V, page 129; for Report of Select Committee, see *ibid*, 1884, Pt. V, page 25; and for Proceedings in Council, see *ibid*, 1883, Supplement, pages 268, 831, 885, 996, 1519 and 2303; *ibid*, 1884, Supplement, pages 633 and 1405, *ibid*, 1885, Supplement, pages 269, 639, 743 and 776.

LOCAL EXTENT.—This Act [except section 31A] extends to the whole of the former Province of Bengal except the town of Calcutta, the Division of Orissa, and the Scheduled Districts—see s. 1(3).

The Act has never been extended to the town of Calcutta.

The Act has, with certain exceptions, restrictions and modifications, been extended, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), ss. 5 and 5A, to the Jalpaiguri district.

The application of the Act is barred in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (I of 1900), s. 4(2).

Section 31A(1) applies only to districts or parts of districts to which it is extended by the Local Government by notification in the *Calcutta Gazette*.

COMMENCEMENT.—Act VIII of 1885 was declared to come into force on the 1st November, 1885, by a notification, dated the 4th September, 1885—see *Calcutta Gazette*, 9th *idem*, Pt. I, page 874. That notification was, however, modified as to the commencement of ss. 61 to 64 and Chapter XII by Act XX of 1885, section 1, which enacted that those portions of the Act should come into force on such date, not later than the 1st day of February, 1886, as the Local Government might appoint, or, if no such date was appointed, then on the 1st February, 1886. (No such date was appointed.) Act XX of 1885 was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

OTHER ENACTMENTS CONTAINING PROVISIONS AS TO LANDLORD AND TENANT.—For a comprehensive view of the several enactments relating to landlord and tenant which are printed in the Bengal Code, see the head "Landlord and Tenant," and cross references therefrom, in the index at the end of Vol. IV of the Bengal Code. Other enactments on the subject which are in force in Bengal are—

- (1) the Mesne Profits and Improvements Act, 1855 (XI of 1855);
- (2) the Opium Act, 1878 (I of 1878), ss. 4, 5, 9, 11, 22 (cultivation of the poppy);
- (3) the Transfer of Property Act, 1882 (IV of 1882), Ch. V (leases of immovable property);
- (4) the Cantonments (House accommodation) Act, 1923 (VI of 1923); and
- (5) the Code of Civil Procedure, 1908 (Act V of 1908), ss. 4 and 5 (suits between landlord and tenant);

²This includes the present Presidency of Fort William in Bengal, and other territory.

(Chapter I.—Preliminary.—Section 1.)

Tenant within the territories under the administration of the Lieutenant-Governor of Bengal¹, it is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

- Short title.** 1. (1) This Act may be called the Bengal Tenancy Act, 1885.
- Commencement.** (2) It shall come into force on such date² (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, appoint in this behalf.
- Local extent.** ³(3) It extends by its own operation to the whole of Bengal, except—
- (i) Calcutta, that is to say, the area described in Schedule I to the Calcutta Municipal Act, 1923⁴, but excluding the area added to Calcutta as defined in clause (1) of section 3 of that Act; Ben. Act III of 1923.
- (ii) (a) the area added to Calcutta as defined in clause (1) of section 3 of the Calcutta Municipal Act, 1923⁴, or any part thereof; and
- (b) any area or part of any area included in Calcutta by notification under sub-section (3) of section 543 of that Act,
- if such area or part is specified in a notification made in this behalf by the Local Government;
- (iii) * * * any area constituted a municipality under the provisions of the Bengal Municipal Act, 1884⁵, or part thereof, if such area or part is specified in a notification made in this behalf by the Local Government; Ben. Act III of 1884.

¹See foot-note ² on p. 1, *ante*.

²See foot-note headed "Commencement" on p. 1, *ante*.

³This sub-section was substituted for the original sub-section (3) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 2.

⁴Printed in the Supplement to the Fourth Edition of the Bengal Code, 1924, p. 425.

⁵The words "lands other than agricultural lands situated within" in s. 1(3) (iii) were repealed by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 2(a), and are omitted.

⁶The Bengal Municipal Act, 1884 (Ben. Act III of 1884), has been repealed and re-enacted by Bengal Municipal Act, 1932 (Ben. Act XV of 1932). The reference to the former Act should now be construed as a reference to the latter Act. See the Bengal General Clauses Act, 1899 (Ben. Act I of 1899), s. 10.

of 1885.]

(Chapter I.—Preliminary.—Sections 2, 3.)

¹Provided that a notification under this clause shall be no bar to the operation of this Act in respect of agricultural lands situated within the area specified in such notification ; and

(iv) the Scheduled Districts² specified in the Part III of the First Schedule to the Scheduled Districts Act, 1874³ :

XIV of
1874.

Provided that no notification shall be issued under clause (ii) or clause (iii) of this sub-section, unless—

(a) it is previously published in the area concerned or part thereof in the prescribed manner ; and

(b) the Bengal Legislative Council by a resolution recommends that the notification be issued.

2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation. Repeal.

⁴(2) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

⁴(3) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

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

⁶(1) “ Agricultural year ” means the Bengali year commencing on the first day of *Baisakh*⁷ :

Provided that where, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, any

¹This proviso was inserted by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 2(b).

²This Act has, with certain exceptions, restrictions and modifications, been extended to the Jalpaiguri district.

³Printed in General Acts, 1873-86, Ed. 1928, p. 31.

⁴These sub-sections were re-numbered as sub-sections (2) and (3) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 3(2). Old sub-section (2) was repealed by s. 3(1) of the same Act.

⁵The definitions have been rearranged in alphabetical order and re-numbered consecutively by s. 129 of the same Act.

⁶This definition was substituted for the former clause (1) by section 4(e) of the same Act.

⁷The month of *Baisakh* corresponds with the last part of April and the first part of May.

(Chapter I.—Preliminary.—Section 3.)

other year has prevailed for agricultural purposes that year shall continue to prevail for those purposes until the first day of *Baisakh*¹ next following the date of the commencement of that Act.

²(2) "Collector" means the Collector of a district or any other officer appointed³ by the Local Government to discharge any of the functions of a Collector under this Act ;

⁴(3) "complete usufructuary mortgage" means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage ;

⁵(4) "estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government *khas mahals* and revenue-free lands not entered in any register ;

⁶(5) "holding" means a parcel or parcels of land or an undivided share thereof, held by a *raiyat* or an under-*raiyat* and forming the subject of a separate tenancy ;

⁷(6) "landlord" means a person immediately under whom a tenant holds, and includes the Government ;

⁸(7) "pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery" ;

⁹(8) "Permanent Settlement" means the Permanent Settlement of Bengal, * ¹⁰ made in the year 1793 ;

¹¹(9) "permanent tenure" means a tenure which is heritable and which is not held for a limited time ;

¹See foot-note⁷ on p. 3, *ante*.

²This definition was numbered as clause (16) originally.

³For a list of orders made under this clause, see the Bengal Local Statutory Rules and Orders, 1924, Vol. I, Pt. IV.

⁴This definition was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 4(h).

⁵This definition was numbered as clause (1) originally.

⁶This definition was substituted for the former clause (9) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 4(c).

⁷This definition was numbered as clause (4) originally.

⁸This definition was numbered as clause (6) originally.

⁹This definition was numbered as clause (12) originally.

¹⁰In clause (8) the words "Bihar and Orissa" which were repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 4(f), are omitted.

¹¹This definition was numbered as clause (8) originally.

of 1885.]

(Chapter I.—Preliminary.—Section 3.)

¹(10) “prescribed” means prescribed by rules made by the Local Government under this Act ;

²(11) “proprietor” means a person owning, whether in trust or for his own benefit, an estate or a part of an estate ;

³(12) “registered” means registered under any Act⁴ for the time being in force for the registration of documents.

⁵(13) “rent” means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant :

in sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, * * Chapter XIV⁷ and Schedule III of this Act, “rent” includes also money recoverable under any enactment for the time being in force as if it was rent ;

⁸(14) “Revenue-officer,” in any provision of this Act, includes any officer whom the Local Government may appoint⁹, by name or by virtue of his office, to discharge any of the functions of a Revenue-officer under that provision ;

¹⁰(15) “signed” includes “marked,” when the person making the mark is unable to write his name ; it also includes “stamped” with the name of the person referred to ;

¹¹(16) “succession” includes both intestate and testamentary succession ;

¹²(17) “tenant” means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person ;

¹This definition was substituted for the former clause (15) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 4(g).

²This definition was numbered as clause (2) originally.

³This definition was numbered as clause (13) originally.

⁴See now the Indian Registration Act, 1908 (XVI of 1908), in the General Acts, 1898-09, Ed. 1928, p. 425.

⁵This definition was numbered as clause (5) originally.

⁶In clause (13) the words and figures “Chapter XII” which were repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 4(b), are omitted.

⁷The words and figures “Chapter XIV” were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 4(1), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), s. 4(1).

⁸This definition was numbered as clause (17) originally.

⁹For a list of orders under this clause, see the Bengal Local Statutory Rules and Orders, 1924, Vol. I, Pt. IV.

¹⁰This definition was numbered as clause (14) originally.

¹¹This definition was numbered as clause (13) originally.

¹²This definition was numbered as clause (3) originally.

(Chapter I.—Preliminary.—Section 3.)

¹provided that a person who, under the system generally known as “*adhi*,” “*barga*” or “*bhag*,” cultivates the land of another person on condition of delivering a share of the produce to that person, is not a tenant, unless—

- (i) such person has been expressly admitted to be a tenant by his landlord in any document executed by him or executed in his favour and accepted by him, or
- (ii) he has been or is held by a Civil Court to be a tenant ;

²(18) “tenure” means the interest of a tenure-holder or an under-tenure-holder ;

³(19) “village” means the area defined, surveyed and recorded as a distinct and separate village in—

- (a) the general land revenue survey which has been made of the Province of Bengal, or
- (b) any survey made by the Government ⁴[which has been adopted by notification in the *Calcutta* or *Eastern Bengal* and *Assam Gazette* or] which may be adopted by notification in the *Calcutta Gazette* as defining villages for the purposes of this clause in any specified area ;

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order declare to constitute a village :

⁵Provided that, when an order has been made under section 101 directing that a survey be made and a record-of-rights prepared in respect of any local area, estate, tenure or part thereof, the Government may, by notification in the *Calcutta Gazette*, declare that in such local area, estate, tenure or part thereof “village” shall mean the area which for the purposes of such survey and record-of-rights may be adopted by the Revenue-officer with the

¹This proviso was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 4(a).

²This definition was numbered as clause (7) originally.

³This definition was numbered as clause (10) originally. It now applies in its present form to both Eastern and Western Bengal—*vide* Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s.4(d).

⁴These words within square brackets were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 4(d) (i).

⁵This proviso which was in force in Eastern Bengal was added by s. 4(d) (ii) of the same Act with certain modifications.

⁶The words “*Calcutta Gazette*” were substituted for the words “*Eastern Bengal and Assam Gazette*” by s. 4(d) (ii) of the same Act.

of 1885.]

(Chapter I.—Preliminary.—Chapter II.—Classes of tenants.—Sections 4, 5.)

sanction of the Board of Revenue ¹[accorded under the provisions of section 115A] as the unit of survey and record.²

CHAPTER II.

CLASSES OF TENANTS.

4. There shall be, for the purposes of this Act, the following classes of tenants (namely):—

Classes of tenants.

- (1) tenure-holders, including under-tenure-holders,
- (2) *raiyats*, and
- (3) under-*raiyats*, that is to say, tenants holding whether immediately or mediately, under *raiyats*;

and the following classes of *raiyats* (namely):—

- (a) *raiyats* holding at fixed rates, which expression means *raiyats* holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,
- (b) occupancy-*raiyats*, that is to say, *raiyats* having a right of occupancy in the land held by them, and
- (c) non-occupancy-*raiyats*, that is to say, *raiyats* not having such a right of occupancy.

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

Meaning of "tenure-holder" and "*raiyat*."

¹These words in square brackets were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 4 (d) (ii).

²Further definitions are given in the following sections, namely:—
s. 5 ("tenure-holder" and "*raiyat*");
s. 16A ("person succeeding", "transferee", "purchaser", "mortgagee" and "person becoming entitled to a permanent tenure by succession");
s. 20 ("settled *raiyat*");
s. 26—1 ("transferee", "transfer", "purchaser" and "mortgagee");
s. 41 ("non-occupancy *raiyat*");
s. 47 ("admitted to occupation");
s. 76 ("improvement");
s. 160 ("protected interests");
s. 161 ("incumbrance", "registered and notified incumbrance, "arrears" and "arrear of rent").

[Act VIII]

(Chapter II.—Classes of tenants.—Chapter III.—Tenure-holders.—Section 6.)

(2) “*Raiyat*” means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by¹ [servants or labourers] or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a *raiya*t unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a *raiya*t, the Court shall have regard to—

- (a) local custom ; and
- (b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard *bighas*, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

CHAPTER III.

TENURE-HOLDERS.

*Enhancement of rent.**Enhancement of rent.*

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

- (a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or
- (b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded and that the lands are capable of affording it.

¹The words “servants or labourers” were substituted for the words, “hired servants” by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 5.

of 1885.]

(Chapter III.—Tenure-holders.—Sections 7—9.)

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

Limits of enhancement of rent of tenures.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than 10 per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

8. If it thinks that an immediate increase of rent would produce hardship, the Court may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf.

Power to order progressive enhancement.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced ²[and for the purposes of

Rent once enhanced may not be altered for fifteen years.

¹This section 8 was substituted for the original section by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 6.

²These words in square brackets in section 9 were inserted by section 7 of the same Act.

(Chapter III.—Tenure-holders.—Sections 10—12.)

this section, if an order for gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 8, the full rent fixed by such order shall be deemed to have come into effect from the date of such order].

Other incidents of tenures.

Permanent tenure-holder not liable to ejection.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected :

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

Transfer and transmission of permanent tenure.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.

Voluntary transfer of permanent tenure.

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by a sale in execution of a decree or by summary sale under any law relating to *patni* or other tenures) can be made only by a registered instrument.

(2) A registering officer ²[shall not accept for registration] any instrument purporting or operating to transfer by sale, gift or ³usufructuary mortgage a permanent tenure ⁴[in favour of any person other than the sole landlord of such tenure] unless there is paid to him, in addition to any fees payable under the Act for the time being in force for

¹As to the validation of certain transfers made under sections 12, 13, 17 or 18, see the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act I of 1903), s. 1; and as to payment of fees under those sections, see *ibid.*, s. 2.

²These words in square brackets in s. 12(2) were substituted for the words "shall not register" by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 3(a).

³This word "usufructuary" in s. 12(2) was inserted by the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886), s. 1.

⁴These words in square brackets in s. 12(2), were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 8(1) (a).

of 1885.]

(Chapter III.—Tenure-holders.—Section 12.)

the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:—

- (a) when rent is payable in respect of the tenure, a fee of two *per centum* on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and
- (b) when rent is not payable in respect of the tenure, a fee of two rupees;

¹together with ²[the prescribed cost of transmission] of the landlord's fee to the landlord.

(3) ³[When any such instrument is admitted to registration], the registering officer shall send to the Collector the landlord's fee ⁴the ⁵cost necessary for the transmission of the same and ⁶[the notice of the transfer] in the prescribed form, and the Collector shall cause the fee to be ⁷transmitted to, and the notice to be served on, the landlord ⁸named in

¹The words "together with the costs necessary for the transmission of the landlord's fee to the landlord" were added to section 12(2), for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 5(1), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), s. 5(1).

²These words in square brackets in s. 12(2), were substituted for the words "the costs necessary for the transmission" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 8(1) (b).

³These words in square brackets in s. 12(3), were substituted for the words "when the registration of any such instrument is complete" by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 3(b).

⁴The words "the costs necessary for the transmission of the same" in section 12(3) were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 5(2) (i), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), s. 5(2) (i).

⁵The word "cost" was substituted for the word "costs" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 8(1)(c).

⁶These words in square brackets in s. 12(3), were substituted for the words "a notice of the transfer and registration," by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 3(b).

⁷This word "transmitted" in sections 12(3), 13(2) and 15 was substituted for the word "paid," for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 5(2) (ii), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), s. 5(2) (ii).

⁸The words "named in the notice" in sections 12(3), 13(2) and 15 were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 5(2) (iii), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), s. 5(2) (iii).

(Chapter III.—Tenure-holders.—Section 13.)

the notice, ¹[or his common agent, if any,] in the prescribed manner.

²(4) The landlord's fees or the prescribed cost of transmission payable under this section and under sections 13 and 15 shall be paid to the registering officer or the Court or the Collector, as the case may be, in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

³13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, ⁴or when a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed, the Court shall, before confirming the sale under ⁵[rule 92 of Order XXI in Schedule I to the Code of Civil Procedure, 1908] ⁶or making a decree or order absolute for the foreclosure, require the purchaser ⁷or mortgagee to pay into Court the landlord's ⁸fee required by ⁹section 12 together with ¹⁰the prescribed cost of transmission thereof to the landlord, and such further fee for service of notice of the sale ¹¹or final foreclosure on the landlord as may be prescribed.

(2) When the sale has been confirmed, ¹²or the decree or order absolute for the foreclosure has been made, the

¹These words in square brackets in ss. 12(3), 13(2) and 15 were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 9.

²This sub-section was added by s. 8(2) of the same Act.

³See foot-note¹ on p. 10 *ante*.

⁴The words "or when a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed," in s. 13(1) were inserted by the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886), s. 2(1).

⁵These words in square brackets in s. 13(1), were substituted for the words and letters "section 312 of the Code of Civil Procedure" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 128.

⁶The words "or making a decree or order absolute for the foreclosure" in s. 13(1) were inserted by the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886), s. 2(2).

⁷The words "or mortgagee" in s. 13(1) were inserted by the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886), s. 2(3).

⁸The words "fee required" in ss. 13(1) and 15, were substituted for the words "fee prescribed" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 127.

⁹The words and figures "section 12" were substituted for the words "the last foregoing section" by s. 126 of the same Act.

¹⁰The words "the prescribed cost of transmission thereof" were substituted for the words "the costs necessary for its transmission" by s. 10(1) of the same Act.

¹¹The words "or final foreclosure" in ss. 13(1) and 13(2) were inserted by the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886), s. 2(4).

¹²The words "or the decree.....has been made" in s. 13(2) were inserted by the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886), s. 2(5).

of 1885.]

(Chapter III.—Tenure-holders.—Sections 14, 15.)

Court shall send to the Collector the landlord's fee, ¹the prescribed cost of transmission of the same, and a notice of the sale ²or final foreclosure in the prescribed form, and the Collector shall cause the fee to be ³transmitted to, and the notice to be served on, the landlord ⁴named in the notice ⁵[or his common agent, if any,] in the prescribed manner.

14. (Transfer of permanent tenure by sale in execution of decree for rent.) *Rep. in Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 2; and in Eastern Bengal by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 2.*

⁶15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's ⁷fee required by section 12, together with ⁸the prescribed cost of transmission thereof to the landlord, and the Collector shall cause the landlord's fee to be ⁹transmitted to, and the notice to be served on, the landlord ⁴named in the notice, ⁵[or his common agent, if any,] in the prescribed manner :

Succession to permanent tenure.

⁹Provided that where, at the instance of the person succeeding, mutation is made in the rent-roll of the landlord within six months of the succession, the person succeeding shall not be required to give notice under this section.

¹The words "the prescribed cost of transmission" were substituted for the words "the costs necessary for the transmission" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 10(2).

²See foot-note¹¹ on p. 12, *ante*.

³See foot-note⁷ on p. 11, *ante*.

⁴See foot-note⁸ on p. 11, *ante*.

⁵See foot-note⁴ on p. 12, *ante*.

⁶As to payment of fees under section 15 to the Registrar of Mutations under the Land Records Maintenance Act, 1895 (Ben. Act III of 1895), see s. 20 of that Act.

⁷See foot-note⁸ on p. 12, *ante*.

⁸The words "the prescribed cost of transmission thereof" were substituted for the words "the costs necessary for its transmission" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 11(1).

⁹This proviso was inserted by s. 11(2) of the same Act.

(Chapter III.—Tenure-holders.—Chapter IV.—Raiyats holding at fixed rates.—Sections 16—18.)

Bar to recovery of rent, pending notice of succession.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit *¹ * or other proceeding any rent payable to him as the holder of the tenure, ²[until the duties imposed upon him by section 15 have been performed].

Interpretation.

³16A. In sections 13, 15 and 16 the words "person succeeding", "transferee", "purchaser", "mortgagee", and "person becoming entitled to a permanent tenure by succession", include the successors in interest of such persons but do not include the landlord where he is the sole landlord.

Transfer of, and succession to, share in permanent tenure.

⁴17. Subject to the provisions of section 88 ⁵sections 12 to 16A shall apply to the transfer of, or succession to, a share in a permanent tenure.

CHAPTER IV.

Raiyats HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

⁶18. ⁷(1) A *raiayat* holding at a rent, or rate of rent, fixed in perpetuity—

(a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, ⁸ * *

¹The word "distrain" was omitted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. IV of 1928), s. 12.

²These words within square brackets in s. 16 were substituted for the words "until the Collector has received the notice fees and costs referred to in the last foregoing section" by s. 12 of the same Act.

³Section 16A was inserted by s. 13 of the same Act.

⁴As to the validation of transfers made under s. 17 or s. 18, see footnote¹ on p. 10, *ante*.

⁵As to the forfeiture of fees deposited under ss. 12, 13, 15, 17 and 18(a), see s. 18C, *post*, and s. 189(f), *post*.

⁶The words and letters "sections 12 to 16A" were substituted for the words "the foregoing sections" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

⁷As to payment of fees under Chapter IV to the Registrar of Mutations under the Land Records Maintenance Act, 1895 (Ben. Act III of 1895), see section 20 of that Act.

⁸Original section 18 was re-numbered as sub-section (1) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 14(1).

⁹The word "and" was repealed by s. 14(2) of the same Act.

of 1885.]

(Chapter IV.—*Raiyats holding at fixed rates.*—Chapter IVA.—*Provisions as to transfer of tenures and holdings and landlord's fees.*—Section 18A.).

- ¹{(b) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;
- (c) shall be deemed to be a settled *raiayat* of the village if he complies with the conditions set forth in section 20 ; and
- (d) shall be entitled—
- (i) to plant,
 - (ii) to enjoy the flowers, fruits and other products of,
 - (iii) to fell, and
 - (iv) to utilise or dispose of the timber of,
- any tree on the land comprised in his holding.]

²(2) The provisions of sections 23A to 38 (both inclusive) shall not apply to *raiayats* holding at fixed rates, even though such *raiayats* have a right of occupancy in the lands of their holdings.

CHAPTER IVA.

PROVISIONS AS TO TRANSFERS OF TENURES AND HOLDINGS AND LANDLORD'S FEES.

⁴18A. Notwithstanding anything contained in section 13⁵ of the Indian Evidence Act, nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenure or holding referred to in such instrument.

Saving as to statements in instruments of transfer where landlord is not a party.

¹The clauses within square brackets were substituted for the original clause (b) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 14(2).

²This sub-section was inserted by s. 14(3) of the same Act.

³This Chapter IVA was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act-I of 1907), s. 8, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 8.

⁴This section which was inserted by s. 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), was substituted for s. 18A as inserted by s. 8 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 15.

⁵Section 13 of Act I of 1872 is printed in General Acts, 1834-72, Ed. 1928, p. 372.

[Act VIII

(Chapter IVA.—Provisions as to transfer of tenures and holdings and landlord's fees.—Chapter V.—Occupancy-*raiyats*.—Sections 18B—19.)

Saving as to acceptance of landlord's fees.

¹18B. The acceptance by a landlord of ²the landlord's fee payable under Chapter III or Chapter IV in respect of any tenure or holding shall not operate—

³(a) as an admission of the permanence, the amount or fixity of rent, the area, the transferability or any incident of such tenure or holding, or

(b) as an express consent under section 88 to the division of such tenure or holding, or to the distribution of the rent payable in respect thereof.

Forfeiture of unclaimed landlord's fees.

⁴18C. All landlord's fees and landlord's transfer fees deposited with the Collector before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928, under Chapter III, IV or V and all fees deposited with the Collector under sub-section (1) of section 48H shall, unless accepted or claimed by the landlord within five years from the date of service of notice, be forfeited to the Government to be credited to the District Boards within the respective jurisdictions of which such fees accumulate.

Ben. Act
IV of 1928

⁵CHAPTER V.

OCCUPANCY-*raiyats*.

General.

General.

Continuance of existing occupancy-rights.

⁶19. (1) Every *raiyat* who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, has, by the operation of any enactment by custom

¹Section 18B was originally inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 8, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 8.

²The words "the landlord's fee" were substituted for the words "any landlord's fee" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 16.

³This clause which originally formed part of section 18B as in force in Eastern Bengal was substituted for clause (a) as in force in Western Bengal by s. 17 of the same Act.

⁴This section was substituted for section 18C as inserted by the Bengal Tenancy (Amendment) Act, 1907, and by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, by s. 18 of the same Act.

⁵Chapter V does not confer a right of occupancy in certain lands—see s. 116, *post*.

⁶This section was substituted for s. 19 as modified by the Bengal Tenancy (Amendment) Act, 1907, and by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 19.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 20.)

or otherwise, a right of occupancy in any land, shall, when that Act comes into force, have a right of occupancy in that land.

(2) The exclusion from the operation of this Act, by a notification under clause (ii), or clause (iii) of sub-section (3) of section 1, of any area or part of any area referred to in those clauses shall not affect any right, obligation, or liability, previously acquired, incurred or accrued, in reference to such area or part thereof.

20. (1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a *raiyat* land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled *raiyat* of that village. Definition of
"settled
raiyat."

¹(1A) A person shall be deemed, for the purposes of this section, to have continuously held land in a village, notwithstanding that such village was defined, surveyed and recorded as, or declared to constitute a village at a date subsequent to the commencement of the said period of twelve years.

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a *raiyat* any land held as a *raiyat* by a person whose heir he is.

(4) Land held by two or more co-sharers as a *raiyati* holding shall be deemed, for the purposes of this section, to have been held as a *raiyat* by each such co-sharer.

(5) A person shall continue to be a settled *raiyat* of a village as long as he holds any land as a *raiyat* in that village and for one year thereafter.

(6) If a *raiyat* recovers possession of land under section 87, he shall be deemed to have continued to be a settled *raiyat* notwithstanding his having been out of possession more than a year.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a *raiyat*, it shall as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until

¹This sub-section (1A) was inserted by the Bengal Tenancy (Amendment) Act, 1925 (Ben. Act I of 1925), s. 2.

(Chapter V.—Occupancy-raiyats.—Sections 21, 22.)

the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a *raiyat*.

Settled *raiyats*
to have
occupancy-
rights.

21. (1) Every person who is a settled *raiyat* of a village within the meaning of section 20, shall have a right of occupancy in all land for the time being held by him as a *raiyat* in that village.

(2) Every person who, being a settled *raiyat* of a village within the meaning of section 20, held land as a *raiyat* in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

Effect of acqui-
sition of occu-
pancy-right
by landlord.

22. (1) When the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder and the entire interests of the landlord and the *raiyat* in the holding become united in the same person by transfer, succession or in any other way whatsoever, such person shall have no right to hold the land as a *raiyat*, but shall hold it as a proprietor or a permanent tenure-holder, as the case may be, but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) Nothing in this section shall prevent the acquisition by transfer, succession or in any other way whatsoever, of the holding of an occupancy-*raiyat* or share or portion thereof, together with the occupancy rights therein by a person who is, or becomes, jointly interested in the lands as a proprietor or a permanent tenure-holder:

Provided that a co-sharer landlord who purchases a holding of a *raiyat* at a sale in execution of a rent decree or of a certificate under this Act shall not hold the land comprised in such holding as a *raiyat* but shall hold the land as a proprietor or tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same. The rent payable by the *raiyat* to the other co-sharer landlords at the time of the transfer shall be regarded as the fair and equitable sum until otherwise determined in accordance with the principles of this Act regulating the enhancement or reduction of the rents of occupancy-*raiyats*.

¹The word and figures "section 20" were substituted for the words "the last foregoing section" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

²This section 22 was substituted for the original section 22 by section 20 of the same Act.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Sections 23—25.)

(3) A person holding land as a temporary tenure-holder or farmer of rents shall not, while so holding, acquire a right to hold as a *raiyat* any land comprised in his temporary tenure or farm.

Explanation.—A person having a right to hold the lands of an occupancy holding as a *raiyat* does not lose it by subsequently holding the land as a temporary tenure-holder or farmer of rents.

Incidents of occupancy-right.

Incidents of occupancy-right.

23. When a *raiyat* has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy ;¹ * * * *

Rights of *raiyat* in respect of use of land.

²23A. Subject to the provisions of section 23, when a *raiyat* has a right of occupancy in respect of any land, he shall be entitled—

Rights of occupancy-*raiyat* and landlord in trees.

- (i) to plant,
- (ii) to enjoy the flowers, fruits and other products of,
- (iii) to fell, and
- (iv) to utilise or dispose of the timber of,

any tree on such land.

24. An occupancy-*raiyat* shall pay rent for his holding at fair and equitable rates.

Obligation of occupancy-*raiyat* to pay rent.

25. An occupancy-*raiyat* shall not be ejected by his landlord from his holding, except in execution of a decree for ejection passed on the ground—

Protection from eviction except on specified grounds.

- (a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or
- (b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

¹The words "but shall not be entitled to cut down trees in contravention of any local custom" were omitted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 21.

²Section 23A was inserted by s. 22 of the same Act.

(Chapter V.—Occupancy-*raiyats*.—Sections 26—26C.)

Devolution of
occupancy-right
on death.

26. If a *raiyat* dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property: provided that in any case in which under the law of inheritance to which the *raiyat* is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

Application of
sections 26B to
26J.

26A. The provisions of sections 26B to 26J shall apply to all transfers of holdings or portions or shares of holdings of occupancy-*raiyats* and the occupancy-rights therein made after the 1st day of April, 1929.

Holdings of
occupancy-*raiyats*
with occupancy-
rights trans-
ferable.

26B. The holding of an occupancy-*raiyat* or a share or a portion thereof, together with the right of occupancy therein, shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property.

Manner of
transfer and
notice to
landlord.

26C. (1) Every transfer shall be made by registered instrument, except in the case of a bequest or a sale in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
III of
1913.

(2) A registering officer ²[shall not accept for registration] any such instrument unless the sale price or where there is no sale price, the value of each holding, portion or share thereof, is stated separately in the instrument and unless it is accompanied by—

- (a) a notice giving particulars of the transfer in the prescribed form;
- (b) the process fee prescribed for the service of such notice on the landlord or his common agent, if any;
- (c) a fee (hereinafter referred to "as the landlord's transfer fee") of the amount provided by section 26D; and
- (d) the prescribed cost of transmission of the landlord's transfer fee to the landlord or his common agent, if any.

(3) ³[When any such instrument is admitted to registration], the registering officer shall send to the Collector the landlord's transfer fee, the prescribed cost of transmission

¹Sections 26A to 26J were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 23.

²These words in square brackets in s. 26C(2) were substituted for the words "shall not register" by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 4(a).

³These words in square brackets in s. 26C(3) were substituted for the words "when the registration of any such instrument is complete" by s. 4(b) of the same Act.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 26C.)

thereof and the notice of the transfer in the prescribed form, and the Collector shall cause the landlord's transfer fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner :

Provided that where there is no common agent, a co-sharer landlord may draw his proportionate share of landlord's transfer fee by an application to the Collector, accompanied by copies of extracts from the intermediate register maintained by the Collector under section 4 of the Land Registration Act, 1876¹, or copies of finally published record-of-rights under Chapter X of this Act, or any other document showing the share and title of the applicant :

Ben. Act
VII of
1876.

Provided also that when a sole landlord purchases a holding or a share or a portion thereof, no deposit of landlord's transfer fee need be made and no notice need be served. And when a co-sharer landlord purchases a holding or a share or a portion thereof and his share is specified in the instrument of transfer, he shall deposit only the amount of landlord's transfer fee proportionate to the share or shares of the remaining co-sharers.

(4) In the case of a bequest, the Court shall, before granting probate or letters of administration, require the applicant to file a notice giving particulars of the transfer in the prescribed form and to deposit a process fee of the prescribed amount, and the landlord's transfer fee provided by section 26D, together with the prescribed cost of transmission thereof to the landlord or his common agent, if any.

(5) When probate or letters of administration have been granted, the Court shall send to the Collector the landlord's transfer fee, the prescribed cost of transmission thereof and the notice in the prescribed form, and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner.

(6) Any sum payable at the date of the transfer as an arrear of rent of the holding, or on account of a mortgage of the holding, or portion or share thereof, which the transferee has paid or agreed to pay in satisfaction of the sale price wholly or in part shall be entered in the instrument of transfer, and such sum shall, as set forth in the instrument, be deemed to be the consideration money or part thereof, as the case may be, for the purposes of sections 26D and 26F.

(7) The landlord's transfer fee and the cost of transmission payable under this section or under section 26E shall be paid to the registering officer or the Court, as the case may be, in the prescribed manner.

¹Printed in Vol. II of the Bengal Code.

(Chapter V.—Occupancy-*raiyats*.—Section 26D.)**Landlord's
transfer fee.**

- 26D. The landlord's transfer fee shall amount—
- (a) in the case of the sale of a holding or a portion or share of a holding, in respect of which a produce rent is payable in whole or in part, to twenty *per cent.* of the consideration money as set forth in the instrument of transfer ;
 - (b) in the case of the sale of a holding or a portion or share of a holding, in respect of which a money rent is payable, to twenty *per cent.* of the consideration money as set forth in the instrument of transfer, or to five times the annual rent of the holding or of the portion or share transferred, whichever is greater ;
 - (c) in the case of a transfer by exchange of a holding or a portion or share of a holding, to five *per cent.* of the value thereof as set forth in the instrument of transfer or one and a quarter times the annual rent of the holding or of the portion or share transferred to each party to the transfer whichever is greater, payable by each party ;
 - (d) in the case of a transfer by gift of a holding or a portion or share of a holding, to twenty *per cent.* of the value thereof as set forth in the instrument of transfer, or to five times the annual rent of the holding or of the portion or share transferred, whichever is greater ;
 - (e) in the case of a transfer by bequest of a holding or a portion or share thereof, to ten *per cent.* of the value thereof as determined by the Court for the purposes of stamp duty for the grant of probate or letters of administration, or to two and a half times the annual rent of the holding or of the portion or share transferred, whichever is greater :

Provided that where only a portion or share of a holding of an occupancy-*raiyat* is transferred, the rent of that portion or share shall, for the purpose of determining the landlord's transfer fee, under this section or section 26E, bear the same proportion to the rent of the entire holding as the area or share transferred bears to that of the entire holding :

Provided also that the landlord's transfer fee shall not be payable in the case of—

- (i) a transfer by bequest or gift (including *heba*) in favour of the husband or wife of the testator or donor or of any relation by consanguinity within three degrees of such testator or donor ;

¹See foot-note¹ on p. 20, *ante*.

of 1885.]

(Chapter V.—Occupancy-*raiyats*.—Section 26E.)

- (ii) a *wakf* in accordance with the provisions of the Muhammadan Law which provides amongst other purposes for * * * the maintenance of the donor himself or the husband or wife of the donor or any relation by consanguinity within three degrees of the donor; or
- (iii) a dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual:

Provided nevertheless that any *wakf* which includes amongst its objects any provision for the maintenance of any person who is not one of the following, namely, the donor himself or the husband or wife of the donor or a relation by consanguinity within three degrees of the donor [or any dedication for religious or charitable purposes not included in clause (iii) of the second proviso] shall be liable to the payment of landlord's transfer fee as provided [in clause (d) and clause (e) of this section.]

Explanation 1.—The expression "*heba*" shall not include *heba-bil-ewaj* for any pecuniary consideration.

Explanation 2.—A relation by consanguinity shall, for the purposes of this section, include a son adopted under the Hindu Law.

26E. (1) When the holding of an occupancy-*raiyat* or a portion or share thereof is sold in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, other than a decree or certificate for arrears of rent due in respect of the holding or dues recoverable as such, and neither the purchaser nor the decree-holder is the sole landlord, the Court or the Revenue-officer as the case may be, shall, before confirming the sale, require the purchaser to file a notice giving particulars of the transfer in the prescribed form and to deposit in addition to the purchase money a process fee of the prescribed amount, the landlord's transfer fee, calculated at the rate of twenty *per cent.* of the purchase money, or five times the annual rent of the holding sold or of the portion or share thereof sold, whichever is greater, together with the prescribed cost of transmission thereof to the landlord:

Procedure on sale in execution of a decree, certificate or foreclosure of mortgage.

Ben. Act II of 1913.

¹The words "the purpose of" in the second proviso to s. 26D, were repealed by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 5(a) and are omitted.

²These words in square brackets in the third proviso to s. 26D, were inserted by s. 5(b) of the same Act.

³These words in square brackets in the third proviso to s. 26D, were substituted for the words "in this section" by s. 5(b) of the same Act.

⁴See foot-note¹ on p. 20, *ante*.

(Chapter V.—Occupancy-raiyats.—Section 26F.)

Provided that where a co-sharer landlord is the purchaser, he shall deposit in addition to the prescribed process fee the amount of landlord's transfer fee proportionate to the shares of the remaining co-sharers together with the prescribed cost of transmission thereof.

(2) When a mortgage of a holding of an occupancy-raiyat or of a portion or share thereof is foreclosed, and the decree-holder is not himself the sole landlord, the Court shall, before making a decree or order absolute for the foreclosure, upon notice to the landlord or to his common agent, if any, determine the market value of the holding and require the mortgagee to file a notice giving particulars of the transfer in the prescribed form and to deposit a process fee of the prescribed amount and the landlord's transfer fee calculated at twenty *per cent.* of such market value, together with the prescribed cost of transmission thereof to the landlord.

(3) If the purchaser fails to comply with the order of the Court or the Revenue-officer under sub-section (1) within such time as may be specified in the said order, the Court or the Revenue-officer may make an order for the forfeiture of the purchase money and for the resale of the holding or portion or share thereof. If the mortgagee fails to comply with the order under sub-section (2) within such time as may be specified therein, the Court may make an order for dismissal of the suit for foreclosure.

(4) When the sale has been confirmed, or the decree or order absolute for the foreclosure has been made, the Court shall send to the Collector the landlord's transfer fee, the prescribed cost of transmission thereof, and the notice of the sale or final foreclosure, in the prescribed form, and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner :

Provided that where there is no common agent, a co-sharer landlord may draw his proportionate share of landlord's transfer fee by an application to the Collector, accompanied by copies of extracts from the intermediate register maintained by the Collector under section 4 of the Land Registration Act, 1876¹, or copies of finally published record-of-rights under Chapter X of this Act, or any other document showing the share and title of the applicant.

Ben. Act
VII of
1876.

Power of
immediate
landlord to
purchase.

²26F. (1) Except in the case of a transfer—

(a) to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase,

¹Printed in Vol. II of the Bengal Code.

²See foot-note¹ on p. 20, *ante*.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 26F.)

Ben. Act
III of
1913.

(b) in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913¹, for arrears of rent due in respect of the holding or dues recoverable as such,

(c) by exchange, or

(d) referred to in the second proviso to section 26D;

the immediate landlord of the holding or the transferred portion or share may, within two months of the service of notice issued under section 26C or 26E, apply to the Court that the holding or portion or share thereof shall be transferred to himself.

(2) The application shall be dismissed, unless such landlord at the time of making it, deposits in Court the amount of the consideration money or the value of the property, as the case may be, as stated in the notice served on him, together with compensation at the rate of ten *per cent.* of such amount.

(3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as the Court may fix and state what other sums he has paid in respect of rent for the period after the date of transfer or as the landlord's transfer fee or in annulling encumbrances on the property. The Court shall then direct the applicant and any person who has joined as a co-applicant under clause (b) of sub-section (4) to deposit within such period as the Court thinks reasonable such amount as the transferee has paid on this account, together with interest at a rate not exceeding twelve and a half *per cent.* per annum with effect from the date on which such rent or the landlord's transfer fee has been paid or the encumbrances have been annulled.

(4) (a) When an application has been made by a co-sharer immediate landlord under sub-section (1), any of the remaining co-sharer landlords, including the transferee, if one of them, may within the period of two months referred to in that sub-section, or within one month of the application whichever is later apply to join in the application of the co-sharer immediate landlord aforesaid, and any co-sharer landlord who has not applied under sub-section (1) or has not applied to join under this sub-section shall not have any further power of purchase under this section.

(b) The application to join as a co-applicant shall be granted if within such period as the Court may fix not extending beyond the period referred to in sub-section (4)(a) the applicant deposits in Court, for payment to the co-sharer landlord who has made the application under sub-section (1), such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section (2).

¹Printed in Vol. III of the Bengal Code.

(Chapter V.—Occupancy-raiyats.—Section 26G.)

(5) If the deposits required under sub-section (2) or clause (b) of sub-section (4), as the case may be, and under sub-section (3) are made, the Court shall make an order allowing the application and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such other persons as the Court thinks fit.

(6) From the date of the making of the order under sub-section (5)—

- (i) the right, title and interest in the holding or portion or share thereof accruing to the transferee from the transfer shall, subject to the provisions of section 22, be deemed to have vested in the immediate landlord and co-sharer immediate landlord, if any, whose application has been allowed free from all incumbrances which have been discharged or created after the date of the transfer;
- (ii) the liability of the transferee for the rent due on account of the holding shall cease, and
- (iii) the Court, on the further application of such landlord or co-sharer immediate landlord may place him in possession of the property so vested in him.

(7) When a transferee is divested of his right, title and interest under the provisions of sub-section (6), he shall for the purposes of clauses (a), (c) and (d) of section 156 be deemed to be a *raiyat* ejected from his holding by proceedings for his ejection commencing on the date on which the landlord applied to the Court under sub-section (1).

(8) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhammadan Law.

Limitation on mortgage by occupancy-*raiyat*.

26G. (1) An occupancy-*raiyat* may enter into a complete usufructuary mortgage in respect of his holding or of a portion or share thereof for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed fifteen years.

(2) Notwithstanding any contract to the contrary, such mortgage may be redeemed at any time before the expiry of the said period.

(3) Every such mortgage shall be registered under the Indian Registration Act, 1908^a.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law, no other form of usufructuary mortgage entered into by an occupancy-*raiyat* in respect

XVI
1908.

^aSee foot-note¹ on p. 20, *ante*.

^aPrinted in General Acts. 1898-1909, Ed. 1928, p. 425.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Sections 26 H, 26-I.)

of his holding or portion or share thereof shall have any force or effect, and no document creating or purporting to create—

- (a) a complete usufructuary mortgage of the holding or of a portion or share of the holding of an occupancy-raiyat for a period exceeding or which can exceed fifteen years, or
- (b) an usufructuary mortgage of such holding, portion or share, other than a complete usufructuary mortgage,

shall be admitted to registration, nor shall any such document be received in evidence or acted on in any Court or by any public servant.

26H. The fee payable by the transferee to the landlord for the transfer of a rent-free holding or of a portion or share of a rent-free holding of an occupancy-raiyat shall be two rupees and shall be paid in the manner provided in section 12 or section 13, as the case may be, and notice of the transfer of such holding, portion or share, shall be given to the landlord in the manner set forth in sub-section (3) of section 12, section 13 or section 15 according to the circumstances of the transfer.

Transfer of rent-free holdings.

26-I. (1) In sections 26C, 26D, 26F, 26H and 26J “transferee” includes the successors in interest of the transferee.

Interpretation and savings.

(2) In sections 26B, 26C, 26D, 26F, 26H and 26J “transfer” includes bequest but in sections 26C, 26D, 26F, 26H and 26J it does not include—

- (i) partition,
- (ii) lease or simple mortgage,
- (iii) usufructuary mortgage, or
- (iv) mortgage by conditional sale, until a decree or order absolute for foreclosure is made.

(3) In section 26E “purchaser” includes the successors in interest of the purchaser and “mortgagee” includes the successors in interest of the mortgagee.

(4) Neither the acceptance of the landlord's transfer fee provided in section 26D, 26E or 26J nor the making of an application to the Court under the provisions of section 26F shall operate as an admission of the amount of rent or the area or any incident of such occupancy holding other than the existence of a right of occupancy therein, or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof.

¹See foot-note¹ on p. 20, ante.

(Chapter V.—Occupancy-raiyats.—Sections 26J—29.)

Landlord's transfer fee with compensation in certain cases of transfer.

26J. In cases where sections 26C and 26E apply—

- (1) A transferee of the holding of an occupancy-*raiyat* or a share or portion thereof, whose instrument of transfer or sale certificate purports to transfer the interest of a permanent tenure-holder or of a *raiyat* holding at a rent or rate of rent fixed in perpetuity or of a rent-free holding shall, notwithstanding anything contained in the instrument of transfer, be liable to pay the landlord's transfer fee as provided in those sections.
- (2) If such payment is not made, the landlord shall be entitled to recover the balance of the landlord's transfer fee, after deducting any amount paid as the landlord's fee under section 12, 13, 17, 18 or 26H together with such compensation as the Court thinks fit, not exceeding the amount provided in section 26D or 26E, as the case may be, as the landlord's transfer fee.
- (3) The provisions of section 26F shall apply to the case of a transfer referred to in sub-section (1) and the immediate landlord shall be competent to exercise his rights of purchase under that section within two months of the date of payment into Court of the balance of the landlord's transfer fee and the compensation allowed.

Enhancement of rent.

Enhancement of rent.

Presumption as to fair and equitable rent.

27. The rent for the time being payable by an occupancy-*raiyat* shall be presumed to be fair and equitable until the contrary is proved.

Restriction on enhancement of money-rents.

28. Where an occupancy-*raiyat* pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Enhancement of rent by contract.

29. The money-rent of an occupancy-*raiyat* may be enhanced by contract, subject to the following conditions :—

- (a) the contract must be in writing and registered ;
- (b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the *raiyat* ;
- (c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract :

.¹See foot-note¹ on p. 20, *ante*.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 30.)

Provided as follows—

- (i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.
- (ii) Nothing in clause (b) shall apply to a contract by which a *raiyat* binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the *raiyat* is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the *raiyat* is chargeable with default in respect of the improvement only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.
- (iii) When a *raiyat* has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the *raiyat* from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

30. The landlord of a holding held at a money-rent by an occupancy-*raiyat* may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds (namely) :—

Enhancement of rent by suit.

- ¹(a) that the rate of rent paid by the *raiyat* is below the prevailing rate paid by occupancy-*raiyats* for land of a similar description and with similar advantages in the same village or in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate ;
- (b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent ;

¹This clause (a) in s. 30 was substituted for the original clause (a) by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898), s. 2. The original clause ran thus :—

“(a) that the rate of rent paid by the *raiyat* is below the prevailing rate paid by occupancy-*raiyats* for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate.”

(Chapter V.—Occupancy-raiyats.—Section 31.)

- (c) that the productive powers of the land held by the *raiyat* have been increased by an improvement effected by, or ¹wholly or partly at the expense of, the landlord during the currency of the present rent; and
- (d) that the productive powers of the land held by the *raiyat* have been increased by fluvial action.

Explanation.—“Fluvial action” includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

Rules as to
enhancement on
ground of
prevailing rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

- (a) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the *raiyat* and the prevailing rate found by the Court;
- (b) If in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under ²[Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908], by such Revenue-officer as the Local Government may authorize in that behalf by rules made under ³[rule 9 in Order XXVI in Schedule I to the said Code];
- (c) in determining under this section the rate of rent payable by a *raiyat*, his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of *raiyats* hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;
- (d) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration;

Act V of
1908.

¹The words “wholly or partly” were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 24.

²These words, letters and figures within square brackets were substituted for the words and letters “Chapter XXV of the Code of Civil Procedure” by s. 128 of the same Act.

³These words, letters and figures within square brackets were substituted for the words and figures “section 392 of the said Code” by s. 128 of the same Act.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 31A.)

¹(e) if a favourable rate has been determined under clause (c) for any description of *raiyats*, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate ;

²(f) if the holding is held at a lump rental the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding, and applying to the area of each class the prevailing rate paid on that class within the village or neighbouring villages.

31A. (1) In any district or part of a district to which this sub-section is extended by the Local Government by notification in the *Calcutta Gazette*, whenever the prevailing rate for any class of land is to be ascertained under section 30, clause (a), by an examination of the rates at which lands of a similar description and with similar advantages are held within any village or villages, the highest of such rates at which, and at rates higher than which, the larger portion of those lands is held may be taken to be the prevailing rate.

What may be taken in certain districts to be the "prevailing rate."

Illustrations.

(a) The rates at which land of a similar description and with similar advantages is held in a village are as follow :—

<i>Bighas.</i>			Rs.	A.	P.
100	..	.. at	1	0	0
200	..	.. „	1	8	0
150	..	.. „	1	12	0
100	..	.. „	2	0	0
150	..	.. „	2	4	0
Total	700				

Then Rs. 2-4 is not the prevailing rate, because only 150 *bighas*, or less than half, are held at that rate. Rs. 2 is not the prevailing rate, because 250 *bighas*, or less than half, are held at that or a higher rate. Re. 1-12 is the prevailing rate, because 400 *bighas*, or more than half, are held either at this or a higher rate, and this is the highest rate at which, and at rates higher than which more than half the land is held.

¹Clauses (e) and (f) were inserted in s. 31 by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898), s. 3.

²Section 31A was inserted by s. 4 of the same Act.

(Chapter V.—Occupancy-raiyats.—Sections 31B, 32.)

(b) The rates at which land of a similar description and with similar advantages is held in a village are as follow :—

<i>Bighas.</i>	Rs. A. P.
100 ..	.. at 1 0 0
250 ..	.. „ 1 4 0
150 ..	.. „ 1 8 0
150 ..	.. „ 1 12 0
50 ..	.. „ 2 0 0
Total	700

Then for the reasons given in Illustration (a), neither Rs. 2 nor Re. 1-12 is the prevailing rate, nor is Re. 1-8 the prevailing rate, because only 350 *bighas* (exactly half) are held at Re. 1-8 or at rates higher than Re. 1-8. In this case Re. 1-4 is the prevailing rate, because more than half the lands are held at Re. 1-4 or higher rates and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(2) The Local Government may, by a like notification, withdraw sub-section (1) from any district or part of a district to which it has been extended as aforesaid.

Limit to
enhancement of
prevailing rate.

31B. When the prevailing rate has once been determined by a Revenue-officer under Chapter X or by a Civil Court in any suit under this Act, it shall not be liable to enhancement save on the ground and to the extent specified in section 30, clause (b) and section 32.

Rules as to
enhancement
on ground of
rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

- (a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison ;
- (b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison : provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period ;

¹Section 31B was inserted by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898), s. 4.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Sections 33—36.)

- (c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (a) the Court may, in its discretion, substitute any shorter periods therefor.

33. (1) Where an enhancement is claimed on the ground of a landlord's improvement—

Rules as to enhancement on ground of landlord's improvement.

- (a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act ;
- (b) in determining the amount of enhancement the Court shall have regard to—
- (i) the increase in the productive powers of the land caused or likely to be caused by the improvement,
 - (ii) the cost of the improvement,
 - (iii) the cost of the cultivation required for utilizing the improvement, and
 - (iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

- (a) the Court shall not take into account any increase which is merely temporary or casual ;
- (b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

35. Notwithstanding anything in sections 30 to 34, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Enhancement suit to be fair and equitable

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree to its

Power to order progressive enhancement.

¹The words and letters " sections 30 to 34 " were substituted for the words " the foregoing sections " by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

²This section 36 was substituted for the original section by s. 25 of the same Act.

(Chapter V.—Occupancy-raiyats.—Sections 37, 38.)

full extent will be attended with hardship to the *raiyat*, it may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf. For the purposes of section 37, however, the full rent shall be deemed to have come into force from the date of the decree.

Limitation of right to bring successive enhancement suits.

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate; or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if ¹* * * a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of ²[rule 1 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908].

Act V of 1908.

Reduction of rent.

Reduction of rent.

Reduction of rent.

38. (1) An occupancy-*raiyat* ³* * * may institute a suit for the reduction of his rent on ⁴one or more of the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise (namely):—

- (a) on the ground that the soil of the holding has without the fault of the *raiyat* become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, ⁵* *
- (b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent, ⁶[or

¹The words "within the said period of fifteen years the rent has been commuted under section 40; or" were omitted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 26.

²These words, letters and figures within square brackets were substituted for the words and figures "section 373 of the Code of Civil Procedure" by s. 128 of the same Act.

³The words "holding at a money rent" were omitted by s. 27 (i) of the same Act.

⁴The words "one or more of" were inserted by s. 27 (ii) of the same Act.

⁵The word "or" was omitted by s. 27 (ii) of the same Act.

⁶This portion within square brackets in section 38 was added by s. 27 (iii) of the same Act.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 39.)

- (c) on the ground that the landlord has refused or neglected to carry out the arrangements, in respect of the irrigation or the maintenance of embankments which were in force at the time when the rent was settled, and the soil of the holding has thereby deteriorated.

Explanation.—A suit for reduction of rent properly framed for the purpose may be instituted or a plea for reduction of rent taken by any one among a number of co-sharer tenants of a holding].

- (2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

Price-lists.

Price-lists.

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

Price-lists of staple food-crops.

(2) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this Chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this

[Act VIII]

(Chapter V.—Occupancy-raiyats.—Chapter VI.—
Non-occupancy-raiyats.—Sections 40—43.)

section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct¹ and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct unless and until it is proved that they are incorrect.

(7) The Local Government² * * * * * shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

3[* * * * *]

40. [Commutation of rent payable in kind.] Rep. by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 28.

40A. [Period for which commuted rents are to remain unaltered.] Rep. by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 29.

4CHAPTER VI.

NON-OCCUPANCY-*raiyats*.

Application of Chapter.

41. This Chapter shall apply to *raiyats* not having a right of occupancy, who are in this Act referred to as non-occupancy-*raiyats*.

Initial rent of non-occupancy *raiyat*.

42. When a non-occupancy-*raiyat* is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Conditions of enhancement of rent.

43. The rent of a non-occupancy-*raiyat* shall not be enhanced except by registered agreement or by agreement under section 46 :

¹The words "and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct" in s. 39 (6) were inserted by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898), s. 5.

²The words "subject to the control of the Governor General in Council" in s. 39 (7), were repealed by the Devolution Act, 1920 (XXXVIII of 1920), s. 2, and are omitted.

³The heading "Commutation" was repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 28.

⁴Chapter VI does not apply to certain lands—see s. 116.

of 1885.]

(Chapter VI.—Non-occupancy-*raiyats*.—Sections 44—46.)

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

44. A non-occupancy-*raiyat* shall, subject to the provisions of this Act, be liable to ejection on one or more of the following grounds, and not otherwise (namely) :—

Grounds on which non-occupancy-*raiyat* may be ejected.

- (a) on the ground that he has failed to pay an arrear of rent ;
- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;
- (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired ;
- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

45. (Conditions of ejection on ground of expiration of lease.) Rep. in Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 2, and in Eastern Bengal by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 2.

46. (1) A suit for ejection on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-*raiyat* unless the landlord has tendered to the *raiyat* ¹a draft of an agreement to pay the enhanced rent, and the *raiyat* has within three months before the institution of the suit refused to execute the agreement.

Conditions of ejection on ground of refusal to agree to enhancement.

(2) A landlord desiring to tender ¹a draft of an agreement to a *raiyat* under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the *raiyat*. The Court or officer shall forthwith cause it to be served on the *raiyat* in the prescribed manner, and when it has been so served, it shall for the purposes of this section be deemed to have been tendered.

¹The words "a draft of an agreement" were substituted for the words "an agreement" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 30 (a).

(Chapter VI.—Non-occupancy-raiyats.—Section 47.)

(3) If a *raiyat* on whom ¹a draft of an agreement has been served under sub-section (2) ²executes the agreement and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a *raiyat* under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the *raiyat* does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a *raiyat* refuses to execute an agreement ³of which a draft has been tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the *raiyat* agrees to pay the rent so determined he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejection ⁴subject to the provisions of this Act unless he has acquired a right of occupancy.

(8) If the *raiyat* does not agree to pay the rent so determined, the Court shall pass a decree for ejection.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by *raiyats* for land of a similar description and with like advantages in the same village.

(10) A decree for ejection passed under this section shall take effect from the end of the agricultural year in which it is passed.

Explanation
of "admitted
to occupation."

47. Where a *raiyat* has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this Chapter, notwithstanding that the lease may purport to admit him to occupation.

¹See foot-note¹ on p. 37, *ante*.

²The words "executes the agreement" were substituted for the words "executes it" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 30 (b).

³The words "of which a draft has been" were inserted by s. 30 (c) of the same Act.

⁴The words "subject to the provisions of this Act" were substituted for the words "under the conditions mentioned in the last foregoing section" by s. 30 (d) of the same Act.

of 1885.]

(Chapter VII.—Under-raiyats—Sections 48—48B.)

CHAPTER VII.

UNDER-raiyats.

¹48. When an under-raiyat is admitted to the occupation of land, he shall, subject to the provisions of this Act, become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission :

Liability of under-raiyat to pay rent.

Provided that the rent or rate of rent agreed upon shall not be less than the rent or rate of rent payable by the raiyat to his landlord.

¹48A. The rent of an under-raiyat shall not be enhanced except under the provisions of section 48B or section 48D.

Enhancement of rent of under-raiyat.

¹48B. (1) The money rent of an under-raiyat may be enhanced by a written registered contract :

Enhancement by contract.

Provided that the rent shall not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the under-raiyat, except in the following cases namely :—

(i) When an under-raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding wholly or partly at the cost of the raiyat and to the benefit of which the under-raiyat is not otherwise entitled, but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the under-raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(ii) When an under-raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of his landlord and the under-raiyat agrees, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

(2) The rent fixed by a contract under the provisions of sub-section (1), shall not be liable to enhancement during a period of fifteen years from the date of such contract.

¹Sections 48, 48A, 48B, 48C, 48D, 48E, 48F, 48G, 48H and 49 were substituted for original sections 48 and 49 by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 31.

(Chapter VII.—Under-raiyats.—Section 48C.)

Ejectment of
under-raiyat.

48C. An under-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely :—

(a) on the ground that he has failed to pay an arrear of rent :

Provided that, if the under-raiyat is one whose rent is payable in terms of cash and not of produce and he pays through the Court all arrears up to date together with such interest and damages as the Court may award, he shall not be liable to ejectment on account of such arrears ;

(b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on the breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected;

(c) on the ground that the term of his lease has expired, when he holds the land under a written lease ;

(d) on the ground that the tenancy has been terminated by his landlord by one year's notice expiring at the end of the agricultural year when he holds the land otherwise than under a written lease ; or

(e) on the ground that he does not agree to pay the rent determined by the Court under sub-section (4) of section 48D :

Provided that an under-raiyat shall not be liable to ejectment on the grounds specified in clause (c) or clause (d)—

(i) if the under-raiyat has—

(1) been admitted in a document by the landlord to have a permanent and heritable right to his land, or

(2) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon,

Ben. Act
IV of 1928.

(ii) in the case of under-raiyats other than those described in clause (i) of this proviso unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with the aid of partners.

¹See foot-note ¹ on p. 39. ante.

of 1885.]

(Chapter VII.—Under-raiyats.—Sections 48D—48G.)

148D. (1) The landlord of an under-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent of the under-raiyat, and to eject the under-raiyat if he refuses to pay the rent determined by the Court.

Enhancement by suit.

(2) The Court shall determine what rent is fair and equitable for the holding; provided that the rate of rent so determined shall not in the case of a money rent exceed one-third of the value of the average estimated produce of the land for the decennial period preceding the institution of the suit and in the case of a produce rent one-half of such produce.

(3) The Court shall thereupon inquire from the under-raiyat if he agrees to pay the rent so determined. If the under-raiyat agrees, he shall be entitled to remain in occupation of his holding at that rent for a term of fifteen years from the date of the agreement.

(4) If the under-raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(5) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

148E. When a raiyat has ejected an under-raiyat on the grounds specified in clause (c) or clause (d) of section 48C, the under-raiyat may apply to the Court by which the decree for ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within four years of the ejectment, the landlord sublets the holding or any portion thereof; and thereupon the Court may, if satisfied after inquiry that the landlord did not use the land for his homestead, or for cultivation by himself or by hired servants or by members of his family or with the aid of partners, order a recovery of possession on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just.

Application for restitution by under-raiyat.

148F. The holding of an under-raiyat shall descend in the same manner as other immovable property, but shall not be transferable except with the consent of the landlord.

Incidents of holding of under-raiyat.

148G. (1) Every under-raiyat who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, had by custom a right of occupancy in any land, shall have a right of occupancy in that land.

Occupancy-rights of under-raiyat.

Ben. Act
IV of
1928.

¹See foot-note ¹ on p. 39, *ante*.

(Chapter VII.—Under-raiyats.—Section 48H.)

(2) Every under-*raiyat* who has a right of occupancy in his holding shall have, as regards his immediate landlord, all the rights and liabilities of a *raiyat* with a right of occupancy, as set forth in—

- (i) Chapter V other than those conferred or imposed by sections 20, 21, 22, 26A to 26J,
- (ii) sections 65, 86, 116 and 178, so far as possible, and
- (iii) Chapter XIV,

and his holding, as against such landlord, shall be deemed to be the holding of an occupancy-*raiyat* for the purposes of the said sections or Chapters.

(3) The interest of an under-*raiyat* who has a right of occupancy in his holding shall not be deemed to be a protected interest under clause (d) of section 160.

(4) The provisions of sections 48A to 48E shall not apply to an under-*raiyat* who has a right of occupancy in his holding, in so far as such provisions are inconsistent with this section.

Provisions as to
salami.

48H. (1) No lease to an under-*raiyat* for a term exceeding twelve years shall be registered unless a landlord's fee equal to twenty *per cent.* of the value of the leasehold created or five times the annual rent of the lessor, whichever is greater, together with the prescribed cost of transmission, a notice giving particulars of the lease in the prescribed form and the prescribed process fee for the service of such notice on the landlord or his common agent, if any, is paid to the Registering Officer.

Explanation 1.—When the lease comprises portion or a share of the lessor's holding the rent of that portion or share shall for the purpose of determining the landlord's fee under this sub-section bear the same proportion to the rent of the entire holding as the area or share sublet bears to that of the entire holding.

Explanation 2.—A lease may include either a *patta* executed by the lessor or a *kabuliyat* executed by the lessee but where the landlord's fee has been paid for the *patta* it shall not be again payable for the *kabuliyat* and *vice versa*.

(2) The manner of transmission of the landlord's fee to the immediate landlord shall so far as possible be that provided in section 26C.

(3) The acceptance by the landlord of the landlord's fee provided in sub-section (1) shall not operate as an admission of the amount of rent or the area or any incident

¹See foot-note ¹ on p. 39, *ante*.

of 1885.]

(Chapter VII.—Under-raiyats.—Chapter VIIA.—Restrictions on alienation of land by aboriginals.—Sections 49, 49A.)

of the *raiyat's* or under-*raiyat's* holding, or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof.

¹49. (1) Notwithstanding anything contained in section 48F, an under-*raiyat* may enter into a complete usufructuary mortgage in the same manner and on the same conditions as are provided in section 26G for occupancy-*raiyats* and the provisions of that section shall apply so far as may be to under-*raiyats* as if they were occupancy-*raiyats*. Mortgage by under-*raiyat*.

(2) Such mortgage shall not be binding upon the landlord of the under-*raiyat*.

CHAPTER VIIA.

RESTRICTIONS ON ALIENATION OF LAND BY ABORIGINALS.

²49A. (1) This Chapter shall apply in the first instance only to the Sonthals of the districts of Birbhum, Bankura and Midnapore, who shall be deemed to be aboriginals for the purposes of this Chapter. Application of Chapter.

(2) The Local Government may, from time to time, by notification published in the *Calcutta Gazette*, declare that the provisions of this Chapter shall, in any district or local area, apply to such of the following aboriginal castes or tribes as may be specified in the notification, and that such castes or tribes shall be deemed to be aboriginals for the purposes of this Chapter, namely :—

Sonthals of other districts, Bhuiyas, Bhumijes, Garos, Gonds, Hadis, Hajangs, Hos, Kharias, Kharwars, Kochs (Dacca Division), Koras, Maghs (Bakarganj District), Mal and Sauria Paharias, Meches, Mundas, Oraons and Turis.

(3) The publication of a notification under sub-section (2) shall be conclusive evidence that the provisions of this Chapter have been duly applied to such castes or tribes.

(4) The Local Government may, by a like notification, declare that this Chapter shall, in any district or local area, cease to apply to the Sonthals mentioned in sub-section (1) or to any caste or tribe to which it may have been applied under sub-section (2).

¹See foot-note ¹ on p. 39, *ante*.

²Chapter VIIA (sections 49A to 49-O) was inserted by the Bengal Tenancy (Amendment) Act, 1918 (Ben. Act II of 1918), s. 2.

(Chapter VIIA.—Restrictions on alienation of land by
aboriginals.—Sections 49B—49E.)

¹(5) Notwithstanding anything elsewhere contained in this Act, the Local Government may, in the manner provided for in sub-sections (2) and (4), declare that the provisions of this Chapter applicable to aboriginal *raiyats* shall apply so far as may be, or cease to apply to *raiyats* within such colonisation areas in the Sundarbans as may be specified in the notification.

Restrictions on
transfer of
tenant rights.

²49B. No transfer by an aboriginal tenure-holder, *raiyat* or under-*raiyat* of his right in his tenure or holding, or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement, shall be valid to any extent except as provided in this Chapter.

Lease by
tenure-holder.

²49C. An aboriginal tenure-holder may grant a lease to another aboriginal, to hold the land as a tenure-holder, or to cultivate it as a *raiyat*, in accordance with the provisions of this Act.

Sub-letting by
raiyat.

²49D. Subject to the provisions of section ²48H, an aboriginal *raiyat* may sub-let his holding to another aboriginal to cultivate it as an under-*raiyat*.

Usufructuary
mortgage by
tenure-holder,
raiyat or
under-*raiyat*.

²49E. (1) An aboriginal tenure-holder, *raiyat* or under-*raiyat* may enter with another aboriginal into a complete usufructuary mortgage in respect of any land under his own cultivation, for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed seven years, or the period of his own right, whichever is less :

Provided that every mortgage so entered into shall be registered under the Indian Registration Act, 1908.⁴

XVI of
1908.

(2) An aboriginal tenant's power to mortgage his land shall be restricted to only one form of mortgage, namely, a complete usufructuary mortgage.

* * * * *

¹This sub-section was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 32.

²See foot-note ² on p. 43, *ante*.

³The figures and letter 48H in s. 49D, were substituted for the figures " 85 " by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 6.

⁴See foot-note ¹ on p. 26, *ante*.

⁵The explanation was omitted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 33.

of 1885.]

(Chapter VIIA.—Restrictions on alienation of land by
aboriginals.—Sections 49F—49H.)

149F. (1) If in any case—

- (a) an aboriginal tenure-holder is unable to lease his land as provided in section 49C, or an aboriginal *raiyat* is unable to sub-let his holding as provided in section 49D, or an aboriginal tenure-holder, *raiyat* or under-*raiyat* is unable to mortgage his land to another aboriginal as provided in section 49E, sub-section (1), or
- (b) an aboriginal tenure-holder, *raiyat* or under-*raiyat* desires to transfer his land, or any portion thereof, by private sale, gift or will to any person,

Application to Collector for transfer in certain cases.

he may apply to the Collector for permission, in case (a), to transfer the same to a person who is not an aboriginal, or in case (b); to transfer the same by private sale, gift or will to any person; and the Collector may pass such order on the application as he thinks fit.

(2) Every such transfer shall be made by registered deed, and before the deed is registered and the land transferred, the written consent of the Collector shall be obtained to the terms of the deed and to the transfer.

(3) Nothing in this section shall validate a transfer of any land or portion thereof which, by the terms upon which it is held, or by any law or local custom, would not be transferable except for the provisions of this section.

149G. No transfer by an aboriginal tenure-holder, *raiyat* or under-*raiyat* in contravention of the provisions of this Chapter shall be registered or in any way recognized as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.

Courts not to register, or recognize as valid, transfers in contravention of this Chapter.

149H. (1) If a transfer of a tenure or holding, or any portion thereof, is made by an aboriginal tenure-holder, *raiyat* or under-*raiyat* in contravention of the provisions of section 49B, or if the transferee has continued or is in possession in contravention of the provisions of section 49E, sub-section (1), or section 49F, as the case may be, the Collector may, on his own initiative or on application made in that behalf, by an order in writing, eject the transferee from such tenure, holding or portion:

Power to Collector to set aside improper transfers by tenure-holder, *raiyat* or under-*raiyat*.

Provided that—

- (a) the transferee whom it is proposed to eject has not been in continuous possession in contravention of this Act for twelve years, and
- (b) he is given an opportunity of showing cause against the order of ejection.

¹See foot-note * on p. 43, *ante*.

[Act VIII.]

(Chapter VIIA.—Restrictions on alienation of land by aboriginals.—Section 49J.)

(2) When the Collector has passed any order under sub-section (1), he shall either—

- (a) restore the transferred land to the aboriginal tenure-holder, *raiyat* or under-*raiyat*, or his heir or legal representative, or
- (b) failing the transferor or his heir or legal representative, declare that the right of settlement is vested in the landlord subject to the provisions of section 49J, provided that if the right is not exercised within one year, the Collector may, within six months, settle the land on behalf of the landlord on such terms as he deems fit with an aboriginal; and, if the Collector is unable to make such settlement within the said period, an unrestricted right of settlement will vest in the landlord.

Resettlement of certain tenancies.

149J. (1) Whenever—

- (a) the right of settlement of any tenancy, or any portion thereof, is declared to be vested in the landlord under clause (b) of sub-section (2) of section 49H, or
- (b) an aboriginal tenant surrenders his tenancy or a portion thereof, or abandons his residence and ceases to hold his tenancy,

the landlord may, subject to the provisions of ²[sections 86, 86A and 87],—

- (i) settle the tenancy, or a portion thereof, with an aboriginal, or
- (ii) with the approval of the Collector in writing, settle the same with a person who is not an aboriginal or retain it in his own possession: provided that such approval shall not be withheld if the Collector is satisfied that the surrender or abandonment referred to in this sub-section is not made with the object of evading the provisions of section 49B, 49E or 49F.

(2) If any landlord resettles or otherwise deals with any tenancy as aforesaid in contravention of the provisions of sub-section (1), the Collector may take action, so far as may be, in accordance with the provisions of section 49H.

¹See foot-note³ on p. 43, *ante*.

²These words, figures and letter in square brackets in s. 49J (1), were substituted for the words and figures "sections 86 and 87" by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 7.

1885.]

(Chapter VIIA.—Restrictions on alienation of land by aborigines.—Sections 49K—49M.)

49K. Notwithstanding anything in this Act, no decree or order shall be passed by any Court for the sale of the right of an aboriginal tenure-holder, *raiyat* or under-*raiyat* in his tenure or holding, or in any portion thereof, nor shall any such right be sold in execution of any decree or order :

Restrictions on sale of tenant rights under order of Court.

Provided as follows :—

- (a) any tenure or holding belonging to an aboriginal may be sold, in execution of a decree of a competent Court, to recover an arrear of rent which has accrued in respect of the tenure or holding ;
- (b) nothing in this section shall affect any right to execute a decree for the sale of any such tenure or holding, or the terms or conditions of any *bona-fide* contract relating thereto, if such decree was passed, or such contract registered,—
 - (i) in the case of the Sonthals of the districts of Birbhum, Bankura and Midnapore, before the 1st November, 1916, and
 - (ii) in the case of other castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under section 49A, sub-section (2), in respect to such castes or tribes ;
- (c) nothing in this section shall affect any right for the sale of any such tenure or holding for the recovery of any dues which are recoverable as public demands.

49L. If the sale of a tenure or holding, or any portion thereof, is ordered in execution of a decree against an aboriginal tenure-holder, *raiyat* or under-*raiyat* in respect of such tenancy or portion thereof, the Court executing the decree shall allow the tenant reasonable time in which to pay the amount due.

Stay of execution of decrees.

49M. (1) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Collector of the district from any order made under section 49F, 49H or 49J by any officer in the district exercising the powers of a Collector, and the order of the Collector on appeal shall be final :

Appeal and revision.

Provided that every order passed by the Collector on appeal shall be subject to revision and modification by the Commissioner.

(2) Notwithstanding anything in sub-section (1), an appeal from any order made under any of the sections

¹See foot-note ² on p. 43, *ante*.

[Act VIII]

(Chapter VIIA.—Restrictions on alienation of land by aboriginals.—Chapter VIII.—General provisions as to rent.—Sections 49N—50.)

mentioned in that sub-section by an officer acting under Chapter X of this Act shall be to such officer as the Local Government may appoint in this behalf, and the orders of such officer on appeal shall be final :

Provided that, in every such case, every order passed by the said officer on appeal shall be subject to revision and modification by such officer as the Local Government may appoint to deal therewith.

(3) An appeal, as provided in sub-section (1), shall lie to the Commissioner from any original order made by the Collector of the district under any of the sections mentioned in that sub-section.

Bar to suits.

¹49N. Notwithstanding anything in this Act, no suit shall lie in any Civil Court to vary or set aside any order passed by the Collector in any proceeding under this Chapter except on the ground of fraud or want of jurisdiction.

Saving of certain transfers.

¹49-O. Nothing in this Chapter shall affect the validity of any transfer (not otherwise invalid) by a tenure-holder, *raiyat* or under-*raiyat* of his tenure or holding, or any portion thereof, made *bona fide*,—

- (a) in the case of the Sonthals of the districts of Birbhum, Bankura and Midnapore before the 1st November, 1916, and
- (b) in the case of other castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under section 49A, sub-section (2), in respect to such castes or tribes.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and presumptions as to fixity of rent.

Rules and presumptions as to amount of rent.

50. (1) Where a tenure-holder or *raiyat* and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or *raiyat* and his predecessors in interest have held at a rent or rate of rent

¹See foot-note ^a on page 43, ante.

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Sections 51, 52.)

which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement :

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a *raiyat*, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Presumption as to amount of rent and conditions of holding.

Alteration of rent on alteration of area.

Alteration of rent on alteration of area.

52. (1) Every tenant shall—

Alteration of rent in respect of alteration of area.

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made ; and

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

[Act VIII

(Chapter VIII.—General provisions as to rent.—
Section 52.)

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

- (a) the origin and conditions of the tenancy, for instance whether the rent was a consolidated rent for the entire tenure or holding ;
- (b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord ;
- (c) the length of time during which the tenancy has lasted without dispute as to rent or area ; and
- (d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description, and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

¹(5) When in a suit under this section the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.

²(6) When in a suit under this section the landlord or tenant proves that—

- (i) at or about the time when the area was recorded in any *patta* or *kabuliyat* there existed in respect

¹Sub-section (5) was added to s. 52 by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898), s. 6.

²This sub-section was substituted for the former sub-section (6) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 34.

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Sections 53, 54.)

of the estate or permanent tenure or part thereof in which the tenure or holding is situated a practice of settlement being made after measurement of the land assessed with rent, or,

- (ii) the area entered in the counterfoil receipts corresponds with the area in the rent-roll on which the claim is based and that a practice of settlement on measurement prevailed at the time when the rent-roll was prepared,

it shall be presumed that the area of the tenure or holding was settled by measurement.

Payment of rent.¹

Payment of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Instalments of rent.

54. (1) Every tenant shall pay or tender each instalment of rent before sunset of the day on which it falls due :

Time and place for payment of rent.

Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made—

- (i) at the landlord's village-office or at such other convenient place as may be appointed in that behalf by the landlord ; or
- (ii) by postal money-order in the manner prescribed by rules made by the Local Government.

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 61.

(3) Where rent is sent by postal money-order in the manner prescribed, the Court may presume until the contrary is proved that a tender has been made.

(4) When a landlord accepts rent sent by postal money-order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money-order form, or that he has waived his rights under sections 26D, 26E, 26F or 26J.

¹The word, "rent" in ss. 53 to 55, includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3 (13), ante.

²This section 54 was substituted for the former section by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 35.

(Chapter VIII.—General provisions as to rent.—
Sections 55—57.)

(5) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

Appropriation of payments.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the years and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and the instalment as the landlord thinks fit.

Receipts and accounts.

¹Receipts and accounts.

Tenant making payment to his landlord entitled to a receipt.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in ²* * * Schedule II to this Act as can be specified by the landlord at the time of payment :

Provided that the Local Government may, from time to time, prescribe or sanction a modified form,³ either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Tenant entitled to full discharge or statement of account at close of year.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

¹The word "rent" in ss. 56 to 60, includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3 (13), *ante*.

²The words "the form of receipt given in" were omitted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 36.

³For orders made under section 56 (3), see the Bengal Local Statutory Rules and Orders, 1924, Vol. I, Pt. IV.

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Section 58.)

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account specifying the several particulars shown in ¹* * Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government, either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars ²required by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount of value of that rent, as the Court thinks fit. Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year required³ in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

³(3) If a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt or statement or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

¹The words "the form of account given in" were omitted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 37.

²The word "required" was substituted for the word "prescribed" by s. 127 of the same Act.

³Sub-sections (3) to (8) were substituted for the original sub-section (3), for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 14, and for Eastern Bengal, by Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), s. 14. The original sub-section ran thus—

"(3) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees."

(Chapter VIII.—General provisions as to rent.—
Section 58.)

¹(4) The Collector may hold a summary inquiry under sub-section (3), either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

¹(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

¹(6) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (3) or awarding compensation under sub-section (5); and the order² passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue,³ be final.

¹(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law⁴ for the time being in force for the recovery of a public demand.

¹(8) For the purpose of an inquiry under this section the Collector shall have power to summon, and enforce the attendance of witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under ⁵the Code of Civil Procedure, 1908.

Act V of
1908.

⁶(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

(a) a receipt for any amount actually paid on account of rent, or

(b) the statement of account required by section 57,

¹See foot-note^a on p. 53, *ante*.

²In Bengal Act I of 1907, s. 14, this word is printed as "orders."

³Now the Board of Revenue for Bengal—see the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912), s. 3, and Sch. D, item 3.

⁴See the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), s. 3, and Sch. I.

⁵The words and figures "the Code of Civil Procedure, 1908" were substituted for the words "the Code of Civil Procedure" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 128.

⁶This sub-section was added by s. 38 of the same Act.

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Sections 59—61.)

and the refusal of the tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt as required by section 56.

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all subdivisional offices forms of receipts with counterfoils and of statements of account suitable for use under sections 56 to 58¹. Local Government to prepare forms of receipt and account.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

Ben. Act
VII of
1876.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876², as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person. Effect of receipt by registered proprietor, manager or mortgagee.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

*Deposit of rent*³.

Deposit of rent.

61. (1) In any of the following cases, namely :—

Application to deposit rent in Court.

- (a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;
- (b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

¹The words and figures "sections 56 to 58" were substituted for the words "the foregoing sections" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

²Printed in Vol. II of the Bengal Code.

³The word "rent" in ss. 61 to 64, includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3 (13), *ante*.

[Act VIII

(Chapter VIII.—General provisions as to rent.—

Section 61.)

- (c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf ; or
- (d) when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court ¹[a sum not less than the amount of the money then due.]

(2) The application shall contain a statement of the grounds on which it is made ; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered ²and the name of his common agent, if any,

in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it ;

shall be signed and verified, in the manner ³provided in ⁴[sub-rules (2) and (3) of rule 15 of Order VI in Schedule I to the Code of Civil Procedure, 1908.] by the tenant, or, where he is not personally cognizant of the facts of the case by some person so cognizant ; ⁵[and shall in cases (a) and (b) be accompanied by the prescribed cost of transmission of the money deposited to the landlord and in cases (c) and (d) by a fee of the prescribed amount.]

Act V of
1908.

¹These words within square brackets were substituted for the words " the full amount of the money then due " by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 39(a).

²The words " and the name of his common agent, if any " were inserted by s. 39(b) (i) of the same Act.

³The words " provided in " were substituted for the words " prescribed in " by s. 127 of the same Act.

⁴These words, figures and letters within square brackets were substituted for the words and figures " section 52 of the Code of Civil Procedure " by s. 128 of the same Act.

⁵These words within square brackets were substituted for the words " and shall be accompanied by a fee of such amount as the Local Government from time to time by rule directs " by s. 39 (b) (ii) of the same Act.

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Sections, 62, 63.)

62. (1) If it appears to the Court to which an application is made under section 61 that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

Receipt granted by Court for rent deposited to be a valid acquittance.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

- in cases (a) and (b) of section 61 by the person specified in the application as the person to whose credit the deposit was to be entered ;
- in case (c) of that section, by the co-sharers to whom the rent is due ; and
- in case (d) of that section, by the person entitled to the rent.

63. The Court receiving a deposit—

- (i) in case (a) or (b) of section 61 shall forthwith forward the same by postal money-order to the address of the landlord, or of the common agent, if any, of the landlord empowered to receive rent ;
- (ii) in case (c) or (d) of that section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under section 64 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in case (c) cause a notice of the receipt of the deposit to be posted free of charge at the landlord's village-office, if any, and in some conspicuous place in the village in which the tenure or holding or any portion thereof is situated, and in case (d) cause a like notice to be served free of charge on every person who it has reason to believe claims, or is entitled to, the deposit.

Procedure for payment to the landlord of rent deposited.

¹The word and figures "section 61" were substituted for the words "the last foregoing section" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

²This section 63 was substituted for the former section by s. 40 of the same Act.

(Chapter VIII.—General provisions as to rent.—
Sections 64, 64A.)

Payment
or refund
of deposit.

64. (1) The Court may pay the amount of the deposit¹ notified under section 63 to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

²[* * * * *]

³(2) If no payment is made⁴ [under clause (i) of section 63 or under sub-section (1) of section 64] before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

³(3) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under⁵ section 62 but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Penalty for
refusing to
receive rent.

Penalty for
refusing to
receive
rent
tendered
by postal
money-
order or
deposited.

⁶Penalty for refusing to receive rent.

⁶64A. If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering by suit interest, costs or damages in respect of the same, and the Court may in addition award to the tenant damages not exceeding twenty-five *per cent.* on the whole amount claimed by the plaintiff.

The plea of the existence of any dispute as to the amount of rent or area of land of the tenure or holding shall not be deemed to be a reasonable cause under this section :

Provided that, when a landlord accepts rent, which has been deposited or remitted by postal money-order, the fact of his acceptance shall not be used in any way as evidence

¹The words and figures " notified under section 63 " were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 41(a).

²Original sub-section (2) was omitted by s. 41(b) of the same Act.

³Sub-sections (3) and (4) were re-numbered as sub-sections (2) and (3) by s. 41(c) of the same Act.

⁴These words and figures within square brackets were substituted for the words " under this section " by s. 41(d) of the same Act.

⁵The word and figures " section 62 " were substituted for the words " the foregoing sections " by s. 126 of the same Act.

⁶This heading and section 64A were inserted by s. 42 of the same Act.

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Sections—65-67.)

that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form.

Arrears of rent.¹

Arrears of rent.

65. Where a tenant is a permanent tenure-holder, a *raiyat* holding at fixed rates or an occupancy-*raiyat*, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Liability to sale for arrears in case of permanent tenure, holding at fixed rates or occupancy-holding.

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a *raiyat* holding at fixed rates or an occupancy-*raiyat*, at the end of the agricultural year ** * *

Ejectment for arrears in other cases.

* * * the landlord may, whether he has obtained a decree for the recovery of the arrear or not and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within thirty days from the date of the decree, or when the Court is closed on the thirtieth day on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of thirty days mentioned in this section.

67. An arrear of rent shall bear simple interest at the rate of twelve and-a-half *per centum per annum* from the

Interest on arrears.

¹The word "rent" in ss. 65 to 68 includes also money recoverable under any enactment for the time being in force as if it was rent—*sec. s. 3(13), ante.*

²The words "agricultural year" were substituted for the words "Bengali year" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 43(a).

³The words "where that year prevails, or at the end of the month of Jeth where the Fasli or Amlî year prevails" were omitted by s. 43(a) of the same Act.

⁴The words "thirty days" and "thirtieth" were substituted for the words "fifteen days" and "fifteenth," respectively, by s. 43(b) of the same Act.

⁵The words "and-a-half" in section 67 were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 15 (a), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A Act I of 1908), s. 15(a).

(Chapter VIII.—General provisions as to rent.—
Sections—68-71.)

expiration of that quarter of the agricultural year in which the instalment falls due ¹to the date of payment or of the institution of the suit, whichever date is earlier.

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five *per centum* on the amount of rent decreed, as it thinks fit :

Provided that interest shall not be decreed when damages are awarded under this section :

²Provided also that where damages are awarded—

- (i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and
- (ii) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five *per centum* on the whole amount claimed by the plaintiff, as it thinks fit.

³[* - * *]

69. (*Order for appraising or dividing produce.*) Repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 45.

70. (*Procedure where officers appointed.*) Repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 45.

71. (*Rights and liabilities as to possession of crop.*) Repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 45.

¹The words "to the date of payment or of the institution of the suit whichever date is earlier" in section 67, were substituted for the words "to the institution of the suit," for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 15(b), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 15(b).

²This proviso was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 44.

³The heading over s. 69 was repealed by s. 45 of the same Act.

of 1885.]

(Chapter VIII.—General provisions as to rent.—
(Sections 72—74.)

Liability for rent on change of landlord or after transfer of tenure or holding.

Liability for rent on change of landlord or after transfer of tenure or holding.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

73. When an occupancy-*raiyat* transfers his holding in whole or in part the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer :

Liability for rent before transfer of occupancy-holding.

Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer.

Illegal cesses, etc.

Illegal cesses, etc.

74. (1) All impositions upon tenants under the denomination of *abwab*, *mathat* or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Abwab, etc., illegal.

(2) All impositions upon tenants of road cess or public works cess, or of both,—

(a) in excess of the net amount fixed by clause (2) of section 41 of the Cess Act, 1880, or

(b) on any scale in excess of that required by clause (3) of that section,

Ben. Act
IX of 1880.

¹The word "rent" in ss. 72 to 75 includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3(13), *ante*.

²This section was substituted for the former section by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 46.

³Section 74 was re-numbered as sub-section (1) of section 74 and sub-sections (2) and (3) were added by the Bengal Tenancy (Amendment) Act, 1919 (Ben. Act III of 1919), s. 2.

⁴The word "fixed" was substituted for the words "prescribed" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 127.

⁵The word "required" was substituted for the word "prescribed" by s. 127 of the same Act.

[Act VIII

(Chapter VIII.—General provisions as to rent.—
Section 75.)

levied in addition to the actual rent, shall be illegal, and all stipulations and reservations for payment of any such excess contained in any contract made between a landlord and a tenant on or after the 13th day of October, 1880, shall be void :

Provided that nothing in this sub-section shall affect the terms of a written contract registered before the commencement of the Bengal Tenancy (Amendment) Act, 1919 :

Ben. Act
III of
1919.

Provided also that, subject to the provisions of section 72 of the Indian Contract Act, 1872, no suit shall lie for the recovery of anything paid before the commencement of the Bengal Tenancy (Amendment) Act, 1919, on account of the impositions referred to in sub-section (2).

IX of
1872.

¹(3) Nothing in this section shall be deemed to affect the terms of a permanent *mukarrari* lease granted by a proprietor or holder of a permanent tenure in a permanently settled area ²[and registered before the commencement of the Bengal Tenancy (Amendment) Act, 1928.]

Ben. IV of
1928.

Penalty for
exaction
by land-
lord from
tenant of
sum in
excess of
the rent
payable.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent ³or road cess or public works cess ⁴or interest lawfully payable, may, ⁵[subject to the second proviso to sub-section (2) of section 74] within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees ; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

¹See foot-note³ on p. 61, *ante*.

²These words within square brackets in s. 74(3), were added by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV 1928), s. 47.

³The words " or road cess or public works cess " in s. 75 were inserted by the Bengal Tenancy (Amendment) Act, 1919 (Ben. Act III of 1919), s. 3(1).

⁴The words " or interest " in s. 75, were inserted, for Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 17, and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 17.

⁵These words and figures within square brackets in s. 75, were inserted by the Bengal Tenancy (Amendment) Act, 1919 (Ben. Act III of 1919), s. 3(2).

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 76.)

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

Improvements.

76. (1) For the purposes of this Act, the term "improvement", used with reference to a ¹* * * * holding, shall mean any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

Definition of "improvement."

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section :—

(a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, ²or for drinking or for the use of men and cattle employed in agriculture ;

³ *Explanation.*—Such construction on agricultural land shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy ;

(b) the preparation of land for irrigation ;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable ;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;

(e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto ; and

⁴(f) the erection of a dwelling-house, whether of masonry bricks, stone or any other material whatsoever, for the tenant and his family, together with all necessary out-offices.

¹The word "raiyat's" was omitted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 48(a).

²The words " or for drinking " were inserted by s. 48 (b) of the same Act.

³This explanation was added by s. 48 (c) of the same Act.

⁴This clause (f) was substituted for the former clause by s. 49 (d) of the same Act.

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 77—80.)

(3) But no work executed by the ¹tenant of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

Right to make improvements in case of holding at fixed rates and occupancy-holding.

77. (1) * * * * neither the ³tenant nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the ³tenant and his landlord wish to make the same improvement the ³tenant shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

⁴(3) Any fee realised from a tenant for permission to make any improvement in respect of his holding shall be deemed to be an *abwab* and the provisions of sub-section (1) of section 74 shall apply thereto.

Collector to decide question as to right to make improvement, etc.

78. If a question arises between the ⁵*raiyat* or under-*raiyat* and his landlord—

- (a) as to the right to make an improvement, or
- (b) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

79. (*Right to make improvements in case of non-occupancy holding*). Repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 51.

Registration of landlord's improvements.

80. (1) A landlord may, by application to such Revenue-officer as the Local Government may appoint, register any improvement which he has lawfully made or which has been lawfully made ⁶wholly or partly at his expense or which he has assisted a tenant in making.

¹The word "tenant" was substituted for the word "*raiyat*" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 49(e).

²The words "where a *raiyat* holds at fixed rates or has an occupancy right in his holding" were omitted by s. 49(a) of the same Act.

³The word "tenant" was substituted for the word "*raiyat*" by s. 49(b) of the same Act.

⁴This sub-section was inserted by s. 49(c) of the same Act.

⁵In ss. 78, 82, 83 and 87 the words "*raiyat* or under-*raiyat*" were substituted for the word "*raiyat*" by s. 50 of the same Act.

⁶The words, "wholly or partly" were inserted by s. 52(a) of the same Act.

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 81, 82.)

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time ¹prescribes.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act—from the commencement of this Act ;

(b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

Application to record evidence as to improvement.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and tenant or any persons claiming under them.

82. (1) Every ²raiyyat or under-raiyyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

Compensation for raiyyats' improvements.

(2) Whenever a Court makes a decree or order for the ejectment of a ²raiyyat or under-raiyyat, it shall determine the amount of compensation (if any) due under this section to the ²raiyyat or under-raiyyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the ²raiyyat or under-raiyyat.

(3) No compensation under this section for an improvement shall be claimable where the ²raiyyat or under-raiyyat has made the improvement in pursuance of a contract or

¹The word "prescribes" was substituted for the words "by rule directs" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 52(b).

²See foot-note^a on p. 64, ante.

[Act VIII]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 83.)

under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a ¹*raiyat* or under-*raiyat* between the second day of March, 1883, and the commencement of this Act, shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors, and the mode of selecting them.

Principle on which compensation is to be estimated.

83. (1) In estimating the compensation to be awarded under ²section 82 for an improvement, regard shall be had—

- (a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement ;
- (b) to the condition of the improvement, and the probable duration of its effects ;
- (c) to the labour and capital required for the making of such an improvement ;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the ¹*raiyat* or under-*raiyat* in consideration of the improvement ; and
- (e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the ¹*raiyat* or under-*raiyat* has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and ¹*raiyat* or under-*raiyat* agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

¹See foot-note* on p. 64, *ante*.

²The word and figures "section 82" were substituted for the words "the last foregoing section" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 84—86).

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose,

Acquisition of land for building and other purposes.

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorize the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

1[* * *]

85. (*Restrictions on sub-letting.*) Repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 53.

Surrender and abandonment.

Surrender and abandonment.
Surrender.

86. (1) A *raiyat* not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the *raiyat* shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a *raiyat* has surrendered his holding, the Court shall, in the following cases for the purposes of sub-section (2), presume, until the contrary is shown, that such notice was so given, namely:—

- (a) if the *raiyat* takes a new holding in the same village from the same landlord during the agricultural year next following the surrender ;
- (b) if the *raiyat* ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

¹The heading to s. 85 was repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 53.

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 86A, 87.)

(4) The *raiyat* may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a *raiyat* has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, ¹[or when there is an under-*raiyat* on the holding or part thereof] the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer ¹[or the under-*raiyat*, as the case may be.]

(7) Save as provided in ²sub-section (6) nothing in this section shall affect any arrangement by which a *raiyat* and his landlord may arrange for a surrender of the whole or a part of the holding.

³86A. (1) If—

(i) the lands of a tenure or holding are wholly lost by diluvion and the tenant obtains on that account exemption from payment of rent in respect of such tenure or holding,

(ii) any portion of the lands of a tenure or holding is lost by diluvion and the tenant obtains on that account an abatement of rent in respect of such portion,

Effect of exemption from payment of rent or abatement of rent on account of diluvion.

the tenant shall, unless there is a contract to the contrary made by registered instrument, be deemed to have surrendered his rights in such lands or portion thereof, as the case may be, and his tenancy and rights therein shall be extinguished.

(2) Nothing in this section shall prevent the accrual of rights under the operation of any other enactment in any portion of the lands of a tenure or holding which have been lost by diluvion, if such lands thereafter re-appear as an accretion thereto.

Abandonment.

87. (1) If a ⁴*raiyat* or under-*raiyat* voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration

¹These words within square brackets were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 54.

²The word, brackets and figure "sub-section (6)" were substituted for the words "the last foregoing sub-section" by s. 129 of the same Act.

³Section 86A was inserted by s. 55 of the same Act.

⁴See foot-note³ on p. 64, *ante*.

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 87.)

of the agricultural year in which the ¹*raiyat* or under-*raiyat* so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office, stating that he has treated the holding as abandoned and is about to enter on it accordingly ; and the Collector shall cause a notice to be published in ²the prescribed manner.

(3) When a landlord enters under this section, the ¹*raiyat* or under-*raiyat* shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-*raiyat*, six months, from the date of the publication of the notice ; and thereupon the Court may, on being satisfied that the ¹*raiyat* or under-*raiyat* did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the ¹*raiyat* or under-*raiyat* who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that ¹*raiyat* or under-*raiyat*. If the sub-lessee refuses or neglects within ²two months to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

⁴(5) If an under-*raiyat* has—

- (a) a right of occupancy in a holding or portion thereof, or
- (b) been admitted in a document by the landlord to have a permanent and heritable right in his land, or
- (c) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon,

Ben. Act
IV of
1928.

¹See foot-note ⁵ on p. 64, *ante*.

²The words "the prescribed manner" were substituted for the words "such manner as the Local Government, by rule, directs" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 56 (a).

³The words "two months" were substituted for the words "a reasonable time" by s. 56 (b) of the same Act.

⁴This sub-section was added by s. 56 (c) of the same Act.

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(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 91—93.)

- (b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation ;
- (c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

Power for Court to order tenant to attend and point out boundaries.

91. (1) Where a landlord desires to measure any land which he is entitled to measure under section 90, the Civil Court may, on the application of the landlord make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

Standard of measurement.

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local inquiry make rules declaring for any local area the standard or standards of measurement locally in use in that area ; and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers.

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager.

93. (1) When any dispute exists between co-owners of an estate or tenure or of lands held jointly between two or more estates or tenures as to the management thereof ; or

¹The word and figures "section 90" were substituted for the words "the last foregoing section" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

²This section was substituted for the former section by s. 58 of the same Act.

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 94.)

(ii) when, owing to the existence of a large number of small co-sharers in an estate or tenure the tenants or landlords are put to inconvenience and harassment in the payment or receipt of the rent due,

the District Judge may, if it appears to him to be just and convenient, on the application of—

in case (i),—

(a) the Collector, or

(b) any one having an interest in the estate or tenure or in any of the estates or tenures ; and

in case (ii),—

(a) more than half the tenants, or

(b) co-sharers holding more than half the aggregate interests in the estate or tenure,

direct notice to be served on all the co-owners or co-sharers calling on them to show cause why they should not appoint a common manager—

in case (i), either for the whole of the estate or tenure or estates or tenures, as the case may be, or for those portions of the estate or tenure or estates or tenures, as the case may be, which are affected by the dispute, and

in case (ii), for the estate or tenure in which the tenants or landlords are put to inconvenience or harassment :

Provided that a co-owner or co-sharer of an estate or tenure or a co-owner of lands held jointly between two or more estates or tenures shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner or co-sharer of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.¹

Ben. Act
VII of
1876.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under section 93, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to order them to appoint a manager, if cause is not shown.

¹Printed in Vol. II of the Bengal Code.

²The word and figures "section 93" were substituted for the words "the last foregoing section" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 95—98.)

Power to appoint manager, if order is not obeyed.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under ¹section 94, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time;—

- (a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof ; or
- (b) in any case appoint a manager.

Power to nominate person to act in all cases under clause (b) of section 95.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of ²section 95 and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879,³ as relates to the management of immovable property shall apply to the management.

Ben. Act IX of 1879.

Provisions applicable to manager.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

¹The word and figures "section 94" were substituted for the words "the last foregoing section" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

²The word and figures "section 95" were substituted for the words "the last foregoing section" by s. 126 of the same Act.

³Printed in Vol. II of the Bengal Code.

of 1885.]

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(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103¹ or section 158A.

(8) He shall be removable by the order of the District Judge and not otherwise.

²99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Power to restore management to co-owners.

³99A. (1) Where two or more persons are joint or co-sharer landlords they may by an instrument in writing appoint a common agent for the whole of their joint property or for any portion thereof to receive on behalf of all of them—

Appointment of common agent.

- (a) notices of transfer under sections 12, 13, 15, 17, 18, 26C, ⁴[26F and 48H] of tenures or holdings or portions or shares thereof held under them within that property,
- (b) the landlord's fee or the landlord's transfer fee payable under those sections, and
- (c) the rent deposited in Court under section 61.

(2) (a) The Collector shall, on application by the common agent and on production by him of the instrument of appointment, register the names of the common agent and the landlords appointing him and their addresses and other particulars in the prescribed manner.

(b) The name and address of such common agent shall be entered upon the receipt required under section 56 to

¹The words and figures "or section 158A" were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928) s. 59.

²For a note to s. 99, see the Bengal Wards' Manual, 1909, p. 260.

³Section 99A was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 60.

⁴These figures, letters and word within square brackets in s. 99A (1) (a) were substituted for the word, figures and letter " and 26F" by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 8.

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be given on the payment of rent for the tenure or holding situated within the area for which he has been appointed under sub-section (1).

Power to make rules.

100. (1) The High Court may, from time to time, make rules defining the powers and duties of managers under sections 95 to 99.

(2) The Board of Revenue may, from time to time, make rules defining the powers and duties of common agents under section 99A.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Part I.—Record-of-rights.

Power to order survey and preparation of record-of-rights.

101. (1) The Local Government may, in any case
 3* * * * *
 if it thinks fit,⁴ * * * * *
 make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer, in respect of
⁵all lands in any local area, estate or tenure or part thereof :

⁶Provided that the provisions of sections 104 to 105A, inclusive, 109C, 109D, 110, 112 and 113 shall not apply in

¹This section was substituted for the former section by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 61.

²This Chapter was substituted for the original Chapter X by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898), s. 7.

As regards proceedings under ss. 104, 105 and 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), as originally passed, see the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898), ss. 8, 9.

Every Deputy Collector making a partition under the Estates Partition Act, 1897 (Ben. Act V of 1897), has, as regards the estate under partition, all the powers exercisable by a Revenue-officer employed in preparing a record-of-rights under Chapter X of the present Act, see s. 44 of the former Act.

³The words "with the previous sanction of the Governor General in Council, and may" in section 101 were repealed by the Devolution Act, 1920 (Act XXXVIII of 1920), s. 2 and are omitted.

⁴The words "without such sanction in any of the cases next hereinafter mentioned" in section 101 were repealed by the Devolution Act, 1920 (Act XXXVIII of 1920), s. 2 and are omitted.

⁵The words "all lands" were substituted for the words "the lands" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 62 (i).

⁶This proviso was inserted by s. 62 (ii) of the same Act.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part I.—Record-of-rights.—Section 101.)

respect of any lands which are held by a non-agriculturist and are not used for purposes connected with agriculture or horticulture.

(2) ¹[In particular and without prejudice to the generality of the foregoing power, the Local Government may make such an order in the following cases,] namely :—

²(a) where—

- (i) the landlord or tenants, or
- (ii) a proportion of not less than one-half of the total number of landlords, or
- (iii) a landlord, or a proportion of the landlords, whose interest, or the aggregate of whose interests, respectively, in the lands of the local area, estate or tenure or part thereof is not less than one-half of the total shares of all the landlords therein, or
- (iv) a proportion of not less than one-fourth of the total number of tenants,

applies, or apply, for such an order, depositing or giving security for, such amount for the payment of expenses as the Local Government³ directs ;

(b) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally ;

(c) where the local area, estate or tenure or the part thereof belongs to, or is managed by, the Government.

¹These words within square brackets in s. 101 (2), were substituted for the words "The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following," by the Devolution Act, 1920 (XXXVIII of 1920), s. 2.

²This clause (a) was substituted for the original clause (a), for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 19 (1), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 18 (1). The original clause ran thus :—

"where the landlord or tenants, or a large proportion of the landlords or of the tenants, apply for such an order, and deposit, or give security for, such amount for the payment of expenses as the Local Government directs."

³Now the Governor in Council of Fort William in Bengal, *see* the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912), s. 3. and Sch. D, items 1 and 2.

(Chapter X.—Record-of-rights and settlement of rents.—
Part I.—Record-of-rights.—Section 102.)

or the Court of Wards ¹or a manager appointed by the District Judge under section 95 ;

- (d) where a settlement of land-revenue is being or is about to be made in respect of the local area, estate or tenure or of the part thereof.

Explanation 1.—The term “settlement of land revenue”, as used in clause (d), includes a settlement of rents in an estate or tenure which belongs to the Government.

Explanation 2.—A superior landlord may apply for an order under this section, notwithstanding that his estate or part thereof is temporarily leased to a tenure-holder.

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

(4) The survey shall be made and the record-of-rights prepared in accordance with rules made in this behalf by the Local Government.

Particulars to be recorded.

102. Where an order is made under section 101, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following namely :—

- (a) the name of each tenant or occupant ;
(b) the class ²or classes to which each tenant belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, settled *raiyat*, occupancy-*raiyat*, non-occupancy *raiyat* or under-*raiyat*, ³with or without a right of occupancy and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure ;
(c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier ;
(d) the name of each tenant's landlord ;

¹The words “or a manager appointed by the District Judge under section 95” in clause (c), were added for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 19 (2), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 18 (2).

²The words “or classes ” were inserted by the Bengal Tenancy Amendment) Act, 1928 (Ben. Act IV of 1928), s. 63(i).

³The words “ with or without a right of occupancy ” were inserted by s. 63 (i) of the same Act.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part I.—Record-of-rights.—Section 102.)

- ¹(*dd*) the name of each proprietor in the local area or estate ;
- (*e*) the rent payable at the time the record-of-rights is being prepared ;
- ²(*ee*) the amount payable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like at the time the record-of-rights is being prepared, the conditions and incidents appertaining to such rights, and if the amount is gradually increasing amount, the time at which, and the increments by which, it increases;
- (*f*) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise ;
- (*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases ;
- ³(*gg*) the rights and obligations of each tenant and landlord in respect of—
- (*i*) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well, or any other source of supply, and
- (*ii*) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land ;
- (*h*) the special conditions and incidents, if any, of the tenancy ;
- ⁴(*i*) any right of way or other easement attaching to the land for which a record-of-rights is being prepared ;

¹Clause (*dd*) was inserted for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 20(1), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 19(1).

²Clause (*ee*) was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 63(ii).

³Clause (*gg*) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 20(2), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 19(2), and is to be deemed to have been so inserted from the commencement of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

⁴Clause (*i*) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 20(3), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 19(3).

(Chapter X.—Record-of-rights and settlement of rents.—
Part I.—Record-of-rights.—Section 102A.)

¹(j) if the land is claimed to be held rent free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled, under what authority :

²Provided that, if lands are not used for purposes connected with agriculture or horticulture, it shall be sufficient to record that fact together with the prescribed particulars relating to the occupant, the landlord and the tenancy.

Power to order survey and preparation of record-of-rights as to water.

³102A. The Local Government⁴ may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water,

make an order directing that a survey be made, and a record-of-rights be prepared, by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

- (a) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well, or any other source of supply ; and
- (b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.

¹This clause was formerly lettered (i), and was re-lettered (j), for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 20(3), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 19(3).

²This proviso was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 63 (iii).

³Section 102A was inserted for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 21, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 20.

⁴Now the Governor in Council of Fort William in Bengal—see the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912), s. 3, and Sch. D, items 1 and 2.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—

Part I.—Record-of-rights.—Sections 103—103 B.)

103. On the application of one or more of the proprietors or tenure-holders, or of a large proportion of the *raiyats* of an estate or tenure, and on the applicant or applicants depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with, rules made in this behalf by the Local Government, ascertain and record all or any of the particulars specified in section 102 with respect to the estate or tenure or any part thereof.

Power for Revenue-officer to record particulars on application of proprietor, tenure-holder or large proportion of *raiyats*.

103A. (1) When a draft record-of-rights has been prepared, the Revenue-officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

Preliminary publication, amendment and final publication of record-of-rights.

(2) When such objections have been considered and disposed of according to such rules as the Local Government may make, and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent-roll has been incorporated with the record under section 104F, sub-section (3), the Revenue-officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

103B. (1) When a record-of-rights has been finally published under section 103A, the Revenue-officer shall, within such time as the Board of Revenue may, by general or special order, require, make a certificate stating the fact of such final publication and the date thereof, and shall date and subscribe the same with his name and official title.

Certificate of, and presumption as to, final publication, and presumption as to correctness, of record-of-rights.

(2) The certificate of final publication, or, in the absence of such certificate, a certificate signed by the Collector of any district in which the local area, estate, tenure or part thereof

¹The word "make" was substituted for the word "prescribe" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 127.

²This section which was inserted by s. 21 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, was substituted for section 103B as inserted by s. 22 of the Bengal Tenancy (Amendment) Act, 1907, by s. 64 of the same Act.

³The word "require" was substituted for the word "prescribe" by s. 127 of the same Act.

(Chapter X.—Record-of-rights and settlement of rents.—
Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Section 104.)

to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof.

(3) The Local Government may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in such area; and such notification shall be conclusive proof of such publication.

(4) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied.

(5) Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.

Settlement of rents and preparation of Settlement Rent-roll when to be undertaken by Revenue-officer.

104. In every case in which a settlement of land-revenue is being, or about to be made, the Revenue-officer shall, after publication of the draft of the record-of-rights under section 103A, sub-section (1),—

- (a) settle fair and equitable rents for tenants of every class,
- (b) notwithstanding anything contained in section 191, settle a fair and equitable rent for any land in

¹Now the Governor in Council of Fort William in Bengal—see the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912), s. 3, and Sch. D, item 2.

²The words "disposal of objections", in this heading, were substituted for the words "decision of disputes", for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 23, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 22.

³The word and figures "section 191" in s. 104(b) were substituted for the word and figures "section 192" by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 9.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—

Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Section 104A.)

respect of which he has recorded, in pursuance of ¹clause (j) of section 102, that the occupant is not entitled to hold it without payment of rent, and

(c) prepare a Settlement Rent-roll :

²Provided that the Revenue-officer shall not settle the rents of tenants of every class in an estate or tenure belonging to the Government, if it does not appear to the ³Local Government to be expedient that he should do so. ⁴

104A. (1) For the purposes of settling rents under this Part and preparing a Settlement Rent-roll, the Revenue-officer may proceed in any one or more of the following ways or partly in one of those ways and partly in another, that is to say,—

Procedure for settlement of rents and preparation of Settlement Rent-roll under this Part.

- (a) if in any case the landlord and tenant agree between themselves as to the amount of the rent fairly and equitably payable, the Revenue-officer shall satisfy himself that the rent so agreed upon is fair and equitable, and if he is so satisfied, but not otherwise, it may be settled and recorded as the fair and equitable rent ;
- (b) the Revenue-officer may himself propose what he deems to be the fair and equitable rent, and if the amount so proposed is accepted, either orally or in writing, by the tenant, and if the landlord, after notice to attend, raises no objection, the rent so proposed may be settled and recorded as the fair and equitable rent ;
- (c) if the circumstances are, in the opinion of the Revenue-officer, such as to make it practicable to prepare a Table of Rates showing for any

¹This reference " clause (j) " was substituted for the reference " clause (i) " for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 24 (1), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 23(1).

²This proviso was added to section 104, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 24 (2), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 23 (2).

³See foot-note¹ on p. 82, *ante*.

⁴For an order made under the proviso to s. 104, see the Bengal Local Statutory Rules and Orders, 1924, Vol. I, Pt. IV.

[Act VIII]

(Chapter X.—Record-of-rights and settlement of rents.—

Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Section 104B.)

local area, estate, tenure or village or part thereof, or for each class of land in any local area, estate, tenure or village or part thereof, the rate or rates of rent fairly and equitably payable by tenure-holders and *raiyats* and under-*raiyats* of each class, he may frame a Table of Rates and settle and record all or any of the rents on the basis of such rates in the manner hereinafter described ;

- (d) the Revenue-officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of-rights as published under section 103A, sub-section (1), or by enhancing or reducing such rentals :

Provided that, in making any such settlement, regard shall be had to the principles laid down in sections 6 to 9 (both inclusive), 27 to 36 (both inclusive), 38, 39, 43, 50 to 52 (both inclusive), 180 and 191.

(2) The Settlement Rent-roll shall show the name of each landlord and of each tenant whose rent has been settled, and the amount of each such tenant's rent payable for the area shown against his name.

Contents of
Table of Rates.

104B. (1) If a Table of Rates is prepared, it shall specify—

- (a) the class or several classes of land for which, having regard to the nature of the soil, situation, means of irrigation, and other like considerations, it is in the opinion of the Revenue-officer necessary or practicable to fix a rate or different rates of rent ; and
- (b) the rate or rates of rent fairly and equitably payable by tenants holding land of each such class whose rent is liable to alteration.

Local publication
of Table.

(2) When the Revenue-officer has prepared the Table of Rates, he shall publish it in the local area, estate, tenure or village to which it relates, in the vernacular language prevailing in the district, and in the prescribed manner.

Revenue-officer
to deal with
objections.

(3) Any person objecting to any entry in the Table of Rates may present a petition to the Revenue-officer within a period of one month after such publication, and the

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(Chapter X.—Record-of-rights and settlement of rents.—
Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Sections 104C, 104D.)

Revenue-officer shall consider any such objection and may alter or amend the Table.

(4) If no objection is made within the said period of one month, or, where objections are made, after they have been disposed of, the Revenue-officer shall submit his proceedings to the Revenue authority empowered by rule made by the Local Government to confirm the Tables and Rent-rolls prepared under this Part (hereinafter called the "confirming authority"), with a full statement of the grounds of his proposals, and shall forward any petitions of objection which he may have received.

Table to be submitted to superior Revenue authority.

(5) The confirming authority may confirm a Table submitted under sub-section (4), or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made or may return the case for further inquiry.

Proceedings of confirming authority.

(6) When a Table of Rates has been confirmed by the confirming authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act; and it may be presumed that the rates shown in the Table for tenants of each class, for each class of land, are the fair and equitable rates payable for land of that class within the area to which the Table applies.

Effect of Table.

104C. When a Table of Rates has been confirmed under section 104B, sub-section (5), the Revenue-officer may settle all or any of the rents and prepare the Settlement Rent-roll on the basis of the rates shown in the Table by calculating the rental of each tenure or each holding of a *raiyat* or under-*raiyat* on the area of such tenure or holding at the said rates :

Application of Table of Rates.

Provided that the Revenue-officer shall not be bound to apply the said rates in any particular case in which he may consider it unfair or inequitable to do so.

104D. In framing a Table of Rates under section 104B, and in settling rents under section 104C, the Revenue-officer shall be guided by such rules as the Local Government may make in this behalf, and shall, so far as may be, and subject to the proviso to the said section 104C, have regard to the general principles of this Act regulating the enhancement or reduction of rents.

Rules and principles to be followed in framing Table of Rates and settling rents in accordance therewith.

[Act VIII

(Chapter X.—Record-of-rights and settlement of rents.—
Part II.—Settlement of rents, preparation of
Settlement Rent-roll, and disposal of objections, in
cases where a settlement of land-revenue is being or is
about to be made.—Sections 104E—104G.)

Preliminary
publication and
amendment of
Settlement
Rent-roll.

104E. (1) When a Settlement Rent-roll for a local area, estate, tenure or village or part thereof has been prepared, the Revenue-officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period, and shall receive and consider any objections made to any entry therein, or omission therefrom, during the period of publication and shall dispose of such objections according to such rules as the Local Government may¹ make.

(2) The Revenue-officer may, of his own motion or on the application of any party aggrieved, at any time before a Settlement Rent-roll is submitted to the confirming authority under section 104F, revise any rent entered therein :

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Final revision of
Settlement
Rent-roll,
and incorporation
of the same in
the record-of-
rights.

104F. (1) When all objections have been disposed of under section 104E, the Revenue-officer shall submit the Settlement Rent-roll to the confirming authority with a full statement of the grounds of his proposals and a summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the Settlement Rent-roll, with or without amendment, or may return it for revision :

Provided that no entry shall be amended or omission supplied, until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After sanction by the confirming authority, the Revenue-officer shall finally frame the Settlement Rent-roll and shall incorporate it with the record-of-rights published in draft under section 103A.

Appeal to, and
revision by,
superior
Revenue
authorities.

104G. (1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue-officer prior to the final publication of the record-of-rights on any objection made under section 104B, sub-section (3), or section 104E ; and such appeal shall lie to ²the prescribed superior Revenue authority.

¹The word "make" was substituted for the word "prescribe" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 127.

²The words "the prescribed superior Revenue authority" were substituted for the words "such superior Revenue authority as the Local Government may by rule prescribe" by s. 65 of the same Act.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part II.—Settlement of rents, preparation of
Settlement Rent-roll, and disposal of objections, in
cases where a settlement of land-revenue is being or is
about to be made.—Section 104 H.)

(2) The Board of Revenue may, in any case under this Part, on application or of its own motion, direct the revision of any record-of-rights, or any portion of a record-of-rights, at any time within two years from the date of the certificate of final publication, but not so as to affect any order passed by a Civil Court under section 104H :

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

104H. (1) Any person aggrieved by an entry of a rent settled in a Settlement Rent-roll prepared under sections 104A to 104F and incorporated in a record-of-rights finally published under section 103A, or by an omission to settle a rent for entry in such Settlement Rent-roll, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

Jurisdiction of Civil Courts in matters relating to rent.

(2) Such suit must be instituted within six months from the date of the certificate of final publication of the record-of-rights, or, if an appeal has been presented to a Revenue authority under section 104G, then within six months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds, and on no others, namely :—

- (a) that the land is not liable to the payment of rent ;
- (b) that the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent ;
- (c) that the relation of landlord and tenant does not exist ;
- (d) that land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy ;
- (e) that the tenancy belongs to a class different from that to which he is shown in the record-of-rights as belonging ;

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(Chapter X.—Record-of-rights and settlement of rents.—
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Settlement Rent-roll, and disposal of objections, in
cases where a settlement of land-revenue is being or is
about to be made.—Section 104H.)

- (f) that the Revenue-officer has not postponed the operation of the settled rent under the provisions of section 110, clause (a), or has wrongly fixed the date from which it is to take effect under that clause ;
- ¹(g) that the special conditions and incidents of the tenancy have not been recorded, or have been wrongly recorded ;
- ¹(h) that any right of way or other easement attaching to the land has not been recorded, or has been wrongly recorded.

The Secretary of State for India in Council shall not be made a defendant in any such suit unless the Government is landlord or tenant of the land to which the aforesaid entry relates or in respect of which the aforesaid omission was made.

(4) If it appears to the Court that the entry of rent settled is incorrect, it shall in case (a) or case (c) mentioned in sub-section (3), declare that no rent is payable, and shall in any other case settle a fair rent ;

and, in any case referred to in clause (f) or clause (g) of the said sub-section (3), the Court may declare the date from which the rent settled is to take effect, or pass such order relating to the entry as it may think fit.

(5) When the Court has declared under sub-section (4) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled.

(6) In settling a fair rent under sub-section (4) the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the same Settlement Rent-roll, as settled under sections 104A to 104F.

(7) Any rent settled by the Court under sub-section (4) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent-roll.

(8) Save as provided in this section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under sections 104A to 104F.

¹Clause (g) as originally enacted by the Bengal Tenancy Act, 1885 (VIII of 1885) and clause (h) as inserted by section 24 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, were substituted for clause (g), as modified by section 25 of the Bengal Tenancy (Amendment) Act, 1907, by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 66.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—

Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—

Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.—Sections 104J, 105.)

(9) When a Civil Court has passed final orders or a decree under this section, it shall notify the same to the Collector of the district.

104J. Subject to the provisions of section 104H, all rents settled under sections 104A to 104F and entered in a record-of-rights finally published under section 103A, or settled under section 104G, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Presumptions as to rents settled under sections 104A to 104G.

Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.

105. (1) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, either the landlord or the tenant applies, within ²four months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent in respect of the land held by the tenant.

Settlement of rents by Revenue-officer in cases where a settlement of land-revenue is not being or is not about to be made.

Explanation.—A superior landlord may apply for a settlement of rent notwithstanding that his estate or tenure or part thereof has been temporarily leased.

(2) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, the Revenue-officer has recorded, in pursuance of ³clause (j) of section 102 that the occupant of any land claimed to be held rent-free is not entitled to hold it without payment of rent, and either the landlord or the occupant applies, within ²four

¹This section as modified by sections 23 (1) and 25 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and by the Devolution Act, 1920, was substituted for section 105 as modified by section 24 (1) of the Bengal Tenancy (Amendment) Act, 1907, and by the Devolution Act, 1920, by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 67 (2).

²The words "four months" were substituted for the words "two months" by s. 67 (1) of the same Act.

³The reference "clause (j)" was substituted for the reference "clause (i)", for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907, s. 24 (1), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, s. 23 (1).

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(Chapter X.—Record-of-rights and settlement of rents.—
Part III.—Settlement of rents and decision of disputes,
in cases where a settlement of land-revenue is not being or
is not about to be made.—Section 105.)

months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent for the land.

(3) Every application under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in the Court-fees ¹Act, 1870, bear such stamp as the ²Local Government may ³* * * * * prescribe ⁴* * * * * VII of 1870.

(4) In settling rents under this section, the Revenue-officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

(5) The Revenue-officer may in any case under this section propose to the parties such rents as he considers fair and equitable; and the rents so proposed, if accepted in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

(6) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue-officer shall satisfy himself that the amount agreed upon is fair and equitable, and, if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (4) and (5).

⁵(7) Where the lands of the tenancy are included in different local areas for which separate records are framed, the period of limitation specified in sub-section (1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to the tenancy.

¹Printed in the General Acts, 1834-72, Ed., 1928, p. 282.

²The words "Local Government" were substituted for the words "Government of India" by the Devolution Act, 1920 (XXXVIII of 1920), s. 2.

³The words "from time to time" were omitted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 67 (1).

⁴The words "by notification in the local official gazette" were omitted by s. 67 (1) of the same Act.

⁵Sub-section (7) was added by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 25.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part III.—Settlement of rents and decision of disputes,
in cases where a settlement of land-revenue is not being
or is not about to be made.—Sections 105A, 105B.)

105A. Where, in any proceedings for the settlement of rents under this Part, any of the following issues arise :—

- (a) whether the land is, or is not, liable to the payment of rent ;
- (b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent ;
- (c) whether the relation of landlord and tenant exists ;
- (d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy ;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging ;
- (f) whether the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land, have not, or has not, been recorded, or have, or has, been wrongly recorded ;
- ²(g) whether the rent payable at the time of final publication of the record-of-rights was correctly entered, and if not, what was the rent payable at that time ;

Decision of questions arising during the course of settlement of rents under this Part.

the Revenue-officer shall try and decide such issue and settle the rent under section 105 accordingly :

Provided that the Revenue-officer shall not try any issue under this section, which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue-officer in a suit instituted before him under section 106.

105B. When any issue is raised under section 105A, the party raising it shall pay, in addition to any other court-fees which he may be liable to pay, such court-fees as he would have been liable to pay if he had claimed relief under section 106.

Court-fees for raising an issue under section 105A.

¹Section 105A was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 26, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 26.

²This clause was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 68.

³Sections 105B and 105C were inserted by s. 69 of the same Act.

[Act VIII

(Chapter X.—Record-of-rights and settlement of rents.—
Part III.—Settlement of rents and decision of disputes,
in cases where a settlement of land-revenue is not being or is
not about to be made.—Sections 105C, 106.)

Costs not to be
awarded ordi-
narily in pro-
ceedings under
section 105 by
Revenue-officer.

¹105C. Except for reasons to be recorded in writing, no Revenue-officer shall award to any party any portion of his costs in a proceeding under section 105.

Institution of
suit before a
Revenue-officer.

²106. (1) In proceedings under this Part, a suit may be instituted before a Revenue-officer at any time within ³four months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A of this Act, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from, the record,

whether such dispute be between landlord and tenant, or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter ;

and the Revenue-officer shall hear and decide the dispute :

Provided that the Revenue-officer may, subject to such rules as the Local Government may ⁴make in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial :

⁵Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents

¹See foot-note ³ on p. 91, *ante*.

²This section 106 (1) was substituted for the original section 106 by the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act I of 1903), s. 4. It was renumbered as 106 (1) for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 27 (1). It was also renumbered as 106 (1) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 70 (1).

³The words "four months" were substituted for the words "three months" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 70 (1).

⁴The word "make" was substituted for the word "prescribe" by s. 127 of the same Act.

⁵This proviso was added to section 106, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 27, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 27 (2).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part III.—Settlement of rents and decision of disputes,
in cases where a settlement of land-revenue is not being
or is not about to be made.—Sections 107, 108.)

under this Part, where such issue has been tried and decided,
or is already being tried, by a Revenue-officer under section
105A.

¹(2) Where the lands to which the dispute relates are
situated in local areas for which separate records are framed,
the period of limitation specified in sub-section (1) shall
begin to run from the date of the certificate of final publica-
tion of the last record which contains entries relating to such
lands.

107. * * * ³In all proceedings under section Procedure to be
105, section 105A and section 106, the Revenue-officer shall, adopted by
subject to rules made by the Local Government under this Revenue-officer.
Act, adopt the procedure laid down in ⁴the Code of Civil
Procedure, 1908, for the trial of suits; and his decision
in every such proceeding shall have the force and effect
of a decree of a Civil Court in a suit between the parties,
and, subject to the provisions of sections 108 and ⁵115C
shall be final.

* * * * *

108. Any Revenue-officer especially⁷ empowered by Revision by
the Local Government in this behalf, may, on application Revenue-officer.
or of his own motion, within twelve months from the making
of any order or decision under section 105, ⁸section 105A,

¹This sub-section as inserted by the Eastern Bengal and Assam
Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 27 (3)
was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben.
Act IV of 1928), s. 70 (2).

²The number and brackets "(1)" in section 107 were omitted by
s. 72(c) of the same Act.

³The words "In all proceedings under section 105, section 105A
and section 106," in section 107 (1) were substituted for the words and
figures "In all proceedings for the settlement of rents under this Part,
and in all proceedings under section 106," for Western Bengal, by the
Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 28 (a)
and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy
(Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 28 (a).

⁴The words and figures "the Code of Civil Procedure, 1908" were
substituted for the words "the Code of Civil Procedure" by the Bengal
Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 128.

⁵In sections 107, 108, 119 and 180A, the figures and letter
"115C" were substituted for the figures and letter "109A" by s. 71
of the same Act.

⁶Sub-section (2) was omitted by s. 72 (a) of the same Act.

⁷Sic. Read specially.

⁸The word, figures and letter "section 105A," in section 108 were
inserted, for Western Bengal, by the Bengal Tenancy (Amendment)
Act, 1907 (Ben. Act I of 1907), s. 29, and, for Eastern Bengal, by the
Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. &
A. Act I of 1908), s. 29.

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(Chapter X.—Record-of-rights and settlement of rents.—
Part III.—Settlement of rents and decision of disputes,
in cases where a settlement of land-revenue is not being
or is not about to be made.—Sections 108A—109A.)

section 106 or section 107, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed or decree made under section ¹115C :

Provided that no such order or decision shall be so revised if an appeal from it ²has been filed under section ¹115C or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

108A. (Correction by Revenue-officer of mistakes in record-of-rights.) Transferred as section 115B, by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 74.

Bar to jurisdiction of Civil Courts.

109. Subject to the provisions of section ³115C, a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made, ⁴suit instituted or proceedings taken under sections 105 to 108 (both inclusive) :

⁵Provided that nothing contained in this section shall debar a Civil Court from entertaining a suit concerning any matter which—

- (a) was the subject-matter of an application under section 105, or section 105A, or of a suit under section 106, if such application or suit has been dismissed for default or withdrawn, or
- (b) has not been finally adjudicated upon in any such proceeding or suit.

109A. (Appeals from decisions of Revenue-officers.) Transferred as section 115C, by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 76.

¹See foot-note^s on p. 93, *ante*.

²The words "has been filed" were substituted for the words "is pending" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 73.

³The figures and letter "115C" were substituted for the figures and letter "109A" by section 75 (i) of the same Act.

⁴The words and figures "suit instituted or proceedings taken under sections 105 to 108 (both inclusive)" in section 109 were substituted for the words "or suit instituted under section 105, section 106, section 107 or section 108", for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 31, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 31.

⁵This proviso was added by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 75 (ii).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Sections 109B, 109C.)

Part IV.—Supplemental provisions.

109B. In all proceedings under this Chapter, the Revenue-officer may presume that an agreement or compromise made or entered into by any landlord and his tenant is lawful;

Power of Revenue-officer to presume that agreements or compromises are lawful.

but, when the terms of the agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, he shall not give effect to such agreement or compromise until he has given reasonable notice to such third parties to appear and be heard in the matter and unless and until he is satisfied that the statements made by the parties to the agreement or compromise are correct.

109C. (1) Notwithstanding anything contained in section 109B, if in any case while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenuro or holding,

Power to Revenue-officer to settle rents on agreement.

a Revenue-officer³ * * * * * may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such, that, if they were embodied in a contract, they could not be enforced under this Act;

and the provisions of section 113 shall apply to a rent so settled.

(2) A landlord or tenant may appeal to the Special Judge appointed under section 115C, on the ground that the rent settled by the Revenue-officer, under sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within

¹Section 109B as inserted by s. 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) was substituted for s. 109B as inserted by s. 33 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 77.

²Section 109C as inserted by s. 33 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) was inserted after s. 109B by s. 78 (2) of the same Act.

³The words "specially empowered in this behalf by the Local Government" were omitted by s. 78 (1) of the same Act.

⁴The figures and letter "115C" were substituted for the figures and letter "109A" by s. 78 (1) of the same Act.

[Act VIII]

(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Sections 109D, 110.)

one year from the date of the order, under sub-section (1), settling a rent as a fair and equitable rent, direct the revision of the rent so settled :

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Note of decision
on record.

109D. A note of all rents settled under section 105, of all decisions of issues under section 105A or section 106 and of all orders regarding the same on appeal or revision under section 108 or section 115C shall be made in, or appended to, the record-of-rights finally published under sub-section (2) of section 103A, and such note shall be considered as part of the record.

Date from which
settled rent
takes effect.

110. When a rent is settled by a Revenue-officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land-revenue is being or is about to be made) the date of final publication of the record-of-rights :

Provided as follows :—

- (a) if the land is comprised in an area, estate or tenure in respect of which a settlement of land-revenue is being or is about to be made, the rent settled shall, subject to the provisions of sections 191 and 192 take effect from the expiration of the period of the current settlement, or from such other date after the expiration of that period as may be fixed by the Revenue-officer ;
- (b) if the land is not comprised in an area, estate or tenure as aforesaid, and if the existing rent has been fixed by a contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term, or from such other date after the expiration of that term as may be fixed by the Revenue-officer.

¹This section was substituted for s. 109D as inserted by s. 33 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) and for section 109C as inserted by s. 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 79.

²The words "record-of-rights" were substituted for the words "Settlement Rent-roll" by s. 80 of the same Act.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Sections 111—111B.)

111. When an order has been made under section 101, directing the preparation of a record-of-rights, then, subject to the provisions of section 104H, a Civil Court shall not,—

Stay of proceedings in Civil Court during preparation of record-of-rights.

(a) where a settlement of land-revenue is being or is about to be made—until after the final publication of the record-of-rights, and

(b) where a settlement of land-revenue is not being made or is not about to be made—until ¹four months after the final publication of the record-of-rights, —

entertain ²any application made under section 158, or any suit or application for the alteration of the rent or the determination of the status of any tenant, in the area to which the record-of-rights applies.

111A. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this Chapter or in respect of the framing, publication, signing or attestation of such a record or of any part of it, or, save as provided in section 104H, for the alteration of any entry in such a record of a rent settled under sections 104A to 104F :

Limitation of jurisdiction of Civil Courts in matters, other than rent, relating to record-of-rights.

Provided that any person who is dissatisfied with any entry in, or omission from, a record-of-rights framed in pursuance of an order made under section 101, sub-section (2) clause (d), which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI³ of the Specific Relief Act, 1877.

* I of 1877.

⁴111B. (1) Where a record-of-rights has been prepared and finally published in respect of the land in any area in which a settlement of land-revenue is not being made, or is not about to be made, no application or suit affecting such land or any tenant thereof shall, within ⁵four months

Stay of suits in which certain issues arise.

¹The words "four months" were substituted for the words "three months" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 81.

²The words "any application made under section 158, or" in section 111, were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 34, and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 34.

³Printed in General Acts, 1873-86, Ed. 1928, p. 101.

⁴This section as inserted by s. 35 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908) was substituted for s. 111B, as inserted by s. 35 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 82 (2).

⁵The words "four months" in sub-sections (1) and (4) were substituted for the words "three months" by s. 82 (1) of the same Act.

(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Section 112.)

from the date of the certificate of final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely :—

- (a) whether the land is or is not liable to the payment of rent ;
- (b) whether the relation of landlord and tenant exists ;
- (c) whether the land is part of a particular estate of tenancy ; or
- (d) whether there is any special condition or incident of the tenancy, or whether any right of way or other easement attaches to the land.

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not, in a suit under section 106 or in proceedings under section 105A, try such issue unless in such civil suit such issue is not in fact tried or decided.

(3) Where, in the course of settling fair rents under section 105, the Revenue-officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court before the final publication of the record-of-rights, or before a Revenue-officer under section 106, is unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings, for the settlement of a fair rent, pending a final decision on the issue ;

and, after the issue has been finally decided, he shall settle a fair rent, as if the record-of-rights had been framed in accordance with such decision.

(4) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (1), the period of four months therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.

Power to authorize special settlement in special cases.

112. (1) The Local Government * * * may, on being satisfied that the exercise of the powers hereinafter mentioned, is necessary in the interests of public order or of the local welfare,

¹See foot-note⁵ on p. 97, *ante*.

²The words "with the previous sanction of the Governor General in Council" in section 112 (1) were repealed by the Devolution Act, 1920 (XXXVIII of 1920), s. 2, and are omitted.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Section 113.)

[or that any landlord is demanding or exacting rents in excess of the rents entered as payable in a record-of-rights prepared under this Chapter, or of the rents payable by reason of enhancements lawfully made after the final publication of such record, invest a Revenue-officer]

with the following powers or either of them, namely :—

- (a) power to settle all rents ;
- (b) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

²(2a) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive).

1908

²(2b) If any rent other than rent for which a decree has already been obtained is in arrear in respect of a tenancy at the time when a settlement of rents is made under this section, such arrear shall not be recoverable in any Court in so far as it exceeds the amount which would have been due as rent of the tenancy had the settlement of rent taken place at the commencement of the period for which such rent is claimed.

1928

* * * * *

113. (1) When the rent of a tenure or holding is settled under this Chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding or the holding of an under-*raiyat* having occupancy rights, for fifteen years, and, in the case of a non-occupancy holding

Period for which rents as settled are to remain unaltered.

¹These words within square brackets as inserted by s. 36 (1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) were substituted for the portion commencing with the words "or that any landlord in demanding" and ending with the words "a revenue-officer" inserted by s. 36 (1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 83 (1).

²Sub-section (2a) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 36 (2), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 36 (2).

³Sub-section (2b) was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 83 (2).

⁴Sub-section (3) of section 112 was repealed by the Devolution Act, 1920 (XXXVIII of 1920), s. 2, and is omitted.

(Chapter X.—Record-of-rights and settlement of rents.—
Part, IV.—Supplemental provisions.—Section 114.)

or the holding of an under-raiyat not having occupancy rights, for five years; and no such rent shall be reduced within the periods aforesaid save on the ground of alteration in the area of the holding or on the ground specified in section 38, clause (a).

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

Expenses of
proceedings
under Chapter.

114. (1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter, in any case except where a settlement of land-revenue is being or is about to be made, the expenses incurred¹ * * * in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred² at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter), or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part in such proportions³ and in such instalments (if any) as the Local Government, having regard to all the circumstances, may determine.

⁴(2) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary marks for a period not exceeding fifteen years, or such part of such amount as the Local Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

¹The words "by the Government," in section 114 (1) were repealed, in Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 37 (a), and, in Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), s. 37 (a), and are omitted.

²The words "at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration" in section 114 (1) were substituted for the words "from time to time in the maintenance", for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 37 (b), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), s. 37 (b).

³The words "and in such instalments (if any)" in section 114 (1), were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 37 (c), and for Eastern Bengal, by the Eastern Bengal, and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908) s. 37 (c).

⁴This sub-section (2) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 37 (2), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 37 (2).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Sections 115—115 B.)

¹(3) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part².

²(4) The cost of preparing copies of survey maps and records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.

Explanation.—The word “tenure” in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

115. When the particulars mentioned in section 102, clause (b), have been recorded under this Chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

Presumption as to fixity of rent not to apply where record-of-rights has been prepared.

⁴115A. In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue-officer shall so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875,⁵ preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey, or other survey, if any, adopted under clause (19) (b) of section 3 as defining villages ;

Demarcation of village boundaries.

and, where village maps prepared at such revenue or other survey exist, he shall not, without the sanction of the Board of Revenue,⁶ adopt any other area as such unit.

⁷115B. Any Revenue-officer specially empowered by the Local Government in this behalf may, on application

Correction by Revenue-officer of mistakes in record-of-rights.

Ben. Act
V of 1875.

¹The original sub-section (2) was re-numbered (3), for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 37 (3) and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), s. 37 (3).

²For an alternative method of recovering expenses, see the Land Records Maintenance Act, 1895 (Ben. Act III of 1895), ss. 28 to 32 and 36 (c).

³This sub-section (4) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 37 (4), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), s. 37 (4).

⁴Section 115A as inserted by section 38 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908) was substituted for section 115A as inserted by s. 38 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 84.

⁵Printed in Vol. II of the Bengal Code.

⁶Now the Board of Revenue for Bengal—see the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912), s. 3, and Sch. D, item 3.

⁷This was formerly s. 108A. It was transferred as s. 115B by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 74.

[Act VIII]

(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Section 115C.)

or of his own motion, within ¹two years from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bona fide* mistake :

Provided that no such correction shall be made if an appeal affecting such entry ²has been filed under section ³115C or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Appeals from
decisions of
Revenue-officers.

10-

10

115C. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under sections 105 to 108 (both inclusive) ⁵and section 115B.

(2) An appeal shall lie to the Special Judge from the decisions of a Revenue-officer under sections ⁶105 to 108, both inclusive, and section 115B, and the provisions of ⁷the Code of Civil Procedure, 1908, relating to appeals shall, as nearly as may be, apply to all such appeals. Act V of 1908.

(3) Subject to the provisions of ⁸[sections 100 to 103, section 107, section 108 and section 144 of, and Order XLII in Schedule I to the Code of Civil Procedure, 1908] an appeal shall lie to the High Court from the decision of a Special Judge in any case under this section (not being a decision settling a rent) as if he were a Court subordinate to the High Court within the meaning of ⁹section 100 of that Code :

¹The words "two years" were substituted for the words "twelve months" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 74.

²The words "has been filed" were substituted for the words "is pending" by s. 74 of the same Act.

³The figures and letter "115C" were substituted for the figures and letter "109A" by s. 74 of the same Act.

⁴This was formerly s. 109A. It was transferred as s. 115C by s. 76 of the same Act.

⁵The words, figures and letter "and section 115B" were inserted by s. 76 (1) of the same Act.

⁶The words, figures and letter "105 to 108 (both inclusive), and section 115B" were substituted for the words, figures and letter "105 to 108A (both inclusive)" by s. 76 (2) of the same Act.

⁷The words and figures "the Code of Civil Procedure, 1908" were substituted for the words "the Code of Civil Procedure" by s. 128 of the same Act.

⁸These words, letters and figures within square brackets were substituted for the words and letters "Chapter XLII of the Code of Civil Procedure" by s. 128 of the same Act.

⁹The words and figures "section 100 of that Code" were substituted for the words "the first section of that Chapter" by section 128 of the same Act.

of 1885.]

(Chapter XI.—Non-accrual of occupancy and non-occupancy rights and record of proprietors' private lands.—Section 116.)

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 102 or settled under section 105 or section 108.

CHAPTER XI.

¹NON-ACCURAL OF OCCUPANCY AND NON-OCCUPANCY RIGHTS AND RECORD OF PROPRIETORS' PRIVATE LANDS.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, ²lands acquired under the Land Acquisition Act, 1894,³ for the Government or for any local authority or for a Railway Company, or lands belonging to the Government within a Cantonment, while such lands remained the property of the Government, or of any local authority or Railway Company, ⁴[or lands owned by the Government or by any local authority which are used for any public work, such as a road, canal or embankment, or are required for the repair or maintenance of the same,] or to a proprietor's private lands ⁵[known as *khamar*, *nij*, *nij-jot*, *zirāat*, *sir* or *khamat*] where any such land is held under a lease for a term of years or under a lease from year to year. Saving as to certain lands.

¹The words "non-accrual of occupancy and non-occupancy rights and" were prefixed to this heading, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 39, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), s. 39.

²The words "lands acquired under the Land Acquisition Act, 1894 for the Government or for any local authority or for a Railway Company, or lands belonging to the Government within a cantonment, while such lands remained the property of the Government, or of any local authority or Railway Company, or to" in section 116 were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 40, and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), s. 40.

³Printed in the General Acts, 1887-97, Ed. 1928, p. 213.

⁴These words within square brackets were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 85 (a).

⁵These words within square brackets were substituted for the words "known in Bengal as *khamar*, *nij* or *nij-jot*, and in Bihar as *zirāat*, *sir*, or *khamat*" by s. 85 (b) of the same Act.

[Act VIII.]

(Chapter XI.—Non-accrual of occupancy and non-occupancy rights and record of proprietors' private lands.—Sections 117—120.)

Power for Government to order survey and record of proprietor's private lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of ¹section 116.

Power for Revenue-officer to record private land on application of proprietor or tenant.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Procedure for recording private land.

119. When a Revenue-officer proceeds under ²section 117 or 118 the provisions of ³sections 103A, 103B, 106, 107, 108, 109 and ⁴115C shall apply.

Rules for determination of proprietor's private land.

120. (1) The Revenue-officer shall record as a proprietor's private land—

- (a) land which is proved to have been cultivated as *khamar*, *zirāat*, *sir*, *nij*, *nij-jot* or ⁵*khamat* by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and
- (b) cultivated land which is recognized by village usage as proprietor's *khamar*, *zirāat*, *sir*, *nij*, *nij-jot* or ⁵*khamat*.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was, before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

¹The word and figures "section 116" were substituted for the words "the last foregoing section" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

²The words and figures "section 117 or 118" were substituted for the words "either of the two last foregoing sections" by s. 126 of the same Act.

³The words, figures and letters "sections 103A, 103B, 106, 107, 108, 109 and 109A" in section 119 were substituted for the words and figures "sections 105 to 109, both inclusive," by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898), s. 10.

⁴See foot-note^s on p. 93, *ante*.

⁵The word "*khamat*" was substituted for the word "*kamat*" by the Bengal Tenancy (Amendment) Act, 1923 (Ben. Act IV of 1923), s. 86.

of 1885.]

(Chapter XII.—Distraint.—Chapter XIII.—Judicial procedure.—Sections 121 to 144.)

¹(2a) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land as a proprietor's private land, unless it is proved to be such by satisfactory evidence of the nature described in sub-section (1) or sub-section (2).

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XII.

Distraint.

121 to 142. Repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 87.

CHAPTER XIII.

JUDICIAL PROCEDURE.

Act V of
1908.

143. (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules,² consistent with this Act, declaring that any portions of ³the Code of Civil Procedure, 1908, shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, ³the Code of Civil Procedure, 1908, shall apply to all such suits.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of ²the Code of Civil Procedure, 1908, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which

Jurisdiction in proceedings under Act.

¹Sub-section (2a) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 41, and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 41.

²For rules made under section 143, see the Bengal Local Statutory Rules and Orders, 1924, Vol. I, Pt. IV.

³The words and letters "the Code of Civil Procedure, 1908" were substituted for the words "the Code of Civil Procedure" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 128.

[Act VIII

(Chapter XIII.—Judicial procedure.—Section 145.)

would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought ¹[and no suit between landlord and tenant as such shall be instituted in any Court other than a Court within the local jurisdiction of which the lands of the tenure or holding, as the case may be, are wholly or partly situated.]

²(2) A landlord may institute one suit in respect of the rent of more than one tenancy, if the tenancies, in respect of the rent of which the suit is brought, are held in similar right and equal status by the same tenant under him :

Provided that—

- (i) the claim in respect of each tenancy shall be stated separately in the plaint ;
- (ii) separate decrees shall be made in respect of each tenancy ;
- (iii) the costs of the suit shall be apportioned by the Court in respect of each tenancy ; and
- (iv) separate court-fees shall be levied on the plaint in respect of the claim on account of each tenancy.

³(3) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

Naibs or gumashtas to be recognized agents.

145. Every *naib* or *gumashta* of a landlord empowered in this behalf by a written authority under the hand of the landlord, shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of ⁴the Code of Civil Procedure, 1908, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made :

Act V
of 1908.

⁵Provided that notwithstanding anything contained in the Code of Civil Procedure, 1908, every such *naib* or *gomashta* may verify the pleadings on behalf of the landlord and shall not be required to obtain the permission of the Court for the purpose of such verification.

¹These words within square brackets were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 88 (a).

²This sub-section was inserted by s. 88(b) of the same Act.

³Sub-section (2) was re-numbered as sub-section (3) by s. 88 (c) of the same Act.

⁴The words and figures "the Code of Civil Procedure, 1908" were substituted for the words "the Code of Civil Procedure" by s. 128 of the same Act.

⁵This proviso was added by s. 89 of the same Act.

of 1885.]

(Chapter XIII.—Judicial procedure.—Sections 146, 146A.)

Act V of
1908.

146. The particulars ¹[mentioned in rule 1 of Order VII in Schedule I to the Code of Civil Procedure, 1908,] shall, in the case of such suits, instead of being, entered in the register of civil suits prescribed by ²[rule 2 of Order IV in Schedule I to the said Code,] be entered in a special register to be kept by each Civil Court, in such form³ as the Local Government may, from time to time, prescribe in this behalf.

Special register
of suits.

IX of
1872.

⁴146A. (1) Notwithstanding anything contained in the Indian Contract Act, 1872, all co-sharer tenants in a tenure or holding and their successors in interest shall be liable to the landlord jointly and severally for the rent payable to such landlord on account of the tenure or holding, whether such rent has accrued during the time of their own occupation or during the time of the occupation of their predecessors in interest.

Joint and
several liability
for rent of co-
sharer tenants
in a tenure or
holding.

(2) Notwithstanding anything contained elsewhere in this Act or in any other law a decree for arrears of rent of a tenure or holding and a sale in execution of such decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not and against the holding in the manner provided in Chapter XIV, if the defendants to the suit represented the entire body of co-sharer tenants in the tenure or holding for the rent of which the suit was brought.

(3) The entire body of co-sharer tenants in a tenure or holding shall for the purposes of sub-section (2) be deemed to be represented by the defendants to the suit if such defendants include—

- (i) all the co-sharer tenants in the tenure or holding whose homestead are situated in the village in which the tenure or holding is situated ;
- (ii) such of the co-sharer tenants in the tenure or holding as have, at any time during the three years previous to that for the rent of which the suit is brought, made any payment of rent for the tenure or holding ;
- (iii) such co-sharer tenants who having purchased an interest in the tenure or holding, have given notice of the purchase under sub-section (3) of

¹These words within square brackets were substituted for the words and figures "referred to in section 58 of the Code of Civil Procedure" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 128.

²These words within square brackets were substituted for the words "that section" by s. 128 of the same Act.

³For an order made under section 146, see the Bengal Local Statutory Rules and Orders, 1924, Vol. I, Pt. VI.

⁴Sections 146A and 146B were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 90.

[Act VIII

(Chapter XIII.—Judicial procedure.—Sections 146B,
147.)

section 12, or ¹[section 26C or section 26E,] as the case may be, or who having succeeded to an interest by inheritance have given notice of their succession under section 15; and

(iv) all other co-sharer tenants in the tenure or holding whose names are entered in the landlord's rent-roll.

Procedure in rent suit against co-sharer tenants in a tenure or holding.

²146B. (1) Notwithstanding anything contained in the Indian Limitation Act, 1908, any person who claims that he should have been joined as a co-sharer tenant defendant in a suit for the recovery of arrears of rent due in respect of a tenure or holding may at any time before the hearing of the suit has been commenced apply to be made a party defendant to the suit, and the Court shall consider his claim, and if it finds that he should have been so joined shall join him as a party defendant: IX of 1908.

Provided that if any such person at any time in the course of such suit pays into Court the full amount of the claim together with such costs as the Court may direct, the suit shall be dismissed and in any such case the provisions of section 171 shall apply.

(2) The provisions of sub-sections (2) and (3) of section 146A shall, so far as may be, apply in the case of a co-sharer tenant joined as a defendant under sub-section (1) of this section.

Successive rent-suits.

147. Subject to the provisions of ³[rule 1 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908,] where a landlord has instituted a suit against a *raiyat* for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit: V of 1908.

⁴Provided that where a subsequent suit for rent is instituted by a co-sharer landlord and has been consolidated with a previous suit for rent under the provisions of sub-section (4) of section 148A the date of institution of the subsequent suit shall, for the purposes of this section, be deemed to be the date of the suit which was first instituted and with which it was consolidated.

¹These words, figures and letters within square brackets in s. 146A (3) (iii), were substituted for the words, figures and letters "section 26E or section 26F" by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 10.

²See foot-note^a on p. 107, *ante*.

³These words within square brackets were substituted for the words and letters "section 373 of the Code of Civil Procedure" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 128.

⁴This proviso was inserted by s. 91 of the same Act.

of 1885.]

(Chapter XIII.—Judicial procedure.—Section 147A.)

Act V of
1908.

¹147A. ²(1) Notwithstanding anything contained in ³[rule 3 in Order XXIII in Schedule I to the Code of Civil Procedure, 1908,] if any suit between landlord and tenant as such is wholly or partly adjusted by agreement or compromise, the Court ⁴shall not order an agreement or compromise to be recorded and shall not pass a decree in accordance with such agreement or compromise unless it is satisfied, for reasons to be recorded in writing, that the terms of such agreement or compromise are such that, if embodied in a contract, they could be enforced under this Act :

Compromise of
suits between
landlord and
tenant.

Provided that, in the case of a suit instituted by the landlord to enhance the rent, the enhancement, if any agreed upon may be decreed if the Court be satisfied, for reasons to be recorded in writing, that such enhancement is fair and equitable and in accordance with the rules laid down in this Act for the guidance of Courts in increasing rents.

⁵(2) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise, unless and until it is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant shall be recorded as an occupancy-*raiyat* ; this affects the rights of the tenants of B. The Court must, under ⁶this subsection, inquire whether B is a tenure-holder or a *raiyat* as defined in section 5. If the Court finds on the evidence that B is a *raiyat*, it may pass a decree in accordance with the agreement, but shall not do so if it finds that B is a tenure-holder.

¹Section 147A as inserted by section 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was substituted for s. 147A as inserted by s. 42 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 92 (4).

²This sub-section which was s. 147A as inserted by s. 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was re-numbered as sub-section (1), by s. 92 (2) of the same Act.

³These words, letters and figures within square brackets were substituted for the words and figures "section 373 of the Code of Civil Procedure" by s. 92 (1) of the same Act.

⁴The words "shall not order an agreement or compromise to be recorded and" were inserted by s. 92 (1) of the same Act.

⁵This sub-section with the illustration which was formerly sub-section (4) of s. 147A as inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), was inserted and numbered as sub-section (2) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 92 (3).

⁶The words "this sub-section" were substituted for the words and figures "sub-section (4)" by s. 92 (3) of the same Act.

[Act VIII

(Chapter XIII.—Judicial procedure.—Sections 147 B, 148.)

Regard to be had by Civil Courts to entries in record-of-rights.

¹147B. In all areas for which a record-of-rights has been prepared and finally published under sub-section (2) of section 103A, a Civil Court shall, in all suits between landlord and tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect ; and, when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

Procedure in rent suits.

²148. The following rules shall apply to suits for the recovery of rent :—

³(a) sections 68, to 72 of the Code of Civil Procedure, 1908, and rules 1 to 13 of Order XI, rule 83 of Order XXI and rule 2 of Order XLVIII in Schedule I to the said Code, and Schedule III to the said Code shall not apply to any such suit ; Act V of 1908.

(b) the plaint shall contain, in addition to the particulars specified in ⁴[rules 1, 2, 4, 5 and 6 and sub-rule (2) of rule 9 of Order VII in Schedule I to the Code of Civil Procedure, 1908,] a statement of the situation, designation, extent and boundaries of the land held by the tenant ; or, where the plaintiff is unable to give the extent or boundaries in lieu thereof a description sufficient for identification ⁵[and the plaint shall further contain a statement as to whether a record-of-rights has been prepared and finally published in respect of such land ;]

⁶(c) where the suit is for the rent of land situated within an area for which a record-of-rights

¹Section 147B was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 42, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 42.

²The clauses of this section were re-numbered by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 129.

³This clause was substituted for the former clause by s. 93 (1) of the same Act.

⁴These words and figures within square brackets were substituted for the words and figures "section 50 of the Code of Civil Procedure" by s. 93 (2) (i), of the same Act.

⁵These words within square brackets were inserted by s. 93 (2) (ii) of the same Act.

⁶This clause was formerly numbered (b1). This clause as inserted by s. 43 (1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, was substituted for clause (b1) as inserted by s. 43 (1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 93 (4) of the same Act.

of 1885.]

(Chapter XIII.—Judicial procedure.—Section 148.)

has been finally published, the plaint shall contain a statement of the serial number or numbers borne by the tenancy in the record-of-rights, and of the area and rental of the tenancy according to such record, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement :

Provided that, in all cases in which the Court admits a plaint which does not contain such statement, the Court shall, and in any other case in which it sees fit the Court may require the Collector to supply, without payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy.

¹ Provided also that when the plaint contains such a statement, no statement of the situation, designation, extent and boundaries of the land held by the tenant as referred to in clause (b) shall be required except in so far as may be necessary for the purposes of clause (d) ;

²(d) where any changes have occurred in the area, survey plots, or rent of the tenancy since the record-of-rights was finally published, the plaint shall further contain a statement shewing the particulars of such changes ;

³(e) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only ;

⁴(f) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III. of the Indian Post Office Act, 1866⁵;

XIV of
1866.

¹This proviso was substituted for the second proviso to clause (b1), as formerly numbered, by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 93 (3).

²This clause was formerly numbered (b2). It was substituted for former clause (b2) by s. 93 (5) of the same Act.

³This clause was formerly numbered (c).

⁴This clause was formerly numbered (d).

⁵Act XIV of 1866 has been repealed and re-enacted by the Indian Post Office Act, 1898 (VI of 1898), and this reference should now be construed as a reference to Chapter VI of the latter Act (in General Acts, 1898-1909, Ed. 1928, p. 35)—see the General Clauses Act, 1897 (X of 1897), s. 8 in *ibid.*, 1887-97, Ed. 1928, p. 354.

[Act VIII]

(Chapter XIII.—Judicial procedure.—Section 148).

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered the Court may presume that the summons has been duly served ;

- ¹(g) notwithstanding anything contained in the Code of Civil Procedure, 1908, or any rules made thereunder the plaintiff in a suit for recovery of arrear of rent shall not be required to supply any identifier for the purpose of serving the summons on the defendant or on any witness, and the serving officer shall serve the summons after due inquiry as to the identity of the person on whom, or the house or property where, the summons is served. The serving officer shall serve the summons in the presence of at least two persons and he shall, whenever possible, require the signature of those persons to be endorsed on the original summons and, where he is unable to serve the summons, he shall, whenever possible, require the signatures of two persons of the locality to be so endorsed ;
- ²(h) notwithstanding anything contained in rule 4 (3) of Order XXXII in Schedule I to the Code of Civil Procedure, 1908, the Court may serve on the natural guardian of a minor defendant in a suit for arrears of rent a notice informing him that he will be treated as the guardian of such defendant in respect of such suit, unless he appears and objects within such time, not being less than fourteen clear days after the service of the notice, as may be specified in the said notice, and, in default of compliance with such notice, such natural guardian shall, unless the Court otherwise directs, be deemed to be the duly appointed guardian of the said minor defendant for all the purposes of such suit :
- ³(i) a written statement shall not be filed without the leave of the Court, ⁴[but the Court shall record its reasons for granting or refusing such leave ;]

¹This clause was formerly numbered (d1). It was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 93 (6).

²This clause was formerly numbered (d2). It was inserted by s. 93 (6) of the same Act.

³This clause was formerly numbered (e).

⁴The words within square brackets were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 93 (7).

of 1885.]

Chapter XIII.—Judicial procedure.—Section
148.)Act V of
1908.

¹(j) the rules for recording the evidence of witnesses ²[contained in rule 13 of Order XVIII in Schedule I to the Code of Civil Procedure, 1908.] shall apply, whether an appeal is allowed or not ;

³(k) (i) notwithstanding anything contained in the Code of Civil Procedure, 1908, where a suit is instituted for rent entered in a record-of-rights finally published under Chapter X or where the rent is payable under a registered lease between the landlord and the tenant or where the annual rent payable has been decreed in a previous suit between the landlord and the tenant, the Court may, if the plaintiff desires to proceed under this section, issue a special summons in the prescribed form ;

(ii) when a special summons has been issued under sub-clause (i), if the defendant fails to appear and defend the suit, the allegations in the plaint as regards the rent due shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons together with interest at the rate of six per cent. *per annum* from the date of the suit up to the date of payment and for costs with interest thereon :

Provided that the Court may at its discretion in any case in which it thinks fit, direct the plaintiff to adduce evidence in support of his claim :

I of 1872.

Provided also that notwithstanding anything contained in section 13 of the Indian Evidence Act, 1872, where a decree has been passed under this clause, no statement in the plaint regarding the nature, area and incidents of the tenancy or regarding any liability other than the rent claimed as due shall be evidence against the tenant in any sub-sequent suit or proceeding ;

(iii) within seven days after the passing of a decree under sub-clause (ii) the Court shall send at the cost of the plaintiff to the defendant or defendants against whom the decree has been passed a registered postcard in the prescribed form stating the particulars contained in the decree ;

¹This clause was formerly numbered (f).

²These words within square brackets were substituted for the words "prescribed by section 189 of the Code of Civil Procedure" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s.93(8).

³This clause was formerly numbered (f1). This clause was inserted by s.93 (9) of the same Act.

(Chapter XIII.—Judicial procedure.—Section
148.)

(iv) notwithstanding anything contained in rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908, or in section 153A of this Act, where a decree is passed *ex parte* against a defendant under sub-clause (ii), he may apply to the Court by which the decree was passed for an order to set aside the decree and the Court, if it is satisfied that summons was not duly served and that there is *prima facie* evidence of a *bona fide* defence, may, upon his depositing one half of the amount recoverable under the decree, make an order setting aside the decree as against him or if necessary against all or any of the other defendants also ;

Act V of 1908.

¹(l) when any account-books, rent-rolls, collection-papers, measurement-papers, maps or extracts from records-of-rights have been produced by ²a party before any Court, and have been admitted in evidence in a suit pending therein,

copies of, or extracts from, such documents, ³may be certified by a duly authorized officer of such Court to be true copies or extracts ⁴[without the payment of any court-fee, and such copies or extracts], may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to ⁵the party,

and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals ;

⁶(m) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejection for arrears ;

¹This clause was formerly numbered (*ff*). This clause as inserted by s. 43 (2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was substituted for clause (*ff*) as inserted by s. 43 (2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s.93 (10).

²The words " a party " were substituted for the words " the landlord " by s. 93 (10) of the same Act.

³The words " may be " were inserted by s. 93 (10) of the same Act.

⁴These words within square brackets were inserted by s. 93 (10) of the same Act.

⁵The words " the party " were substituted for the words " the landlord " by s. 93 (10), of the same Act.

⁶This clause was formerly numbered (*g*).

of 1885.]

(Chapter XIII.—Judicial procedure.—Section 148A.)

Act V of 1908.

- ¹(n) notwithstanding anything contained in sub-rule (3) of rule 11 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the Court shall not, unless for special reasons to be recorded in writing direct the decree-holder to file a copy of the decree or any fresh *vakalat-namā* for the purpose of executing the decree :
- ²(o) notwithstanding anything contained in ³[rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908,] an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

148A. (1) A co-sharer landlord may institute a suit to recover the rent due to him in respect of his share in a tenure or holding, by making all the remaining co-sharer landlords parties defendant to the suit, and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding.

Power to co-sharer landlord to sue for rent in respect of his share in a tenure or holding against the tenure or holding on making remaining co-sharers parties.

(2) On the plaint being admitted, the Court shall by summons in the prescribed form call upon the remaining co-sharer landlords aforesaid to join in the suit as co-plaintiffs for their shares of the rent due to them in respect of the tenure or holding up to the date of the institution of the suit.

(3) On the date named in the summons for his appearance or on any subsequent date fixed by the Court in this behalf, any co-sharer landlord, who has been summoned as defendant, may apply to be joined in the suit as a co-plaintiff, and on his paying the court-fee on the amount of his claim, he shall be joined as a co-plaintiff in respect of the rent claimed to be due to him up to the date of the institution of the suit.

(4) If it comes to the notice of the Court that any co-sharer landlord has before the service upon him of a

¹This clause was formerly numbered (gg). It was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 93 (11).

²This clause was formerly numbered (h).

³These words, figures and letters within square brackets were substituted for the words and figures "section 232 of the Code of Civil Procedure" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 93 (12).

⁴This section was substituted for the former section 148A as inserted by s.44 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and section 148A as inserted by s. 44 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act. I of 1908), by s. 94, of the same Act.

*(Chapter XIII.—Judicial procedure.—Section
148A.)*

summons under sub-section (2) instituted a separate suit to recover his share of the rent of the tenure or holding, the separate suit shall be consolidated with that brought under sub-section (1) and such co-sharer landlord shall be deemed to be a co-plaintiff and shall amend his plaint so as to claim the rent due to him up to the date of the institution of the suit under sub-section (1) :

Provided that, if the Court is not competent to consolidate and try the suit, such suit shall be transferred to a Court of competent jurisdiction for consolidation and trial.

(5) The summons on all the defendants to the suit other than co-sharer landlords shall thereafter be served and the Court shall thereupon proceed to the trial of the suit.

(6) A decree passed by the Court for the rent claimed in a suit brought in accordance with the foregoing provisions of this section shall, so far as may be, specify separately the amounts payable to each co-sharer and shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

(7) When one or more co-sharer landlords, having obtained a decree in a suit framed under this section, applies or apply for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application of the execution to the other co-sharers.

(8) (i) In disposing of the proceeds of the sale in execution of the decree referred to in sub-section (6) the following rules, instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed,— Act V of
1908

- (a) there shall first be paid to the decree-holders the costs incurred by them in bringing the tenure or holding to sale ;
- (b) there shall in the next place be paid to the decree-holders the amount due to them under the decree in execution of which the sale was made ;
- (c) if there remains a balance after these sums have been paid, there shall be paid therefrom to the decree-holders and to any defendant landlords, who have not joined as plaintiffs, but have made application in this behalf within one month from the date of the confirmation of the sale, any rent which may have fallen due to them in respect of the tenure or holding between the institution of the suit and the date

of 1885.]

(Chapter XIII.—Judicial procedure.—Section
148A.)

of the confirmation of the sale, in proportion to their respective shares in the tenure or holding :

Provided that the Court shall issue a notice to the judgment debtor or his pleader, if any, before ordering any such payment ;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor on his application unless the Court for reasons to be recorded in writing otherwise directs.

(ii) If the judgment-debtor disputes the right of the decree-holder or of the co-sharer landlord who has been made a party defendant to receive any sum on account of rent under clause (c), the Court shall determine the dispute and the determination shall have the force of a decree.

(9) When a suit has been instituted under the provisions of sub-section (1), no co-sharer landlord, who has been made a party defendant thereto, and duly served with summons issued under sub-section (2), shall be entitled to recover, save as co-plaintiff in that suit, any rent in respect of the tenure or holding for the period in suit or for any period previous thereto.

(10) Where a suit instituted under the provisions of sub-section (1) has been withdrawn with leave to bring a fresh suit, the procedure, remedies and disabilities hereinbefore provided by this section shall apply to such fresh suit when instituted and to the parties thereto.

(11) In the event of the holding or tenure not being sold as a result of a suit instituted under sub-section (1), nothing contained in rule 2 of Order II in Schedule I to the Code of Civil Procedure, 1908, shall preclude a co-sharer landlord who has been joined as plaintiff under sub-section (3) or is deemed to be a co-plaintiff under sub-section (4) from recovering by suit, rent and interest due to him and damages, if awarded, in respect of the tenure or holding for the period subsequent to the date of the institution of the suit under this section.

Act V of
1908.

(12) If the rent claimed in a plaint as amended under sub-section (4) is less than the rent claimed in the original plaint in the separate suit referred to in that sub-section, the balance of rent may be recovered under the provisions of clause (c) of sub-section (8) or of sub-section (11).

*(Chapter XIII.—Judicial procedure.—Sections
149—152.)*

Payment into
Court of
money admitted
to be due to
third person.

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff, but to a third person, the Court shall ¹* * * refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

Payment into
Court of
money admitted
to be due to
landlord.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall ² * * * * * refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Provisions as to
payment of
portion of
money.

151. When a defendant is liable to pay money into Court under ³section 149 or 150 if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Court to grant
receipt.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

¹The words "except for special reasons to be recorded in writing," in section 149 (1), were repealed, in Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 45, and, in Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 45, and are omitted.

²The words "except for special reasons to be recorded in writing," in section 150, were repealed, in Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 45, and, in Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 45, and are omitted.

³The words and figures "section 149 or 150" were substituted for the words "either of the two last foregoing sections" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

of 1885.]

(Chapter XIII.—Judicial procedure.—Sections 153, 153A.)

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where— Appeals in rent suits.

- (a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or
- (b) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees ;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant :

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit.

¹*Explanation.*—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto.

²**153A.** Every application for an order under ³[rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908] to set aside a decree passed *ex parte*, or for a review

Deposit on application to set aside *ex parte* decree.

Act V of 1908.

¹This *Explanation* was added to section 153, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 46, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 46.

²Section 153A was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 47, and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 47.

³These words, letters and figures within square brackets were substituted for the words and figures " section 108 of the Code of Civil Procedure " by the Bengal Tenancy (Amendment) Act, 1928 (Bep. Act IV of 1928), s. 128.

(Chapter XIII.—Judicial procedure.—Sections
154, 155.)

of judgment, under ¹[section 114 and rule 1 of Order XLVII in Schedule I to the said Code] in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment ;

and no such application shall be admitted—

- (a) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct ; or
- (b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.

Date from which
decree for
enhancement
takes effect.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following ; and, if passed in a suit instituted in the last four months of the agricultural year², shall ordinarily take effect on the commencement of the agricultural year next but one following ; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

Relief against
forfeitures.

155. (1) A suit for the ejectment of a tenant, on the ground—

- (a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or
- (b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

¹These words, letters and figures within square brackets were substituted for the words and figures " section 623 of the said Code " by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 128.

²For definition of " agricultural year", see s. 3 (1), *ante*.

of 1885.]

(Chapter XIII.—Judicial procedure.—Section
156.)

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

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

(4) If the defendant, within the period or extended period (as the case may be) fixed by the court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

156. The following rules shall apply in the case of every *raiyat*¹ or under-*raiyat* ejected from a holding—

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

- (a) when the *raiyat*¹ or under-*raiyat* has, before the date of his ejection, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejection ;
- (b) when the *raiyat*¹ or under-*raiyat* has, before the date of his ejection, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejection, together with reasonable interest on that value ;
- (c) but a *raiyat*¹ or under-*raiyat* shall not be entitled to retain possession of any land, or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejection, he has cultivated or prepared the land contrary to the local usage ; and

¹The words "or under-*raiyat*" were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 95.

(Chapter XIII.—Judicial procedure.—Sections
157, 158.)

- (d) if the landlord elects under this section to allow a *raiyat*¹ or under-*raiyat* to retain possession of the land, the *raiyat*¹ or under-*raiyat* shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

Power for Court to fix fair rent as alternative to ejectment.

157. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Application to determine incidents of tenancy.

158. (I)² Subject to the provisions of section 111, the Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, namely :—

- (a) the situation, quantity and boundaries of the land ;
 (b) the name and description of the tenant thereof (if any) ;
 (c) the class³ or classes to which he belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, occupancy-*raiyat*, non-occupancy-*raiyat*, or under-*raiyat*⁴ with or without a right of occupancy and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure ; and
 (d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be

¹See foot-note¹ on p. 121, *ante*.

²The words " Subject to the provisions of section 111," in section 158 (I) were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 48, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 48.

³The words " or classes " were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 96.

⁴The words " with or without a right of occupancy " were inserted by s. 96 of the same Act.

of 1885.]

(Chapter XIII A.—Summary procedure for the recovery of rents under the Bengal Public Demands Recovery Act, 1913—Section 158A.)

Act V of 1908.

held under ¹[Order XXVI in Schedule I to and section 78 of, the Code of Civil Procedure, 1908,] by such Revenue-officer as the Local Government may authorize in that behalf by rule made under ²[rule 9 of Order XXVI in Schedule I to the said Code.]

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

CHAPTER XIII A.

SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE BENGAL PUBLIC DEMANDS RECOVERY ACT, 1913.

¹158A. (1) Any landlord (other than the Government) whose land is situate in an area for which a record-of-rights has been prepared and finally published, and in which such record is maintained,

Recovery of arrears of rent under the certificate procedure in certain areas.

may apply to the Local Government, through the Collector of the district in which his land is situate, for the application of the procedure ⁴provided by the Bengal Public Demands Recovery Act, 1913, to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area.

Ben. Act III of 1913.

⁵(2) The Local Government shall specify the terms and conditions on which such applications may be allowed and shall allow any such application, when such terms and conditions are satisfied. Such terms and conditions may be added to or varied by the Local Government from time to time as may be necessary, and the Local Government may withdraw its allowance of the application if it appears that the terms and conditions are not being complied with.

¹These words, letters and figures within square brackets were substituted for the words and letters "Chapter XXV of the Code of Civil Procedure" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 128.

²These words, letters and figure within square brackets were substituted for the words and figures "section 392 of the said Code" by s. 128 of the same Act.

³Chapter XIII A (section 158A) was substituted for the existing section 158A by the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), s. 60.

⁴The word "provided" was substituted for the word "prescribed" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 127.

⁵This sub-section was substituted for former sub-section by s. 97 of the same Act.

[Act VIII

(Chapter XIII A.—Summary procedure for the recovery of rents under the Bengal Public Demands Recovery Act, 1913.—Section 158 A.)

(3) When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed,

to such Revenue-officer as the Local Government may appoint, for the purpose of this section, to perform the functions of a Certificate-officer under the Bengal Public Demands Recovery Act, 1913,

Ben. Act
III of
1913.

for the recovery of any arrears of rent which he alleges are due to him from any tenant.

(4) Every such requisition shall be signed and verified by the landlord making it, in the manner provided by rule 1 in Schedule II of the said Act, as amended for the time being by rules made under section 39 thereof, and shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

VII of
1870.

(5) On receipt of such requisition, the said Revenue-officer may, in accordance with such rules as the Local Government may make in this behalf, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form, stating that the arrear is due; and shall include in the certificate the fee paid under sub-section (4) and shall cause the certificate to be filed in his office :

Provided that—

- (a) no certificate shall be signed for the recovery of arrears of rent of a tenancy regarding which a suit has been instituted in a Civil Court for the alteration of the rent payable by the tenant or the determination of his status as a tenant, in respect of the period during which it is alleged in the requisition made under sub-section (3) that the arrears of rent sought to be recovered have accrued; and
- (b) if, after the signing of a certificate, it is found that such a suit was instituted in a Civil Court before the certificate was signed, such certificate shall be cancelled.

¹See foot-note⁴ on p. 123, *ante*.

²The word "make" was substituted for the word "prescribe" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 127.

of 1885.]

(Chapter XIII A.—Summary procedure for the recovery of rents under the Bengal Public Demands Recovery Act, 1913—Section 158AA.)

(6) The person in whose favour any certificate is signed under sub-section (5) shall be deemed to be the certificate-holder for the amount mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount; and all proceedings taken by the Certificate-officer for the recovery of such amount shall be taken at the instance of the first-mentioned person, and at his cost and responsibility, and not otherwise.

Ben. Act
III of
1913.

(7) The Bengal Public Demands Recovery Act, 1913, with such restrictions and modifications (if any) as may be prescribed, shall apply to the execution, and to all proceedings arising out of the execution, of certificates filed under sub-section (5).

(8) No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Civil Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (3);

and, subject to the provisions of section 34 of the Bengal Public Demands Recovery Act, 1913, no tenant shall, after the signing of any certificate against him under sub-section (5) of this section, institute a suit in, or apply to, a Civil Court for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent for which such certificate was signed have accrued.

(9) The word "landlord" in this section includes an entire body of landlords, and also one or more co-sharer landlords who collects or collect his or their share or shares of the rent separately; and, where a Revenue-officer signs a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate.

¹158AA. The provisions of this Chapter applicable to recovery of arrears of rent, shall, so far as may be and subject to the conditions specified in sub-sections (1), (2) and (3) of section 158A, apply to the recovery of dues in respect of any rights of pasturage, forest rights, rights over fisheries and the like.

Recovery of arrears under the certificate procedure in certain other cases.

¹Sections 158AA and 158AAA were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 98.

[Act VIII]

(Chapter XIII A.—Summary procedure for the recovery of rents under the Bengal Public Demands Recovery Act, 1913.—Chapter XIV.—Sale for arrears under decree.—Sections 158AAA—159.)

Passing of tenure or holding sold in execution of certificate.

158AAA. Where a tenure or holding is sold in execution of a certificate for arrears of rent signed under the Bengal Public Demands Recovery Act, 1913, the tenure or holding shall, subject to the provisions of section 22, pass to the purchaser if such certificate was signed on the requisition of or in favour of a sole landlord or the entire body of landlords, and the provisions of Chapter XIV shall, so far as may be, apply.

Ben. Act
III of
1913.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

158B. *Passing of tenure or holding sold in execution of decree or certificate. Rep. by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 99.*

General powers of purchaser as to avoidance of incumbrances.

159. ²(1) Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this Chapter as "protected interests," but with power to annul the interests defined in this Chapter as "incumbrances":

Provided as follows :—

- (a) a registered and notified incumbrance within the meaning of this Chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;
- (b) the power to annul shall be exerciseable only in manner by this Chapter directed.

³(2) Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the date of confirmation of the sale.

Act V of
1908.

¹See foot-note¹ on p. 125, *ante*.

²Former section 159 was re-numbered as sub-section (1) by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 100.

³This sub-section was inserted by s. 100 of the same Act.

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—Sections 160, 161.)

160. The following shall be deemed to be protected interests within the meaning of this Chapter :— Protected interests.

- (a) any under-tenure existing from the time of the Permanent Settlement ;
- (b) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement ;
- (c) any lease of land whereon dwelling houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made ;
- (d) any right of occupancy ;
- (e) the right of a non-occupancy-*raiyat* to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer ;
- (f) any right conferred on an occupancy-*raiyat* to hold at a rent which was a fair and reasonable rent at the time the right was conferred ; 1* * *
- ²(ff) the right of a *raiyat* at fixed rates to hold at ³[a fixed rent or rate of rent which has not been changed during twenty years ;] and
- (g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

161. For the purposes of this Chapter—

- (a) the term “incumbrance,” used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in ⁴section 160 ;

Meaning of “incumbrance” and “registered and notified incumbrance.”

¹The word “and” in s. 160(f), was omitted by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act. II of 1930), s. 11(1).

²This clause was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 101.

³These words within square brackets in s. 160 (ff), were substituted for the words “ the fixed rent or rate of rent ” by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 11 (2).

⁴The word and figures “ section 160 ” were substituted for the words “ the last foregoing section ” by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

(Chapter XIV.—Sale for arrears under decree.—
Sections 162, 163.)

- (b) the term “registered and notified incumbrance,” used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument, of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided;
- ¹(c) the terms “arrears” and “arrear of rent” shall be deemed to include interest decreed under section 67 or damages awarded in lieu of interest under sub-section (1) of section 68.

Application for sale of tenure or holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under ²[rule 11 (2) of Order XXI in Schedule I to the Code of Civil Procedure, 1908] for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the *pargana*, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree. Act V of 1908.

Combined order of attachment and proclamation of sale to be issued.

163. ³(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when the decree-holder makes the application mentioned in section 162, the Court if it admits the application under rule 17 of Order XXI in Schedule I to the said Code and orders execution of the decree as applied for, shall issue a combined order of attachment and proclamation in the prescribed form.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in ⁴[rule 66 of Order XXI in Schedule I to the said Code] announce—

- (a) in the case of a tenure or a holding of a *raiyat* holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered

¹Clause (c) was added to section 161, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 51, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 51.

²These words, figures and letters within square brackets were substituted for the words and figures “section 235 of the Code of Civil Procedure” by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 128.

³This sub-section was substituted for former sub-section by s. 102 (a) of the same Act.

⁴These words, letters and figures within square brackets were substituted for the words and figures “section 287 of the said Code” by s. 102 (b) of the same Act.

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Section 164.)

and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given with power to annul all incumbrances; and

(b) in the case of an occupancy-holding ¹not held at fixed rates, that the holding will be sold with power to annul all incumbrances.

²(3) Notwithstanding anything contained in sub-rules (1) and (2) of rule 67 in Order XXI in Schedule I to the said Code, the proclamation shall be published in the following manner—

(a) by beat of drum at some place on or adjacent to the land comprised in the tenure or holding ordered to be sold and by fixing up a copy thereof in a conspicuous place on such land,

(b) by affixing a copy thereof in a conspicuous place at the Court-house of the issuing Court,

(c) by sending in the prescribed form by registered post to the judgment-debtor a concise statement of the order of attachment and proclamation at the time of the issue of the proclamation, and

(d) in such other manner as may be prescribed.

(4) Notwithstanding anything contained in ³[rule 68 of Order XXI in Schedule I to the said Code] the sale shall not, without the consent in writing of the judgment-debtor, take place, until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

164. (1) When tenure or holding at fixed rates has been advertised for sale under ⁴section 163, it shall be put up to auction subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

¹The words "not held at fixed rates" were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 102 (b).

²This sub-section was substituted for the former sub-section (3) by s. 102 (c) of the same Act.

³These words, letters and figures within square brackets were substituted for the words and figures "section 290 of the said Code" by s. 102 (d) of the same Act.

⁴The word and figures "section 163" were substituted for the words "the last foregoing section" by s. 126 of the same Act.

(Chapter XIV.—Sale of arrears under decree.—
Sections 165—167.)

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under ¹section 164 does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation ²[in accordance with the procedure provided in sub-section (3) of section 163] announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

Sale of occupancy holding with power to avoid all incumbrances, and effect thereof.

166. (1) When an occupancy-holding ³not held at fixed rates has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by ⁴section 167 and not otherwise, annul any incumbrance on the holding.

Procedure for annulling incumbrances, under sections 164, 165 or 166.

167. (1) A purchaser having power to annul an incumbrance under ⁵sections 164, 165 or 166 ⁶or under the Bengal Public Demands Recovery Act, 1913, and desiring to annul

Ben. Act III of 1013.

¹The word and figures "section 164" were substituted for the words "the last foregoing section" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

²These words and figures within square brackets were substituted for the words and figures "under section 289 of the Code of Civil Procedure" by s. 128 of the same Act.

³The words "not held at fixed rates" were inserted by s. 103 of the same Act.

⁴The word and figures "section 167" were substituted for the words "the next following section" by s. 103 of the same Act.

⁵The words and figures "sections 164, 165 or 166" were substituted for the words "any of the foregoing sections" by s. 126 of the same Act.

⁶The words "or under the Bengal Public Demands Recovery Act, 1913" in section 167 (1), were inserted by the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), s. 62 (1).

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Section 168.)

the same, may, within one year from the date of the ¹confirmation of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the ²[Court which passed the decree or the Revenue-officer who made the order, as the case may be, for sale of the property] an application in writing requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made ³[in manner provided by this section, the Court or Revenue-officer, as the case may be,] shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree ⁴or a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c), the purchaser may, if he has power under this Chapter ⁵or that Act to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

Ben. Act
III of
1913.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

168. (1) The Local Government may, from time to time, by notification in the official gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any

Power to direct that occupancy holdings be dealt with under sections 159 to 167 as tenures.

¹The words "confirmation of the" were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 104 (a).

²These words within square brackets were substituted for the word "Collector" by s. 104 (a) of the same Act.

³These words within square brackets were substituted for the words "to the Collector in the manner prescribed by this section, he" by s. 104 (b) of the same Act.

⁴The words "or a certificate signed under the Bengal Public Demands Recovery Act, 1913," in section 167 (4), were inserted by the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), s. 62 (2) (a).

⁵The words "or that Act" in section 167 (4), were inserted by s. 62 (2) (b) of the same Act.

(Chapter XIV.—Sale for arrears under decree.—
Section 169.)

local area put up for sale in execution of ¹a decree for an arrear of rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under ²sections 159 to 167 of this Chapter, be treated in all respects as if they were tenures.

Rules for disposal of the sale-proceeds.

169. (1) In disposing of the proceeds of a sale under this Chapter ³[other than a sale in execution of a decree in a suit instituted under sub-section (1) of section 148A] the following rules, instead of those ⁴[contained in section 73 of the Code of Civil Procedure, 1908,] shall be observed, that is to say :—

Act V of 1908.

- (a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale ;
- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made ;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom ⁵the costs of the application under this section and any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of ⁶the confirmation of the sale ;

¹These words " a decree for an arrear of rent " in section 168 (1) were substituted for the words " decrees for rent," for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 52, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 52.

²The words and figures " sections 159 to 167 " were substituted for the words " the foregoing sections " by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 126.

³These words, figures and letter within square brackets were inserted by s. 105 (a) of the same Act.

⁴These words and figures within square brackets were substituted for the words and figures " prescribed by section 295 of the Code of Civil Procedure " by s. 126 of the same Act.

⁵The words " the costs of the application under this section and " were inserted by s. 105 (b) of the same Act.

⁶These words " the confirmation of " in section 160(1)(c) were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 53 (1), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 53 (1).

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Section 170.)

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application ¹unless the Court for reasons to be recorded in writing otherwise directs :

* * * * *

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

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1908.

²170. (1) ⁴[Rules 58 to 63 (both inclusive) of Order XXI in Schedule I to the Code of Civil Procedure, 1908] shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

Tenure or holding to be released from attachment only on payment into Court of amount of decree, with costs, or on confession of satisfaction by decree-holder.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor, or any person ⁵whose interests are affected by the sale, may pay money into Court under this section.

(4) The withdrawal of the amount deposited under ⁶this section or section 174 by the decree-holder landlord shall not operate as an admission of the transferability of the tenure or holding sold in execution of the decree.

¹The words " unless the Court for reasons to be recorded in writing otherwise directs " were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 105 (c).

²The proviso was omitted by s. 105 (d) of the same Act.

³Section 170 as modified by s. 54 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) was substituted for s. 170 as modified by s. 54 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 106 (1) of the same Act.

⁴These words and figures and letters within square brackets were substituted for the words and figures " sections 278 to 283 (both inclusive) of the Code of Civil Procedure " by s. 128 of the same Act.

⁵The words " whose interests are affected by the sale " were substituted for the words " having in the tenure or holding any interest voidable on the sale " by s. 106 (2) of the same Act.

⁶The words and figures " this section or section 174 " were substituted for the words, figures and letter " section 310A of the Code of Civil Procedure " by s. 106 (3) of the same Act.

[Act VIII

(Chapter XIV.—Sale for arrears under decree.—

Sections 171, 172.)

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

171. (1) ¹[When any person whose interests are affected by the sale of a tenure or holding advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bengal Public Demands Recovery Act, 1913] pays into Court the amount requisite to prevent the sale—

Ben. Act III of 1913.

- (a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve *per centum per annum* and secured by a mortgage of the tenure or holding to him ;
 - (b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent ; and
 - (c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.
- (2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Inferior tenant paying into Court may deduct from rent.

²172. When a tenure or holding is advertised for sale—

- (a) under this Chapter, in execution of a decree against a superior tenant defaulting, or
- (b) in execution of a certificate, signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting,

or when such sale is set aside under section 174—

and an inferior tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord ; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

¹These words within square brackets were substituted for the words " when any person having in a tenure or holding advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bengal Public Demands Recovery Act, 1913, an interest which would be voidable upon the sale " by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 107.

²This section was substituted for the former section by s. 108 of the same Act.

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Sections 173, 174.)

Act V of
1908.

173. (1) Notwithstanding anything contained in ¹[rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908,] the holder of a decree in execution of which a tenure or holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

Decree-holder
may bid at sale ;
judgment-debtor
may not.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it shall be paid by the judgment-debtor.

*174. (1) Rules 89 and 90 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply in cases where a tenure or holding has been sold for arrears of rent due thereon, but in such cases the judgment-debtor or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Court to set aside the sale, on his depositing—

Application to
set aside sale.

(a) for payment to the decree-holder, the amount recoverable under the decree up to the date when the deposit is made, with costs ;

(b) for payment to the auction-purchaser, as penalty a sum equal to five *per cent.* of the purchase-money, but not less than one rupee.

(2) Where a person makes an application under sub-section (3) for setting aside the sale of his tenure or holding he shall not, unless he withdraws that application, be entitled to make or prosecute an application made under sub-section (1).

(3) Where a tenure or holding has been sold for arrears of rent due thereon, the decree-holder, the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within six months from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale :

¹These words, figures and letters within square brackets were substituted for the words and figures "section 294 of the Code of Civil Procedure" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 128.

²This section was substituted for the former section by s. 109 of the same Act.

(Chapter XIV.—Sale for arrears under decree.—
Section 174A.)

Provided as follows :—

- (a) no sale shall be set aside on any such ground unless the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud ; and
- (b) no application made by a judgment-debtor or any person whose interests are affected by the sale under this sub-section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court, for reasons to be recorded by it in writing, that no such deposit is necessary.

(4) Rule 91 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to any sale under this Chapter. Act V of 1908.

(5) An appeal shall lie against an order setting aside or refusing to set aside a sale :

Provided that where the Court has refused to set aside the sale on the application of the judgment-debtor or any person whose interests are affected by the sale and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the appellant deposits such amount in Court.

Sale when to become absolute or be set aside, and return of purchase money in certain cases.

174A. (1) Where no application is made under ²[sub-section (1) of section 174 within thirty days from the date of sale] or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where in the case of an application under sub-section (1) of section 174, the deposit required by that sub-section is made within thirty days from the date of sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its repayment with or without interest as the Court may direct.

¹Section 174A was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 110.

²These words and figures within square brackets in s. 174A (1), were substituted for the word and figures "section 174" by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 12(a).

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—Chapter XV.—Contract and custom.—Sections 175—178.)

(4) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

¹(5) Notwithstanding anything contained in this section, an application may be made under sub-section (3) of section 174 to set aside the sale, and where such application is allowed the order made under sub-section (1) confirming the sale shall be deemed to be cancelled.

175. (*Registration of certain instruments creating incumbrances.*) Rep. by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 13.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Notification of incumbrances to landlord.

177. Nothing contained in this Chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

Power to create incumbrances not extended.

CHAPTER XV.

CONTRACT AND CUSTOM.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

Restrictions on exclusion of Act by agreement.

- (a) shall bar in perpetuity the acquisition of an occupancy-right in land, or
- (b) shall take away an occupancy-right in existence at the date of the contract, or
- (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

¹This sub-section was inserted by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 12(b).

[Act VIII

(Chapter XV—Contract and custom.—Section 178.)

- (d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them, ¹[or
- (e) shall entitle a landlord to recover as rent, from a tenant whose rent is a share, as opposed to a fixed quantity of produce, produce in excess of half the gross produce of the holding for the year for which the rent is claimed, or
- (f) shall take away or limit the rights of an under-*raiyat* as against his immediate landlord, as set forth in Chapter VII, or
- (g) shall take away or limit the right of an occupancy-*raiyat* to transfer his holding or any share or portion thereof in accordance with the provisions of sections 26B to 26J, or
- (h) shall take away or limit the rights of occupancy-*raiyats* in trees on their holdings, as provided in section 23A, or
- (i) shall affect the provisions of section 67 relating to interest payable on arrears of rent.]

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act, shall prevent a *raiyat* from acquiring in accordance with this Act, an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

(a) prevent a *raiyat* from acquiring, in accordance with this Act, an occupancy-right in land ;

(b) take away or limit the right of an occupancy-*raiyat* to use land as provided by section 23 ;

(c) take away the right of a *raiyat* to surrender his holding in accordance with section 86 ;

* * * * *

² (d) take away the right of an occupancy-*raiyat* to sublet subject to, and in accordance with, the provisions of this Act ;

³ (e) take away the right of a *raiyat* to apply for a reduction of rent under section 38 or section 52 ;

* * * * *

* * * * *

¹The portion within square brackets were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 112 (a).

²Former clauses (d), (g) and (h) were omitted by s. 112 (b) (i) of the same Act.

³Clauses (e) and (f) were renumbered as clauses (d) and (e), respectively, by s. 112(b) (ii) of the same Act.

of 1885.]

(Chapter XV.—Contract and custom.—Section 179.)

Provided as follows:—

- (i) nothing in this section shall affect the terms or conditions of a lease granted *bona fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;
- (ii) when a landlord has reclaimed waste-land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a *raiyat*, nothing in this Act shall affect the terms of any contract whereby a *raiyat* is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a *raiyat*;
- (iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of ¹horticultural or orchard land with agricultural crops.

²*Explanation.*—The expression “horticultural land,” as used in proviso (iii), means garden land, in the occupation of a proprietor or permanent tenure-holder, which is used *bona fide* for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant: Permanent *mukarrari* leases.

³Provided that such proprietor or holder shall not be entitled to recover interest at a rate exceeding that set forth in section 67 or anything that is an *abwab* or the recovery of which is illegal under the provisions of section 74 or subsection (3) of section 77.

¹The words “horticultural or” in proviso (iii) were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 56(1), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 56(1).

²This *Explanation* was added to proviso (iii), for Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 56(2), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 56(2).

³This proviso was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 113.

(Chapter XV.—Contract and custom.—Sections 180, 180A.)

Utbandi, char and diara lands.

180. (1) Notwithstanding anything in this Act, a *raiyat*—

(a) who, in any part of the country where the custom of *utbandi* prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(b) who holds land of the kind known as *char* or *diara*, shall not acquire a right of occupancy—

in case (a), in land ordinarily held under the custom of *utbandi* and for the time being held under that custom, or

in case (b), in the *char* or *diara* land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to *raiyats* holding land under the custom of *utbandi* in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be *char* or *diara* land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

Fixing of uniform annual money rent in respect of *utbandi* lands.

180A. (1) Notwithstanding anything contained in section 180, when a *raiyat* who is or who but for the operation of section 180 in respect of land held under the custom of *utbandi* would have been, a settled *raiyat* of the village, holds or has held under the custom of *utbandi*, or under any form of tenancy locally known as *utbandi* land (hereinafter referred to as *utbandi* land), either the landlord or the *raiyat* may apply to have a uniform annual money rent determined for the land.

(2) The application shall include at the discretion of the applicant either—

(a) all *utbandi* lands held in the same village by the same *raiyat* under the same landlord in which the *raiyat* has acquired a right of occupancy whether under the provisions of section 180 or otherwise, or

¹Sections 180A to 180C were inserted by the Bengal Tenancy (*Utbandi* Amendment) Act, 1923 (Ben. Act X of 1923), s. 2.

These sections extend to the districts of Nadia, Murshidabad and Jessore but will extend to other districts when notified—*vide* section 1 (2) of the same Act.

of 1885.]

(Chapter XV.—Contract and custom.—Section 180A.)

(b) all the lands held in the same village under the same landlord by the *raiyat* which the *raiyat* or any deceased person whose heir he is, has cultivated as *utbandi* land at any time during the preceding period of six years if he or the said deceased person is the last person to have cultivated the land and has not or had not acquired occupancy-rights therein, or

(c) both.

(3) Subject to the provisions of sub-section (2), a single application may be made by a landlord in respect of lands held as *utbandi* lands in the same village by one or more *raiyats* under him and a joint application may be made by two or more *raiyats* in respect of lands held by them as *utbandi* lands in the same village under the same landlord.

(4) The application may be made to the Collector or to a Subdivisional Officer or to a Revenue-officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorized by the Local Government.

(5) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (4) to receive applications.

(6) The officer receiving the application or the officer to whom the case is transferred as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

If the immediate landlord or the *raiyat* is a temporary tenure-holder or *ijaradar*, the officer receiving the application shall also give notice to the superior landlord in the lowest degree, who is a proprietor or permanent tenure-holder.

(7) If the application is made in respect of lands in which the *raiyat* has not acquired occupancy-rights, the officer may reject it in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it:

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if in the opinion of the officer who then receives the application the circumstances have in the meantime changed.

(8) If the application is not rejected, the officer shall then determine the sum to be paid as a uniform annual

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money rent, and also in the case of lands in which the *raiyat* has not acquired occupancy-rights, a premium to be paid to the landlord, and he shall order that the *raiyat* shall, in lieu of paying the rent for the land as *utbandi* land, pay the sum so determined and the premium, if any :

Provided that in any case in which an order fixing a uniform annual money rent is passed *ex parte* the opposite party may within one month of the date of such order or, when the notice has not been duly served, within one month of the date of his knowledge of such order apply to the officer by whom the order was passed for an order to set it aside and, if he satisfies the officer that the notice of the application under sub-section (1) was not duly served on him or that he was prevented by any sufficient cause from appearing when the case was determined, the officer shall set aside the order and shall appoint a day for the determination of the case. No order shall be set aside on application made under this proviso unless notice thereof has been served on the respondent thereto.

(9) In making the determination of the sum to be paid as rent, the officer shall calculate the average of the amount that was actually paid or payable as rent for the land for the previous six years and shall ordinarily declare the same as the sum to be paid as rent :

Provided that the officer may also take into consideration—

- (a) the average money rent payable by occupancy-*raiyats* for land of a similar description and with similar advantages in the vicinity ;
- (b) the average rates for lands of a similar description and with similar advantages in the vicinity held as *utbandi* lands ;
- (c) the average money rent payable for lands of a similar description and with similar advantages in the vicinity by *raiyats* who formerly paid their rent for those lands as *utbandi* lands but whose rents have been converted into uniform annual money rents whether under this section or by agreement or otherwise ;
- (d) the charges incurred in accordance with custom by the landlord in respect of the irrigation and drainage of the *utbandi* lands and the arrangements made for continuing those charges ;
- (e) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy-*raiyats* ;
- (f) any sum agreed to by the parties to be paid as money rent :

of 1885.]

(Chapter XV.—Contract and custom.—Section 180A.)

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

(10) The premium to be paid to the landlord in the case of lands in which the *raiyat* has not acquired occupancy-rights shall be three times the rent, or, if the application is made under clause (c) of sub-section (2), three times the portion of the rent determined under sub-section (8) on account of such lands.

(11) If the immediate landlord of the *raiyat* is a temporary tenure-holder or *ijaradar* the officer shall apportion the premium payable under sub-section (10) between the said temporary tenure-holder or *ijaradar* and his superior landlord of the lowest degree who is a proprietor or permanent tenure-holder in such manner as may appear fair and reasonable to the officer in view of all the circumstances of the case, and any sum so awarded to the said superior landlord shall be recoverable by him from the temporary tenure-holder or *ijaradar* or his successor in interest as an arrear of rent but shall not be recoverable by the superior landlord from the *raiyat*.

(12) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(13) The officer shall fix the date (not being more than one month from the date of the order) by which the premium shall be paid or he may, on the application of the *raiyat*, order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section (8) takes effect and that one of the remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

(14) The premium or any instalment thereof shall be recoverable as rent and if the premium or any instalment thereof is not paid by the date fixed under sub-section (13) for the payment of such premium or instalment the landlord may make a requisition to the Collector for the recovery of the arrear of the same in the manner set forth in sub-sections (3) and (4) of section 158A, and the provisions of sub-sections (5) to (9) of that section shall apply to the recovery of the said arrear by the Collector as if it were an arrear of rent, recoverable by him under the provisions of that section.

Interest shall not be payable on any instalment in respect of which default has not been made.

(Chapter XV.—Contract and custom.—Sections 180B, 180C.)

The Local Government may make rules ¹to provide for the form of requisition to be made by a landlord under this sub-section and for carrying into effect the purposes of this sub-section.

(15) Any order made under this section shall be subject to appeal in the manner provided in section ²115C unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(16) An application made under sub-section (1) may be amended if it appears at any time to the officer prior to the issue of the order under sub-section (7) or sub-section (8) or to the appellate or revisional Court that it does not comply with the provisions of sub-section (2) but that it can be brought into conformity with that sub-section. Such amendment may be made either on the initiative of the parties or either of them or of the officer or Court but it shall not be made unless prior notice thereof is given to the parties, and, if such amendment is made, it shall be made only on such terms or conditions as to such officer or Court shall appear to be just.

(17) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any Court in respect of any order passed under this section, save as is provided in this section.

Lands in respect of which a uniform annual money rent has been fixed under section 180A to cease to be *utbandi* lands.

³180B. Whenever an order under section 180A is passed determining a uniform annual money rent for any lands, such lands shall cease to be held as *utbandi* lands with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy-*raiyat* from the date of the order.

Period for which rent fixed under section 180A to remain unaltered.

³180C. (1) Where a uniform annual money rent has been fixed under section 180A, the said rent shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (a) of sub-section (1) of section 38.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (1) of section 180A.

¹The words "to provide for" were substituted for the word "prescribing" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act. IV of 1928), s. 127.

²See foot-note⁵ on p. 93, *ante*.

³See foot-note¹ on p. 140, *ante*.

of 1885.]

(Chapter XV.—Contract and custom.—Chapter XVI.—
Limitation.—Sections 181—185.)

181. Nothing in this Act shall affect any incident of a *ghatwali* or other service-tenure, or in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed. Saving as to service-tenures.

182. When a *raiyat* or an under-*raiyat* holds his homestead otherwise than as part of his holding within the same village or any village contiguous to that village, his status in respect of his homestead shall be that of a *raiyat* or an under-*raiyat* according to the status of the landlord of the homestead, and the incidents of his tenancy of such homestead shall be governed by the provisions of this Act applicable to *raiyats* or under-*raiyats*, as the case may be. Homesteads.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions. Saving of custom.

* * * * *

CHAPTER XVI.

LIMITATION.

184. (1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that Schedule for them, respectively; and every such suit or appeal instituted, and application made, after the period of limitation so provided shall be dismissed although limitation has not been pleaded. Limitation in suits, appeals and applications in Schedule III.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

IX of 1908. 185. Sections 6, 7, 8 and 9 and sub-section (2) of section 29 of the Indian Limitation Act, 1908, shall not and, subject to the provisions of this Chapter, the remaining provisions of that Act, shall apply to all suits, appeals and applications specified in Schedule III annexed to this Act. Portions of the Indian Limitation Act not applicable to such suits, etc., mentioned in Schedule III.

¹As to *ghatwali* tenures, see the Bengal Ghatwali Lands Regulation, 1814 (XXIX of 1814), and the Bengal Ghatwali Lands Act, 1859 (V of 1859).

²This section 182 was substituted for the former section by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 114.

³The illustrations to s. 183 were omitted by s. 115 of the same Act.

⁴The word "provided" was substituted for the word "prescribed" by s. 127 of the same Act.

⁵This section was substituted for the former section by s. 116 of the same Act.

(Chapter XVII.—Supplemental.—Sections 186, 186A.)

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

Penalties for illegal interference with produce.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

(a) distrains or attempts to distrain the produce of a tenant's holding, or,

1* * * * *

(c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

Act XLV
of 1860.

(2) Any person who abets, within the meaning of the Indian Penal Code, the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Damages for denial of landlord's title.

Damages for denial of landlord's title.

²*Damages for denial of landlord's title.*

²**186A.** (1) When, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

(2) The amount of damages decreed under sub-section (1), together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money, or, * * * * *
* * * * * in any of the modes in which a decree for rent may be executed.

¹Clause (b) was omitted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 117.

²This heading and section 186A were inserted for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 57, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 57.

³The words and figures and letter "subject to the provisions of section 158B" were omitted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 118.

of 1885.]

(Chapter XVII.—Supplemental.—Sections 187, 188.)

Agents and representatives of landlords.

Agents and representatives of landlords.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

Power for landlord to act through agent.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

188. (1) Subject to the provisions of section 148A where two or more persons are co-sharer landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together or by an agent authorized to act on behalf of both or all of them :

Action to be taken collectively by co-sharer landlords or by their common agents except in certain cases.

Provided that one or more co-sharer landlords, if all the other co-sharer landlords are made parties defendant to the suit or proceeding in manner provided in sub-sections (1) and (2) of section 148A and are given the opportunity of joining in the suit or proceeding as co-plaintiffs or co-applicants, may—

- (i) file an application under sub-section (1) of section 26F or under section 26J,
- (ii) bring a suit for enhancement of the rent of a tenure under section 7 or of a holding under section 30, or for alteration of rent on account of alteration in area under section 52,
- (iii) bring a suit for ejection of a tenant on the grounds specified in section 10, clause (b) of section 18, section 25, or clause (a), clause (b), or clause (c) of section 44, or in accordance with the provisions of ²[section 48C] or section 66,

¹This section was substituted for the former section by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 119.

²The word, figures and letter within square brackets in clause (iii) of the proviso to section 188 (1), were substituted for the word and figures "section 49" by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 14.

(Chapter XVII.—Supplemental.—Sections 188A, 189.)

- (iv) make applications as regards improvements under sections 78, 80 and 81,
- (v) apply for measurement under sections 90 and 91,
- (vi) file an application under section 105,
- (vii) bring a suit under section 106,
- (viii) apply for record of private lands under section 118,
- (ix) apply for the determination of the incidents of a tenancy under section 158,
- (x) apply to the Collector for a declaration under sub-section (3) of section 180.

(2) Any decree passed or order made in a suit or proceeding in which the conditions set forth in sub-section (1) of this section have been complied with, shall have the effect of a decree passed or order made, on the application of the sole landlord or the whole body of landlords, and shall take effect as regards the whole tenure or holding, as the case may be :

Provided that where a suit is brought under section 7 or section 30 for enhancement of rent, or under section 52 for alteration of rent, or where an application is made under section 105 by a co-sharer landlord for settlement of rent, the Court or Revenue-officer, as the case may be, when the rent has been fixed or settled, shall distribute any amount by which the rent has been increased or reduced between the co-sharer landlords of the tenancy in proportion to their respective shares in such tenancy whether they have or whether they have not joined as plaintiffs or applicants, and such distribution shall be binding on all the co-sharer landlords as if they had all sued or applied for the same, and for the purposes of any appeal, application or suit in regard to such distribution they shall be deemed to have sued or applied under sub-section (1) of this section together with co-sharer plaintiff or applicant.

188A. (*Procedure in suits by joint landlords.*) *Rep. by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 120.*

Rules under Act.

Power to make rules regarding procedure, powers of officers and services of notices.

Rules under Act.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules,¹ consistent with this Act,—

- (1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed

¹For rules made under section 189, see the Bengal Local Statutory Rules and Orders, 1924, Vol. I, Part IV.

of 1885.]

(Chapter XVII.—Supplemental.—Section 189.)

upon them by or under this Act, and may by such rules confer upon any such officer—

- (a) any power exercised by a Civil Court in the trial of suits ;
- (b) power to enter upon any land, and to survey, demarcate and make a map of the same and any power exercisable by any officer under the Bengal Survey Act, 1875¹ ; and
- (c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of soil ; and

Ben. Act V
of 1875.

- ²(2) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is ³provided in this or any other Act ;
- ²(3) to prescribe the manner in which ⁴the landlord's fee or the landlord's transfer fee shall be transmitted to the landlord ; and
- ²(4) to prescribe the authority by whom the fees, deposited under sections 12, 13, 15, 17, ⁵18, clause (a), 26C, 26E and 48H may be declared to be forfeited, and the mode in which such fees, when so forfeited, shall be dealt with ;
- ⁶(5) to provide for all or any of the following matters, namely—
 - (a) the manner of publication of—
 - (i) notifications under sub-section (3) of section 1 ;
 - (ii) price lists under sub-section (3) of section 39 ;

¹Printed in Vol. II of the Bengal Code.

²These sub-sections (2) to (4) were substituted for the original sub-section (2), for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 59, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 59. The original sub-section ran thus :—

“(2) to prescribe the mode of service of notices under this Act, where no mode is prescribed by this or any other Act.”

³The words “provided in” were substituted for the words “prescribed by” by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 121 (1).

⁴The words “the landlord's fee or the landlord's transfer fee” were substituted for the words “landlord's fee” by s. 121 (2) of the same Act.

⁵The words, figures, letters and brackets “18, clause (a), 26C, 26E and 48H” were substituted for the words, figures, letter and brackets, “and 18, clause (a)” by s. 121 (3) of the same Act.

⁶Clause (5) was inserted by s. 121(4) of the same Act.

(Chapter XVII.—Supplemental.—Section 189.)

- (iii) notices under sub-section (2) of section 87 ;
 - (iv) the draft record-of-rights under sub-section (1) of section 103A ;
 - (v) the record-of-rights under sub-section (2) of section 103A ;
 - (vi) Tables of Rates under sub-section (2) of section 104B ;
 - (vii) the draft Settlement Rent-roll under sub-section (1) of section 104E ;
 - (viii) proclamation under clause (d) of sub-section (3) of section 163 ; and
 - (ix) the rules made by authorities other than the Local Government or the High Court under sub-section (2) of section 190 ;
- (b) the manner of payment of the landlord's fee under sub-section (4) of section 12 and of the landlord's transfer fee and costs of transmission under sub-section (7) of section 26C ;
- (c) the amount of the fee—
- (i) for process referred to in sub-section (2) of section 12 ;
 - (ii) for process referred to in clause (b) of sub-section (2) of section 26C ;
 - (iii) for process referred to in sub-section (4) of section 26C ;
 - (iv) for process referred to in sub-section (1) of section 26E ;
 - (v) for process referred to in sub-section (2) of section 26E ;
 - (vi) for service of notice referred to in sub-section (1) of section 13 ;
 - (vii) referred to in sub-section (2) of section 61 ;
- (d) the amount of the cost of transmission of fees or other monies ;
- (e) the manner of payment or tender of rent by postal money-order ;
- (f) the manner of verification of applications under sub-section (2) of section 80 ;
- (g) the information to be contained in the applications referred to in sub-section (2) of section 80 ;

of 1885.]

(Chapter XVII.—Supplemental.—Section 190.)

- (h) the form of the register referred to in clause (a) of sub-section (2) of section 99A and the particulars to be therein entered ;
- (i) the manner of making a survey and preparing a record-of-rights under sub-section (4) of section 101 ;
- (j) the particulars referred to in the proviso to clause (j) of section 102 ;
- (k) the period of publication of the draft record-of-rights under sub-section (1) of section 103A and of the draft Settlement Rent-roll under sub-section (1) of section 104E ;
- (l) the manner in which objections shall be considered and disposed of under sub-section (2) of section 103A ;
- (m) the empowering of the “ confirming authority ” referred to in sub-section (4) of section 104B ;
- (n) the superior Revenue authority referred to in section 104G ;
- (o) the stamp to be borne by applications under sub-section (1) or sub-section (2) of section 105 ;
- (p) the restrictions and modifications referred to in sub-section (7) of section 158A ;
- (q) any other matter required or permitted under this Act to be prescribed.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

Procedure for making, publication and confirmation of rules.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may, in its opinion, be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner :

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(Chapter XVII.—Supplemental.—Sections 191, 192.)

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.
Settlement of rent of land held in a district not permanently settled.

Provisions as to temporarily-settled districts.

191. Where the area comprised in a tenure or holding is situate in an estate not subject to a subsisting permanent settlement and when,

- (a) land-revenue is for the first time made payable in respect of the land, or
- (b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

nothing in this Act or in any lease or contract made after the passing of the Bengal Tenancy Act, 1885, shall entitle any tenant to hold his tenancy free of rent or at a particular rent, unless in the case of a fresh settlement made under clause (b) the right so to hold beyond the term of the previous settlement has been expressly recognised at the previous settlement by a Revenue authority empowered by Government to make definitively or confirm settlements, and the Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, or of his own motion, fix a fair and equitable rent for all grades of tenants in accordance with the principles laid down in sections 6, 7, 8, 9, 27 to 36, 38, 39, 43, 50 to 52 and 180 :

Provided that, notwithstanding anything contained in sub-section (3) of section 7 he may divide the minimum profit of ten *per centum* provided for in that sub-section among two or more grades of tenure-holders if such exists.

192. (*Power to alter rent in case of new assessment of revenue.*) Amalgamated with section 191 by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 122.

¹This section was substituted for former sections 191 and 192 by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 122.

of 1885.]

(Chapter XVII.—Supplemental.—Sections 193—195.)

Rights of pasturage, etc.

Rights of pasturage, etc.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-right, rights over fisheries and the like.

Rights of pasturage, forest-rights, etc.

Saving for conditions binding on landlords.

Saving for conditions binding on landlords.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition :

Tenant not enabled by Act. to violate conditions binding on landlord.

¹Provided that this section shall not apply to a *raiyat* or an under-*raiyat* doing any act in exercise of the rights conferred by this Act upon *raiyats* or under-*raiyats*, as the case may be.

Savings for special enactments.

Savings for special enactments.

195. Nothing in this Act shall affect—

- (a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act ;
- (b) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue authorities ;
- (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue ;
- (d) any enactment relating to the partition of revenue-paying estates ;
- ²(e) any enactment relating to *patni*-tenures in so far as it relates to those tenures, except that the expression “ *khudkast raiyat* or resident and hereditary cultivator ” in sub-section (3) of section 11 of the

¹This proviso was inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 123.

²Clause (e) was substituted for former clause by s. 124 of the same Act.

[Act VIII]

(Chapter XVII.—Supplemental.—Sections 195A, 196.)

Bengal Patni Taluqs Regulation, 1819, shall be deemed to include all *raiyats* having a right of occupancy ; or

Reg. VIII of 1819.

(f) any other special or local law not repealed either expressly or by necessary implication by this Act.

Protection for certain acts.

Protection in certain cases for acts done.

Protection for certain acts.

¹195A. No suit or other proceeding shall be instituted against the Secretary of State for India in Council or against any officer of the Government in respect of anything done by the registering officer, the Collector or the Court in regard to the receiving, distribution or payment of the landlord's fee or the landlord's transfer fee :

Provided that nothing in this section shall prevent any person entitled to receive the amount of any such landlord's fee or landlord's transfer fee or any portion thereof from recovering the same from a person to whom it has been paid by the Collector or the Court.

* * * * *

196. (*Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.*) *Rep. by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 125.*

¹This section was inserted by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 15.

²The heading "Construction of Act" and s. 196 were repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 125.

of 1885.]

(Schedule I.—Repeal of enactments.)

SCHEDULE I.

(See section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
8 of 1793 ..	A regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the public revenue payable from the lands of the <i>zamindars</i> , independent <i>talukdars</i> and other actual proprietors of land in Bengal, Bihar and Orissa, passed for those Provinces, respectively, on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections, 51, 52, 53, 54, 55, 64 and 65.
12 of 1805 ..	A regulation for the settlement and collection of the public revenue in the <i>zila</i> of Cuttack, including the <i>parganas</i> of Pataspur, Kamardachor and Bhogra, at present included in the <i>zila</i> of Midnapore.	Section 7.
5 of 1812 ..	A Regulation for amending some of the rules at present in force for the collection of the land revenue.	Sections 2, 3, 4, 26 and 27.
18 of 1812 ..	A Regulation for explaining section 2, Regulation 5, 1812, and rescinding sections 3 and 4, Regulation 44, 1793, and sections 3 and 4, Regulation 50, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
11 of 1825 ..	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "Nor if annexed to a subordinate tenure" to the end of the clause.

*(Schedule I.—Repeal of enactments.)**Acts of the Bengal Council.*

Number and year.	Subject of Act.	Extent of repeal.
6 of 1862 ..	An Act to amend Act 10 of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
4 of 1867 ..	An Act to explain and amend Act 6 of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
8 of 1869 ..	An Act to amend the Procedure in suits between landlords and tenants.	The whole Act.
8 of 1879 ..	An Act to define and limit the powers of Settlement-officers.	The whole Act.
	<i>Act of the Governor General in Council.</i>	
10 of 1859 ..	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

of 1885.]

(Schedule II.—Particulars of receipt and of statement of account.)

¹SCHEDULE II.

PARTICULARS OF RECEIPT AND ²[OF STATEMENT OF ACCOUNT].

(See sections 56 and 57.)

Particulars of receipt (landlord's portion).	Particulars of receipt (tenant's portion).
1. Serial number of receipt.	1. Serial number of receipt.
2. Name of village, pargana, thana.	2. Name of village, pargana, thana.
3. (a) Name of the estate and <i>tazri</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.	3. (a) Name of the estate and <i>tazri</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.	4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.	5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar</i> , <i>bankar</i> and <i>phalkar</i> .	6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar</i> , <i>bankar</i> and <i>phalkar</i> .
7. Amount paid, specifying for which of the items (c), (d) and (e) and for which year and <i>kist</i> .	7. Amount paid, specifying for which of the items (c), (d) and (e) and for which year and <i>kist</i> .
8. Date of payment.	8. Date of payment.
9. Signature of landlord or his authorized agent.	9. Signature of landlord or his authorized agent.

¹This was substituted for former schedule by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 130.

²These words within square brackets in the heading to Schedule II, were substituted for the word "Account" by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act. II of 1930), s. 16(a).

[Act VIII]

(Schedule II.—Particulars of receipt and of statement of account.)

[Particulars of statement of account.] (Landlord's portion.)	[Particulars of statement of account.] (Tenant's portion.)
1. Serial number of receipt.	1. Serial number of receipt.
2. Name of village, pargana, thana.	2. Name of village, pargana, thana.
3. (a) Name of the estate and <i>tavzi</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.	3. (a) Name of the estate and <i>tavzi</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.	4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.	5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar, bankar</i> and <i>phalkar</i> .	6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlord's rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar, bankar</i> and <i>phalkar</i> .
7. Amounts due at the beginning of the year :— (a) under each of the items (c), (d) and (e) and for which years ; and (b) as interest on above.	7. Amounts due at the beginning of the year :— (a) under each of the items (c), (d) and (e) and for which years ; and (b) as interest on above.
8. Amounts paid during the years against each of the above dues, with dates of payment and serial number of the rent-receipt granted.	8. Amounts paid during the years against each of the above dues, with dates of payment and serial number of the rent-receipt granted.
9. Amounts remaining due at the end of the year.	9. Amounts remaining due at the end of the year.
10. Date of the statement of account.	10. Date of the statement of account.
11. Signature of landlord or his authorized agent.	11. Signature of landlord or his authorized agent.

¹These words within square brackets in the sub-heading were substituted for the words "Particulars of account" by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 16(b).

of 1885.]

(Schedule III.—Limitation.)

SCHEDULE III.

LIMITATION.

(See section 184.)

PART I.—Suits.

Description of suit.	Period of limitation.	Time from which period begins to run.
1. To eject any tenure-holder, ¹ [<i>raiyat</i> or under- <i>raiyat</i>] on account of any breach of a condition in respect of which there is a contract expressly providing that ejection shall be the penalty of such breach.	One year	The date of the breach.
² 1(a) To eject a non-occupancy- <i>raiyat</i> ³ [or under- <i>raiyat</i>] on the ground of the expiration of the term of his lease.	Six months	The expiration of the term.
2. For the recovery of an arrear of rent ⁴ in a suit brought by— (i) a sole landlord, (ii) the entire body of landlords, or (iii) one or more co-sharer landlords— (a) when the arrear fell due before a	Six months	The date of the service of notice of the

¹The word "rent", in Schedule III, includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3 (13), *ante*.

²These words within square brackets in article 1 of Schedule III were substituted for the words "or *raiyat*" by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 17 (1).

³Article 1 (a) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 61 (1), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 61 (1).

⁴These words within square brackets in article 1 (a) of Schedule III were inserted by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 17 (2).

⁵The words "in a suit brought by—

- (i) a sole landlord,
- (ii) the entire body of landlords, or
- (iii) one or more co-sharer landlords "

in Article 2 were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 61 (a), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 61 (a).

(Schedule III.—Limitation.)

Description of suit.	Period of limitation.	Time from which period begins to run.
deposit was made under section 61 on account of the rent of the same tenure or holding.		deposit or presentation of the postal money-order, as the case may be.
(b) in other cases . .	Three years	*The last day of the agricultural year in which the arrear fell due.
3. To recover possession of land claimed by the plaintiff as ⁴ a <i>raiyat</i> or an under- <i>raiyat</i> .	Two years	The date of dispossession.

PART II.—Appeals.

Description of appeal.	Period of limitation.	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days	The date of the decree or order appealed against.
5. From any order of a Collector under this Act, to the Commissioner.	Thirty days	The date of the order appealed against.

¹The words "tenure or holding" were inserted by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 131.

²The words "or presentation of the postal money-order, as the case maybe" were inserted by s. 131 of the same Act.

³This entry was substituted for the original entry, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 61 (b), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 61 (b). The original entry ran thus:—

"The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of *Jeth* of the *Amlî* or *Fasî* year in which the arrear fell due, where either of those years prevails."

⁴The words "a *raiyat* or an under-*raiyat*" in Article 3 were substituted for the words "an occupancy-*raiyat*", for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 61 (3), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 61 (3).

of 1885.]

(Schedule III.—Limitation.)

PART III.—Applications.

Description of application.	Period of limitation.	Time from which period begins to run.
<p>6. For the execution of a decree or order made [in a suit between landlord and tenant to whom the provisions of this Act are applicable,] and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1908: ¹Provided that, where a sale in execution for arrears of rent is set aside on application, the proceedings in execution shall continue and the time between the date of such sale and the date of the order setting it aside shall be excluded from the period of limitation provided by this Article.</p>	<p>Three years</p>	<p>(1) The date of the decree or order; or. (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been review of judgment, the date of the decision passed on the review.</p>

IX of 1908.

¹These words within square brackets in Article 6 were substituted for the words "under this Act, or any Act repealed by this Act," for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 61 (4), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 61 (4).

²The figures "1908" were substituted for the figures "1877" by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 132 (1).

³This proviso was inserted by s. 132 (2) of the same Act.