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GOVERNMENT OF BIHAR.
LEGISLATIVE DEPARTMENT.

**The Bihar Tenancy (Amendment)
Act, 1938.**

[BIHAR ACT XI OF 1938.]



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The Bihar Tenancy (Amendment) Act, 1938.

[BIHAR ACT XI OF 1938.]

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[Bihar Act XI of 1938.]

**THE BIHAR TENANCY
(AMENDMENT) ACT, 1938.**

*[The assent of the Governor to this Act
was published in the Bihar Gazette
of the 9th November, 1938.]*

AN

ACT

TO AMEND THE BIHAR TENANCY ACT, 1885.

WHEREAS it is expedient to amend the Bihar Tenancy Act, 1885, in the manner ^{VIII of 1885.} hereinafter appearing;

It is hereby enacted as follows :—

Short title and commencement.

1. (1) This Act may be called the Bihar Tenancy (Amendment) Act, 1938.

(2) It shall come into force on such date as the Governor may, by notification, appoint, and different dates may be so appointed for different provisions.

Amendment of section 8 of Act VIII of 1885.

2. In clause (5) of section 3 of the Bihar Tenancy Act, 1885 (hereinafter referred to as the said Act), for the word and figures " Chapter XIV ", the word and figures " Chapter XIII " shall be substituted. ^{VIII of 1885.}

Amendment of section 12 of Act VIII of 1885.

3. In section 12 of the said Act,—

(a) in sub-section (1), for the words " gift or mortgage ", the words and comma " gift, exchange or mortgage " shall be substituted;

(b) for sub-section (2), the following sub-sections shall be substituted, namely :—

"(2) A registering officer shall not register any instrument purporting or operating to transfer

[*The Bihar Tenancy (Amendment) Act, 1938.*]

by sale, gift, exchange or usufructuary mortgage a permanent tenure unless there is paid to him, in addition to any fee payable under the law for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called the landlord's registration fee) together with the costs necessary for the transmission of the landlord's registration fee to the landlord.

(3) The landlord's registration fee shall be,—

(a) in the case of a transfer by sale, gift or usufructuary mortgage,—

(i) if the rent of the tenure is payable in cash, a fee of two *per centum* on the annual rent :

Provided that no such fee shall be less than one rupee or more than one hundred rupees;

(ii) in any other case, a fee of two rupees; and

(b) in the case of a transfer by exchange, a fee of two rupees.”; and

(c) sub-section (3) shall be renumbered as sub-section (4), and in the said sub-section, as renumbered, for the words “landlord's fee”, the words “landlord's registration fee” shall be substituted.

[The Bihar Tenancy (Amendment) Act, 1938.]

**Amendment of
section 13 of Act
VIII of 1885.**

4. In section 13 of the said Act,—

(a) for the words “ landlord’s fee ”, wherever they occur, the words “ landlord’s registration fee ” shall be substituted; and

(b) in sub-section (1), for the word and figures “ section 312 ”, the words and figures “ rule 92 of Order XXI ” shall be substituted, and after the word “ Procedure ”, the figures “ 1908 ” shall be inserted.

**Amendment of
section 15
of Act VIII of
1885.**

5. In section 15 of the said Act, for the words “ landlord’s fee ”, wherever they occur, the words “ landlord’s registration fee ” shall be substituted; and for the words and figures “ prescribed by section 12 ”, the words, brackets, figures and letter “ prescribed by sub-section 3(a) of section 12 ” shall be substituted.

**Amendment of
the heading to
Chapter IVA of
Act VIII of
1885.**

6. In the heading to Chapter IVA of the said Act, for the words “ LANDLORD’S FEES ”, the words “ LANDLORD’S REGISTRATION FEES ” shall be substituted.

**Amendment of
section 18B of
Act VIII of 1885.**

7. In section 18B of the said Act, for the words “ landlord’s fee ”, the words “ landlord’s registration fee ” shall be substituted; after the word and figures “ Chapter III ” a comma shall be inserted; and for the words and figures “ or Chapter IV ”, the words and figures “ Chapter IV or Chapter V ” shall be substituted.

**Amendment of
section 18C of Act
VIII of 1885.**

8. In section 18C of the said Act, for the words “ landlord’s fees ”, the words “ landlord’s registration fees ” shall be substituted; after the word and figures “ Chapter III ” a comma shall be inserted; and for the words and

[*The Bihar Tenancy (Amendment) Act, 1938.*]

figures " or Chapter IV ", the words and figures " Chapter IV or Chapter V " shall be substituted.

Amendment of
section 23A of Act
VIII of 1885.

9. In section 23A of the said Act,—

(i) in clause (a), the words " part of " shall be omitted, and after the word " holding ", the words " or a part of such holding " shall be inserted;

(ii) in clause (b), after the words " the landlord and the *raiyat* shall have equal shares in the timber and ", the words " the landlord shall have nine-twentieths and the *raiyat* shall have eleven-twentieths " shall be inserted; and

(iii) in the proviso,—

(a) the words " or bamboo ", where they occur for the first time, shall be omitted;

(b) the words, letter and brackets " or clause (b) " shall be omitted; and

(c) for the words " such tree or bamboo ", the words " the timber of such tree " shall be substituted.

Amendment of
section 25A of Act
VIII of 1885.

10. In section 25A of the said Act,—

(a) in sub-section (2), after the words " by an order of a Court ", the words " or otherwise " shall be inserted;

(b) in clause (b) of sub-section (3), for the words " rent of holding ", the words " rent of the holding " shall be substituted;

(c) in sub-section (5), the words " payable to the Collector " shall be omitted; and

[*The Bihar Tenancy (Amendment) Act, 1938.*]

(d) after sub-section (5), the following sub-section shall be added, namely:—

“(6) Nothing in this section shall apply to a partition of an occupancy-holding made by an order of a Court or otherwise between the transferor and the transferee of a share in, or a portion of, such holding, or between persons to whom the entire holding has been transferred, whether jointly or separately, and any distribution of the rent of the holding, as settled on such partition, between the transferor and the transferee, or between persons to whom the entire holding has been transferred as aforesaid, shall not be binding on the landlord save in accordance with the provisions of sections 88A to 88D, 88F or sub-section (2) of section 88I.”

Substitution of new section for section 26A of Act VIII of 1885.

11. For section 26A of the said Act, the following section shall be substituted, namely:—

“26A. (1) Every occupancy-holding or a portion thereof, together with the right of occupancy therein, shall be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property, and all transfers made by sale, exchange or gift and all bequests shall, subject to the provisions of sub-section (2), be binding on the landlord.

(2) Every transfer of an occupancy holding or a portion thereof, together with the right of occupancy therein, by sale, exchange or gift and every bequest of such holding or portion, together with the right of occupancy therein, shall be made in the same manner and subject to the same conditions as a permanent tenure in respect

Transfer and bequest of occupancy-holdings or portions thereof.

[*The Bihar Tenancy (Amendment) Act, 1938.*]

of registration and the payment of landlord's registration fee."

Substitution of new section for section 26B of Act VIII of 1885.

12. For section 26B of the said Act, the following section shall be substituted, namely:—

"26B. If a person, who became entitled to an occupancy-holding or a portion thereof by transfer at any time before the date of the commencement of the Bihar Tenancy (Amendment) Act, 1938, has not given to the landlord notice of the transfer nor paid the landlord's transfer fee payable under the law in force immediately before the date of the commencement of the said Act, he may at any time after the said date give notice of the transfer to the Collector in the prescribed form, and pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's registration fee prescribed by section 12 as if such holding or portion were a permanent tenure or a portion of a permanent tenure, together with the costs necessary for its transmission to the landlord, and the Collector shall cause the notice to be served on, and the landlord's registration fee to be transmitted to, the landlord named in the notice in the prescribed manner, and such transfer shall thereupon be binding in the same manner and to the same extent as a transfer made after the date of the commencement of the said Act:

Provided that if the transfer was made before the first day of January, 1923, it shall be binding on the landlord, and no notice shall be necessary and no landlord's registration fee shall be payable."

[The Bihar Tenancy (Amendment) Act, 1938.]

Repeal of sections 26C to 26P of Act VIII of 1885. **13.** Sections 26C to 26P of the said Act shall be omitted.

Collector not to take further steps or entertain applications in certain cases. **14.** After the commencement of this Act, no further steps shall be taken by the Collector in any proceeding pending before him for any of the orders specified in sub-section (2) of section 26E or in sub-clauses (i) and (ii) of clause (b) of sub-section (1) of section 26H of the said Act.

Amendment of section 40 of Act VIII of 1885.

15. In section 40 of the said Act,—

(i) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) The order shall be in writing and shall state the grounds on which it is made and the time from which it is to take effect.”; and

(ii) after sub-section (5) as substituted, the following sub-sections shall be added, namely:—

“(6) An appeal shall lie from an order referred to in sub-section (5),—

(i) if such order is passed by any officer other than the Collector of a district, to the Collector of the district;

(ii) if such order is passed by the Collector of a district, to the prescribed authority;

and the decision of the Collector or the prescribed authority on any such appeal shall be final.

(7) Appeals under this section shall be heard and disposed of in accordance with the prescribed procedure.”

[*The Bihar Tenancy (Amendment) Act, 1938.*]

Insertion of new sub-heading after section 40A and insertion of new section 40B in Act VIII of 1885.

16. After section 40A of the said Act, the following sub-heading and section shall be inserted, namely:—

“COMMUTATION IN RESPECT OF TREES.

40B. (1) Where a *raiyat* has a right of occupancy in any land and the *raiyat* and the landlord have shares in the timber and in the flowers, fruits or other products of all trees or bamboos growing on such land in accordance with the provisions of clause (b) of section 23A, either the *raiyat* or his landlord may apply to the Collector to have the rent of such trees or bamboos commuted to money-rent.

(2) If an application is made under sub-section (1), the Collector shall deal with such application as if it were an application under section 40, and may pass such order thereon as he could have passed if it were an application under the said section :

Provided that an order under this sub-section commuting the rent of any tree into money-rent shall not affect the landlord's right to a share in the timber of such tree as specified in section 23A.”

Insertion of new sections 48A and 48B in Act VIII of 1885.

17. After section 48 of the said Act, the following sections shall be inserted, namely:—

“ 48A. Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of the Bihar Tenancy (Amendment) Act, 1938, has continuously held land as an under-*raiyat* in any village, whether under a lease or otherwise, shall be deemed to have acquired, on the expiration of that

[The Bihar Tenancy (Amendment) Act, 1938.]

period, a right of occupancy in the land which he has so held for the said period :

Provided that the interest of an under-*raiyat* in any land in which he has acquired a right of occupancy under this section shall not be deemed to be a protected interest under clause (d) of section 160.

48B. An under-*raiyat*, who has acquired a right of occupancy in any land under section 48A, shall be subject to the same provisions with respect to rights in trees and bamboos and the use of, succession to, and eviction from, such land as an occupancy-*raiyat*."

Substitution of new sections for section 49 of Act VIII of 1935.

18. For section 49 of the said Act, the following sections shall be substituted, namely :—

"49. An under-*raiyat* may be ejected by his landlord from land, in which he has not already acquired a right of occupancy in accordance with the provision of section 48A, on one or more of the following grounds and not otherwise, namely :—

- (a) on the ground that he has failed to pay an arrear of rent;
- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;
- (c) where he has been admitted to occupation of the land under a written lease, on the ground

[The Bihar Tenancy (Amendment) Act, 1938.]

that the term of the lease has expired.

49A. Notwithstanding anything to

Ejection of under-
raiyats, without occu-
pancy rights, occupy-
ing land otherwise than
under a written lease
from before the com-
mencement of the Act.

the contrary con-
tained in the last
foregoing section,
where an under-
raiyat was admitted
to occupation of land
otherwise than
under a written lease

before the date of the commencement of the Bihar Tenancy (Amendment) Act, 1938, and has not acquired a right of occupancy therein, his landlord may, before the 30th June, 1939, serve upon him a notice to quit, and the under-*raiyat* shall thereupon be liable to be ejected from the land at the end of the agricultural year next following the year in which the said notice to quit was served."

Renumbering of
section 49A of
Act VIII of
1885.

19. Section 49A of the said Act shall be renumbered section 49AA.

Amendment of
section 49B of Act
VIII of 1885.

20. In sub-section (2) of section 49B of the said Act, after the word "Purnea", where it occurs for the last time, and before the full-stop, the words "and Tharus and Oraons in the whole or any part of the district of Champaran" shall be inserted.

Amendment of
section 49E of
Act VIII of
1885.

21. In sub-section (2) of section 49E of the said Act, the words, figures and brackets "Notwithstanding anything contained in sub-section (2) of section 85" shall be omitted.

Insertion of new
section 52A in Act
VIII of 1885.

22. After section 52 of the said Act, the following section shall be inserted, namely:—

"52A. (1) If the land of a holding or a portion thereof is lost by diluvion, the rent of the holding shall abate

Abatement of rent on
account of diluvion and
re-entry into lands which
reform on the old site.

[*The Bihar Tenancy (Amendment) Act, 1938.*]

by an amount which bears to the rent of the entire holding the same proportion as the area lost bears to the area of the entire holding.

(2) (a) Notwithstanding anything to the contrary contained in this Act or in any other law or in any contract, the right, title and interest of the *raiyat* shall subsist in such land or portion during the period of loss by diluvion and the *raiyat* shall have the right to immediate possession on the reformation of such land or portion on its old site.

(b) The amount to be added to the rent of the holding on account of lands which have reformed shall, until modified in accordance with the provisions of this Act, be in the same proportion as the area of the lands reformed bears to the total area of the holding ”.

Amendment of section 54 of Act VIII of 1935.

23. In section 54 of the said Act,—

(a) after the word “tenant”, wherever it occurs, the words “or the mortgagee of his holding or tenure or of a portion of his holding or tenure” shall be inserted;

(b) in the proviso to sub-section (2), after the word “rent”, where it occurs for the first time, the words “or a portion of rent” shall be inserted; and

(c) in sub-section (3), after the word “rent”, the words “or a portion of rent” shall be inserted.

Substitution of new section for section 55 of Act VIII of 1935.

24. For section 55 of the said Act, the following section shall be substituted, namely:—

“ 55. (1) When a tenant or the mortgagee of his holding or tenure or of a portion of his

Appropriation of payments.

[*The Bihar Tenancy (Amendment) Act, 1938.*]

holding or tenure makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited.

(2) Notwithstanding any declaration mentioned in sub-section (1), if there is any arrear of rent due by the tenant, the recovery of which is not barred by the law for the time being in force as to limitation of suits for arrears of rent, the payment may, at the option of the landlord, be applied first to such arrear."

Amendment of section 56 of Act VIII of 1885.

25. In section 56 of the said Act, after the word "tenant", the words "or the mortgagee of his holding or tenure or of a portion of his holding or tenure" shall be inserted.

Amendment of section 57 of Act VIII of 1885.

26. In section 57 of the said Act, after the words "the tenant", wherever they occur, the words "or the mortgagee of his holding or tenure or of a portion of his holding or tenure" shall be inserted.

Amendment of section 58 of Act VIII of 1885.

27. In section 58 of the said Act,—

- (a) after the word "tenant", wherever it occurs, the words "or the mortgagee of his holding or tenure or of a portion of his holding or tenure" shall be inserted;
- (b) in sub-section (4), after the word "either", the words "on his own motion or" shall be inserted; and
- (c) for sub-section (6), the following sub-section shall be substituted, namely:—

"(6) An appeal shall lie to the prescribed authority against any order of the Collector imposing a fine under sub-section (3) or awarding compensation under sub-section

[The Bihar Tenancy (Amendment) Act, 1938.]

(5), and the order passed by such authority on such appeal shall be final."

Amendment of section 61 of Act VIII of 1935.

28. In section 61 of the said Act, after the word "tenant", wherever it occurs, the words "or the mortgagee of his holding or tenure or of a portion of his holding or tenure" shall be inserted.

Substitution of new section for section 73 of Act VIII of 1935.

29. For section 73 of the said Act, the following section shall be substituted, namely:—

"73. (1) When an occupancy-holding has been transferred, in whole or in part, whether before or after the commencement of the Bihar Tenancy (Amendment) Act, 1938, by sale, exchange or gift, or by sale in execution of a decree or of a certificate filed under the Bihar and Orissa Public Demands Recovery Act, 1914, other than a decree ^{B. & O. Act IV of} or a certificate for arrears of rent due in 1914. respect of the holding,—

- (a) all arrears of rent due in respect of the holding before the date of the transfer shall be a first charge on the holding;
- (b) the transferor shall be liable for all arrears due before the date of the transfer; and
- (c) the transferor and the transferee shall be jointly and severally liable for all arrears falling due between the date of the transfer and the date of the distribution of the rent.

(2) In this section the expression "date of the transfer" means,—

- (a) in the case of a transfer by sale, exchange or gift—the date of

[*The Bihar Tenancy (Amendment) Act, 1938.*]

the execution of the instrument of transfer or the date on which the transaction was completed, as the case may be; and

- (b) in the case of a sale in execution of a decree or certificate filed under the Bihar and Orissa ^{B. & O.} Public Demands Recovery Act, ^{Act IV of} 1914,—the date of the sale.” 1914.

Amendment of section 75 of Act VIII of 1885.

30. In clause (b) of section 75 of the said Act, for the words “ shall be bailable and compoundable ”, the words and comma “ shall be bailable, and shall be compoundable ” shall be substituted.

Amendment of section 85 of Act VIII of 1885.

31. Sub-section (2) of section 85 of the said Act shall be omitted.

Amendment of section 86 of Act VIII of 1885.

32. In sub-section (6) of section 86 of the said Act, after the words “ registered instrument ”, the words “ or when there is an under-*raiyat* on the holding or part thereof ” shall be inserted, and after the word “ incumbrancer ”, the words “ or the under-*raiyat* or both, as the case may be ” shall be inserted.

Amendment of section 87 of Act VIII of 1885.

33. In section 87 of the said Act, after sub-section (4), the following sub-section shall be added, namely :—

“(5) If an under-*raiyat* has a right of occupancy in a holding or a portion thereof, the landlord shall, before entering on the holding under this section, offer the whole holding to the under-*raiyat* at the rent paid by the *raiyat* and on condition of the under-*raiyat* paying up all arrears due from the *raiyat*. If the under-*raiyat* refuses or neglects within a reasonable time to accept the offer, the landlord may enter on the holding and let it to another tenant or cultivate it himself, as provided in sub-sections (1) and (2).”

[The Bihar Tenancy (Amendment) Act, 1938.]

Amendment of the sub-heading after section 87 of Act VIII of 1935.

34. For the sub-heading "Sub-division of tenancy" after section 87 of the said Act, the sub-heading "Sub-division of tenancy and distribution of rent" shall be substituted.

Amendment of section 88 of Act VIII of 1935.

35. In section 88 of the said Act,—

(a) the figures and letters "26B", "26E" and "26M and 26O" shall be omitted; for the figures and letters "26D", "26F", "26H" and "26J", the figures and letters "88A", "88B", "88C" and "88F", respectively, shall be substituted; and after the figures and letter "88F", as substituted, the words, figures, brackets and letters "88H and sub-section (2) of section 88I" shall be inserted; and

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

" Provided further that in the case of a transfer of a portion of a holding made before the first day of January, 1923, the landlord shall be deemed to have accepted the distribution of the rent of the holding as stated in the instrument of transfer or, if there is no such instrument, as settled between the transferor and the transferee."

Insertion of new sections 88A to 88I in Act VIII of 1935.

36. After section 88 of the said Act, the following sections shall be inserted, namely:—

" 88A. (1) When a portion of the holding of an occupancy-*raiyat* or a *raiyat* holding at fixed rate is transferred by sale (including a sale in execution of a decree

Distribution of rent of a holding on transfer of a portion thereof.

[*The Bihar Tenancy (Amendment) Act, 1938.*]

other than a decree for arrears of rent), exchange or gift, the transferor and the transferee may, in the case of a transfer made after the date of the commencement of the Bihar Tenancy (Amendment) Act, 1938, at the time of the transfer or at any time thereafter, and in the case of a transfer made before the date of the commencement of the said Act, at any time after such date, distribute the rent of the holding by agreement.

(2) Any distribution of the rent of a holding made under sub-section (1) shall be binding on the landlord, if the transferee,—

- (a) in the case referred to in clause (b) of sub-section (3), sends to the landlord by post a notice registered under Chapter VI of the Indian Post Office Act, VI of 1902, 1898, and containing the prescribed particulars; and
- (b) in all other cases, tenders with a statement containing the prescribed particulars to the landlord or his agent or, if such tender is refused, deposits with the Collector under sub-section (1) of section 88C a fee (hereinafter called the rent distribution fee) which, subject to the provisions of sub-section (3), shall be,—
 - (i) in the case of a transfer by sale, a sum equal to four *per centum* of the consideration for the sale as stated in the instrument of transfer;
 - (ii) in the case of a transfer by gift, a sum equal to four *per centum* of the value of the

[*The Bihar Tenancy (Amendment) Act, 1938.*]

portion so transferred as stated in the instrument of transfer for the purpose of the stamp duty payable on such instrument or, if there is no such instrument, as stated by the donee; and

- (iii) in the case of an exchange, a sum of two rupees payable by each of the parties to the exchange in addition to a sum equal to four *per centum* of the consideration, if any, paid in cash for the exchange.

ILLUSTRATION.

A, B and C are co-raiyats of a holding and X, Y and Z are co-raiyats of another holding. A, B and C on one side and X, Y and Z on the other, exchange portions of their respective holdings. A, B and C together shall be considered one party and X, Y and Z together shall be considered the other party to the exchange.

(3) In determining the amount payable by a transferee as rent distribution fee to the landlord, the following principles shall be observed, namely :—

- (a) any amount paid by the transferee as the landlord's registration fee in respect of the transfer shall be deducted from the amount of the rent distribution fee as calculated in accordance with the provision of clause (b) of sub-section (2);
- (b) if the amount paid by the transferee as the landlord's registration fee is equal to, or in

[*The Bihar Tenancy (Amendment) Act, 1938.*]

excess of, the amount of such rent distribution fee, the transferee shall not be liable to pay any sum as rent distribution fee; and

- (c) if the amount paid by the transferee as the landlord's registration fee exceeds the amount of such rent distribution fee, the transferee shall not be entitled to recover from the landlord the amount by which such registration fee exceeds such rent distribution fee.

(4) Nothing in sub-sections (2) and (3) shall affect the right of a landlord to make an application under sub-section (1) of section 88E.

88B. If the landlord, or his agent specially authorised by the landlord in this behalf, accepts the rent distribution fee tendered under sub-section (2) of section 88A,—

Effect of acceptance of rent distribution fee by landlord or his agent.

- (a) such landlord or such agent, as the case may be, shall forthwith grant to the transferee a written receipt signed by the landlord or the agent showing the amount of the rent distribution fee paid by the transferee, the area of the portion transferred, the rent payable for such portion in accordance with the distribution and such other particulars as may be prescribed; and
- (b) the landlord shall prepare and retain a counterfoil of the receipt.

[*The Bihar Tenancy (Amendment) Act, 1938.*]

88C. (1) If the landlord or his agent does not accept the rent distribution fee tendered under sub-section (2) of section 88A, the transferee may deposit such fee with the Collector together with the prescribed process fee for service of notice on the landlord, a statement in the prescribed form showing particulars of the land transferred, the area of such land, the rent payable for such land in accordance with the distribution, the stated value of such land, the amount of rent distribution fee and the name of the landlord or landlords registered under the Land Registration Act, 1876, and such other particulars as may be prescribed. Ben. Act
VII of
1876.

(2) If the transferee deposits the rent distribution fee with the Collector under sub-section (1), the Collector shall grant to the transferee a receipt for the same in the prescribed form, and every person claiming an interest as landlord in the portion of the holding transferred shall be deemed to have accepted the distribution of rent as settled between the transferor and the transferee on the date on which such receipt is given :

Provided that nothing in this sub-section shall affect the right of the landlord to make an application under sub-section (1) of section 88E.

88D. When the Collector grants a receipt under sub-section (2) of section 88C, he shall serve a notice in the prescribed manner and in the prescribed form containing the particulars referred to in sub-section (1) of section 88C on the landlord or landlords named in the statement mentioned in the said sub-section.
Collector to serve notice upon landlord or landlords.

[*The Bihar Tenancy (Amendment) Act, 1938.*]

88E. (1) Any landlord upon whom a notice has been served under section 88D or clause (a) of sub-section (2) of section 88A may,—

(a) in the case of a notice under section 88D, at any time within six months from the date of the service of such notice—

(i) apply to the Collector for payment to him of the sum deposited as rent distribution fee in respect of the distribution of the rent of such holding or, if he is a co-sharer landlord, for payment to him of such portion of the sum as is proportionate to his share;

(ii) apply in one and the same application for the payment to him of the sum, or a portion of it, deposited as the rent distribution fee and for any of the orders mentioned in clause (b);

(b) in the case of a notice under clause (a) of sub-section (2) of section 88A, at any time within six months from the date of the service of such notice, apply for an order declaring—

(i) that the distribution of the rent of the holding as stated in the instrument of transfer or in the notice referred to in clause (a) of sub-section (2) of section 88A or in section 88D, as the case may be, is inequitable;

(ii) that, in the case of a transfer by sale, the consideration for the sale of the portion transferred, as stated in the instrument of transfer, is below its market value.

[*The Bihar Tenancy (Amendment) Act, 1938.*]

(2) Every application under sub-section (1) shall be in the prescribed form and shall, notwithstanding anything contained in the Court-fees Act, 1870,^{VI of 1870.} bear such stamp as the Governor may, from time to time, direct by notification in the *Bihar Gazette*.

88F. (1) On receipt of an application Procedure to be followed by Collector on receipt of application. under sub-section (1) of section 88E, the Collector,—

- (i) in the case of an application under sub-clause (i) of clause (a) of the said sub-section, shall pay the amount of the deposit, or a portion of it proportionate to the share of the applicant, to the applicant;
- (ii) in the case of an application under sub-clause (ii) of clause (a) or under clause (b) of the said sub-section,—
 - (a) shall, in the case of a transfer by sale, if he is satisfied that the consideration for the sale of the portion transferred, as stated in the instrument of transfer, is below its market value, determine the market value of such portion, and,—
 - (1) in the case of an application under sub-clause (ii) of clause (a) of the said sub-section, order the transferee to pay to the landlord or deposit with the Collector within a specified time, as part of the rent distribution fee, a sum equal to the difference between the sum already deposited by the transferee and a sum equal to four *per centum* of the market

[*The Bihar Tenancy (Amendment) Act, 1938.*]

value of such portion as determined by the Collector in accordance with the provisions of sub-sections (2) and (3) of section 88A;

- (2) in the case of an application under clause (b) of the said sub-section, order the transferee to pay to the landlord or deposit with the Collector within a specified time a sum equal to the rent distribution fee determined by him as aforesaid;
- (b) may, in the case of a transfer by sale, if he is satisfied that the value of the portion has been wilfully understated with a view to reducing the amount of the rent distribution fee, order the transferee to pay to the landlord or deposit with the Collector as penalty, within a specified time, a further sum equal to the rent distribution fee as determined by him under sub-clause (a);
- (c) shall, if he is satisfied that the distribution of the rent as set forth in the instrument of transfer or, if there is no such instrument, in the notice referred to in section 88D is inequitable, pass an order distributing the rent of the original holding between the portion transferred and the portion retained by the transferor, in such manner as he considers fair and equitable; and
- (d) shall, if the right to receive the rent distribution fee is not in

[*The Bihar Tenancy (Amendment) Act, 1938.*]

dispute, pay the rent distribution fee to the person who has applied for it.

(2) The Collector shall hear all applications in respect of the same distribution of rent in a single proceeding.

88G. If any sum deposited with the Collector as rent distribution fee or any portion of such sum is not disposed of under section 88F, the Collector shall deposit such sum or such portion of the sum, as the case may be, in the treasury. Any person may apply for payment to him of the same at any time within twelve years of the date on which it is deposited in the treasury, and the Collector shall deal with any such application in the prescribed manner. If no such application for payment is made within the aforesaid period of twelve years, the Collector shall dispose of such sum in the prescribed manner.

Procedure to be followed by Collector when no application made.

88H. (1) If an application under clause (a) of subsection (1) of section 88E is presented after the rent distribution fee has been paid to any person by the Collector under section 88F, such application shall be summarily rejected.

(2) If no application for an order under sub-clause (i) of clause (b) of subsection (1) of section 88E is made, the landlord of the portion transferred shall be deemed to have accepted the distribution of the rent of the holding as stated in the instrument of transfer or as settled between the transferor and the transferee.

[*The Bihar Tenancy (Amendment) Act, 1938.*]

88I. (1) Any sum which a transferee is liable to deposit with the Collector in accordance with an order passed by the Collector shall be recoverable from such transferee as a public demand under the Bihar and Orissa Public Demands Recovery Act, 1914, and the portion of the holding in respect of the distribution of the rent whereof such sum is payable shall be liable to be sold in execution of a certificate filed by the Certificate Officer in respect of such demand, and the proceeds of such sale shall, after deduction of any amount due for arrears of rent in respect of the holding or portion sold, be applied first to the payment of such sum.

B. & O.
Act IV of
1914.

(2) An order passed by the Collector under sub-clause (c) of clause (ii) of sub-section (1) of section 88F shall, unless the Collector for reasons to be recorded in writing otherwise directs, take effect from the date of the transfer or, if such transfer was made after the first day of January, 1923, and before the date of the commencement of the Bihar Tenancy (Amendment) Act, 1938, and if there is no instrument of transfer, from the date on which the transaction was completed.

(3) The Collector shall have power to award costs to any party to any proceeding under sections 88E to 88H, and any sum so payable as costs shall be recoverable as a public demand.

(4) An order of the Collector passed under section 88F shall be final and shall not be questioned in any Civil Court :

Provided that, if such an order is passed by a Deputy Collector exercising the powers of a Collector, an appeal

[The Bihar Tenancy (Amendment) Act, 1938.]

shall lie to the Collector of the district and his decision on such appeal shall be final :

Provided further that nothing in this section shall prevent any person entitled to receive any sum paid by the Collector under section 88F or section 88G from recovering the same in the Civil Court from the person to whom it was paid."

Amendment of section 113 of Act VIII of 1885.

37. In sub-section (1) of section 113 of the said Act, for the words, figure and brackets " or on the ground specified in sub-clause (i)", the words, figures and brackets " or on any of the grounds specified in sub-clauses (i) and (ii)" shall be substituted.

Substitution of new section for section 121 of Act VIII of 1885.

38. For section 121 of the said Act, the following section shall be substituted, namely :—

" 121. (1) Where an arrear of rent is due to the landlord ^{Cases in which an application for distraint may be made.} of a *raiyat* or under-*raiyat*, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,—

- (a) any crops or other products of the earth standing or un-gathered on the holding;
- (b) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are

[*The Bihar Tenancy (Amendment) Act, 1938.*]

deposited on the holding or on a threshing floor or place for treading out grain whether in the fields or within a homestead.

(2) An application under sub-section (1) may be made by a co-sharer landlord in respect of his share of the rent, if he makes all the remaining co-sharer landlords parties defendant to the application, and satisfies the Court that the other co-sharer landlords are unwilling to join in the application, or that the share of the rent payable to such co-sharers has been paid :

Provided that an application shall not be made under this section—

- (1) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or
- (2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or
- (3) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord; or

[*The Bihar Tenancy (Amendment) Act, 1938.*]

- (4) by the remaining co-sharer landlords, in respect of the arrear of rent for the year for which one co-sharer landlord has filed an application under sub-section (2) in which such co-sharer landlords have not joined.”

Amendment of section 122 of Act VIII of 1936. **39.** In sub-section (1) of section 122 of the said Act,—

- (a) for clause (b), the following clause shall be substituted, namely :—

“ (b) the name of the tenant and, in the case of an application by a co-sharer landlord, the names of the remaining co-sharer landlords; ”; and

- (b) for clause (d), the following clauses shall be substituted, namely :—

“ (d) the amount of the arrear, and, in the case of an application by a co-sharer landlord, the share of such co-sharer landlord;

(d1) the interest, if any, claimed on the amount of the arrear and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is

[*The Bihar Tenancy (Amendment) Act, 1938.*]

claimed, the contract or proceeding, as the case may be, under which that amount is payable;”.

Amendment of
section 123 of
Act VIII of
1885.

40. In section 123 of the said Act,—

(a) for sub-section (2), the following sub-section shall be substituted, namely :—

“ (2) The Court may, if it thinks fit, examine the applicant and shall, with as little delay as possible,—

(a) if the application is by a co-sharer landlord, fix a date for the hearing of the application and give notice of such date to the remaining co-sharers; and

(b) in all other cases, admit the application or reject it or permit the applicant to furnish additional evidence in support of it.”;

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

“ (2a) In the case of an application made by a co-sharer landlord, the Court may, on the date mentioned in the notice, after hearing such of the remaining co-sharers as may appear, admit the application, allow the remaining co-sharers or any of them to join in the application, or reject the application.”; and

(c) in sub-section (3), the words, figure and brackets “ under sub-section (2)” shall be omitted.

[The Bihar Tenancy (Amendment) Act, 1938.]

Substitution of new section for section 124 of Act VIII of 1885.

41. For section 124 of the said Act, the following section shall be substituted, namely :—

“ 124. (1) If an application is admitted under Execution of the last fore-order for distraint. going section and an order for distraining any produce is made, the Court shall send a copy of the order containing the prescribed particulars to the Collector for execution.

(2) The Collector shall, upon receipt of the copy of the order referred to in sub-section (1), depute an officer to distrain the produce specified therein, or such portion of that produce as he thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in this behalf, and publishing a notification of the distraint in accordance with rules to that effect made by the Provincial Government :

Provided that produce, which from its nature does not admit of being stored, shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.”

Amendment of section 130 of Act VIII of 1885.

42. In section 130 of the said Act, for the words “ distraint shall be immediately withdrawn ”, the words “ order

[*The Bihar Tenancy (Amendment) Act, 1938.*]

of distraint shall not be executed ” shall be substituted.

Amendment of section 136 of Act VIII of 1885.

43. In section 136 of the said Act,—

- (a) in sub-section (1), for the words “ in the Court issuing ”, the words “ with the Collector executing ” shall be substituted; for the words “ the Court or officer ”, the words “ the Collector or officer ” shall be substituted; and for the words “ distraint shall forthwith be withdrawn ”, the words “ order of distraint shall not be executed ” shall be substituted;
- (b) in sub-section (2), for the words “ into the Court ”, the words “ to the Collector ” shall be substituted; and
- (c) in sub-section (4), for the word “ Court ”, the word “ Collector ” shall be substituted.

Amendment of section 140 of Act VIII of 1885.

44. In section 140 of the said Act,—

- (a) after the words “ Civil Court ”, the words “ or a Collector ” shall be inserted; and
- (b) the following proviso shall be inserted, namely:—

“ Provided that, if such an order is passed by a Deputy Collector exercising the powers of a Collector, an appeal shall lie to the Collector of the district and his decision on such appeal shall be final.”

Repeal of section 141 of Act VIII of 1885.

45. Section 141 of the said Act shall be omitted.

[The Bihar Tenancy (Amendment) Act, 1938.]

Amendment of section 142 of Act VIII of 1935.

46. Section 142 of the said Act shall be renumbered as section 141, and in section 141, as renumbered, for the words "High Court", the words "Provincial Government" shall be substituted; and for the words "under this Chapter", the words "under the foregoing provisions of this Chapter" shall be substituted.

Insertion of new section 142 in Act VIII of 1935.

47. After section 141 of the said Act, as renumbered, the following section shall be inserted, namely:—

" 142. (1) If, at any time, the Provincial Government are satisfied that, in any local area or in respect of any class of cases, circumstances exist which render it impracticable for a landlord to realise his rent, the Provincial Government may, by notification, direct that all rents in such local area or class of cases shall, after the publication of the notification, be realised by the application of the prescribed procedure.

(2) If, in the opinion of the Provincial Government, circumstances so require, they may further direct that such procedure shall be applied and the rents realised in the said local area or class of cases by the prescribed authority.

(3) The Provincial Government may make rules to give effect to the provisions of this section."

Substitution of a new heading for the heading to Chapter XIII of Act VIII of 1935.

48. For the heading to Chapter XIII above section 143 of the said Act, the heading "JUDICIAL PROCEDURE FOR THE RECOVERY OF RENT BY SUIT" shall be substituted.

[*The Bihar Tenancy (Amendment) Act, 1938.*]

Amendment of sections 143 and 144 of Act VIII of 1885.

49. In sections 143 and 144 of the said Act, after the words "Code of Civil Procedure", wherever they occur, the figures "1908" shall be inserted.

Amendment of section 145 of Act VIII of 1885.

50. In section 145 of the said Act,—

- (a) after the words "under the hand of the landlord", the words "or by any person authorized by the landlord in this behalf by writing under his hand" shall be inserted;
- (b) after the words "Code of Civil Procedure", the figures "1908" shall be inserted; and
- (c) the following proviso shall be added, namely:—

"Provided that notwithstanding anything contained in the Code of Civil Procedure, 1908, every ^v of 1908. such *naib* or *gumashta* may verify the pleadings on behalf of the landlord and shall not be required to obtain the permission of the Court for the purpose of such verification."

Amendment of section 146 of Act VIII of 1885.

51. In section 146 of the said Act,—

- (a) for the words and figures "referred to in section 58 of the Code of Civil Procedure", the words and figures "mentioned in rule 1 of Order VII of the Code of Civil Proce-^v of 1908. dure, 1908" shall be substituted; and
- (b) for the words "that section", the words and figures "rule 2 of Order IV of the said Code" shall be substituted.

Amendment of section 147 of Act VIII of 1885.

52. In section 147 of the said Act, for the words and figures "section 373 of the Code of Civil Procedure", the

[*The Bihar Tenancy (Amendment) Act, 1938.*]

words and figures “ rule 1 of Order XXIII of the Code of Civil Procedure, v of 1908. 1908 ” shall be substituted.

Amendment of
section 147A of
Act VIII of
1885.

53. In sub-section (1) of section 147A of the said Act, for the words and figures “ section 375 of the Code of Civil Procedure”, the words and figures “ rule 3 of Order XXIII of the Code of Civil Procedure, 1908 ” shall be substituted. v of 1908.

Amendment of
section 148 of
Act VIII of 1885.

54. In section 148 of the said Act,—

(a) for clause (a), the following clause shall be substituted, namely:—

“ (a) sections 68 to 72 (both inclusive), rules 1 to 13 (both inclusive) of Order XI, rules 22 and 83 of Order XXI, rule 2 of Order XLVIII and Schedule III of the Code of Civil Procedure, v of 1908. 1908, shall not apply to any such suit;”;

(b) in clause (b) for the words “section 50 of the Civil Procedure Code”, the words, figures and brackets “ rules 1, 2, 4, 5, 6 and sub-rule (2) of rule 9 of Order VII of the Code v of 1908. of Civil Procedure, 1908 ” shall be substituted;

(c) after clause (b2), the following new clause shall be inserted, namely:—

“ (b3) the plaintiff shall further contain a statement of the value of the land held by the tenant, or, if the plaintiff desires any particular portion of such land to be sold in the event of his getting a decree, a statement of the

[*The Bihar Tenancy (Amendment) Act, 1938.*]

situation, designation, extent, boundary and value of that portion;”;

(d) in clause (c), the words “ unless the Court is of opinion that the summons should be for the settlement of issues only ” shall be omitted;

(e) in clause (d), for the words and figures “ Part III of the Indian Post Office Act, 1866 ”, the words and figures “ Chapter VI of the Indian Post Office Act, 1898 ” shall ^{VI of 1898.} be substituted;

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

“ (d1) notwithstanding anything contained in the Code of Civil Procedure, 1908, or in ^{V of 1908.} any rules made thereunder, the plaintiff in such a suit shall not be required to supply any identifier for the purpose of serving summons or notice on the defendant or the judgment-debtor or on any witness, and the serving officer shall serve the summons or notice after due inquiry as to the identity of the person on whom, or the house or property where, the summons or notice is to be served. The serving officer shall serve the summons or notice in the presence of at least two persons and he shall, whenever possible, require the signatures of those persons to be endorsed on the original summons or notice and, where he is unable to serve the summons or notice, he shall,

[*The Bihar Tenancy (Amendment) Act, 1938.*]

whenever possible, require the signatures of two persons of the village, in which the person to be served with the summons or notice ordinarily resides, to be so endorsed;

(d2) if the natural guardian of a minor defendant is—

(a) his father, father's father, or, in the case of a married female, her husband; or

(b) his mother's father or mother's brother with whom the minor resides,

and if upon notice being served upon such guardian under rule 3 of Order XXXII of the Code of Civil Procedure, ^{v of 1908.} 1908, he does not appear and object to his appointment as guardian for the suit for such defendant, the Court may, notwithstanding anything to the contrary contained in the said Code, presume the consent of such guardian to his appointment as guardian for the suit for such defendant;”;

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

“ (ee) notwithstanding anything to the contrary contained in the Code of Civil Procedure, ^{v of 1908.} 1908, whenever a Court adjourns the hearing of a suit, it shall record the reasons therefor;”;

[*The Bihar Tenancy (Amendment) Act, 1938.*]

(h) in clause (f), for the words and figures “section 189 of the Code of Civil Procedure”, the words and figures “rule 13 of Order XVIII of the Code of Civil Procedure, 1908” shall be^v of 1908. substituted;

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

“(f1) where the suit is a suit for the recovery of money-rent and the Court decides to proceed with the same *ex-parte*, it may dispense with oral evidence and determine such suit upon the affidavit of the plaintiff or his agent, if such plaintiff or agent is able of his own knowledge to prove the facts stated in such affidavit :

Provided that the Court may call for oral evidence in case it considers such evidence necessary;”;

(j) clause (ff) shall be renumbered clause (f2) and in clause (f2) as renumbered, for the words “the landlord”, in the first place in which they occur, the words “a party” shall be substituted; after the words “such documents”, the words “may be” shall be inserted; after the words “true copies or extracts”, the words “without the payment of any court-fee, and such copies or extracts” shall be inserted; and for the words “the landlord”, in the second place in which they

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occur, the words " the party " shall be substituted;

(k) for clause (g), the following new clause shall be substituted, namely:—

“(g) the Court shall, when passing a decree, make an order directing that a notice be sent to the defendant at the plaintiff’s cost in the prescribed form stating the amount payable to the plaintiff under the decree (including the cost of such notice) and calling upon the defendant to pay to the plaintiff or deposit into Court such amount within a period of forty-five days from the service of such notice;” and

(l) in clause (h), for the words and figures “ section 232 of the Civil Procedure Code ”, the words and figures “ rule 16 of Order XXI of the Code of Civil Procedure, 1908 ” shall^v of 1908. be substituted.

Insertion of new section 148AA in Act VIII of 1935.

55. After section 148A of the said Act, the following new section shall be inserted, namely:—

“148AA. (1) If a *raiyat* defaults in payment of the rent of his holding for a period of four consecutive years, ^{When a *raiyat* may be held to be a habitual defaulter and consequences of such finding.} after the commencement of the Bihar^{Bihar Act VIII of 1937,} Tenancy (Amendment) Act, 1937, and^{1937.} in consequence of such default the landlord obtains one or more than one decree against such *raiyat* in respect of the arrears of such rent, and if in the year

[*The Bihar Tenancy (Amendment) Act, 1938.*]

immediately following the said period of four years the *raiyat* again defaults in payment of the rent of the said holding for such year, the Court may, in a suit for the recovery of the arrears of rent for the whole of the said year, hold that the defendant is a habitual defaulter and that the entire holding, in respect of which the suit has been filed, is liable to be sold for the realisation of the amount payable under the decree in such suit :

Provided that the Court shall not hold as aforesaid unless, after giving the defendant a reasonable opportunity of being heard and after taking into consideration all the facts and circumstances of the case, it is satisfied that the defendant had no reason beyond his control for default.

(2) If in any suit for the recovery of arrears of rent of a holding it is proved that, previous to the institution of such suit, the landlord had obtained one or more than one decree for arrears of rent in respect of the said holding against the *raiyat* for four years, whether consecutive or not, after the commencement of the Bihar Tenancy (Amendment) Act, 1937, the Court may, notwithstanding anything to the contrary contained in sub-section (1), hold the *raiyat* to be a habitual defaulter if, after giving the *raiyat* a reasonable opportunity of being heard and considering all the facts and circumstances of the case, the Court is satisfied that the *raiyat* had wilfully defaulted without reasonable cause in paying the rent for the years in respect of which the aforesaid decree or decrees were obtained and that the payments, if any, made during the years which intervened between the years in respect of which

Bihar Act
VIII of
1937.

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the said decrees had been obtained were nominal payments made with the intention of defeating the provision of sub-section (1).

(3) Notwithstanding anything to the contrary contained in this Act, if the Court holds a defendant a habitual defaulter under this section, it shall, when passing the decree in the suit, direct that if the defendant fails to pay the decretal amount to the plaintiff or deposit the same into Court within the time mentioned in clause (g) of section 148, the whole of his holding shall, if the decree-holder so desires, be sold."

Amendment of section 153A of Act VIII of 1885.

56. In section 153A of the said Act,—

(a) for the words and figures " section 108 of the Code of Civil Procedure ", the words and figures " rule 13 of Order IX of the Code of Civil Procedure, 1908 " shall be substituted; ^v of 1908. and

(b) for the words and figures " section 623 of the said Code ", the words and figures " section 114 and rule 1 of Order XLVII of the said Code " shall be substituted.

Amendment of section 158 of Act VIII of 1885.

57. In clause (c) of sub-section (1) of section 158 of the said Act, after the words " under-*raiyat* ", the words " with or without occupancy-right " shall be inserted.

Repeal of Chapter XIII A of Act VIII of 1885.

58. (1) Chapter XIII A of the said Act shall be omitted.

(2) From the date on which this Act comes into force all orders passed before such date by the Provincial Government allowing a landlord's application

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under section 158A shall cease to have effect as if such orders had never been passed :

Provided that nothing in this section shall affect any certificate signed under sub-section (5) of the said section 158A, and any such certificate may be executed as if this Act had not been passed.

Repeal of the heading to Chapter XIV of Act VIII of 1885.

59. The words and figures " Chapter XIV—EXECUTION OF DECREES FOR ARREARS OF RENT ", occurring above section 158AA, shall be omitted.

Substitution of new section for section 158AA of Act VIII of 1885.

60. For section 158AA, the following section shall be substituted, namely :—

" 158AA. (1) If, within the time mentioned in clause (g) of section 148, the judgment-debtor fails to pay to the decree-holder or deposit into Court the decretal amount, such amount may, upon an application made in this behalf by the decree-holder, be realised by the attachment and sale of the property of the judgment-debtor, both movable and immovable :

Provided that the movable property of the judgment-debtor shall not without his consent in writing be so attached or sold unless the decree cannot be satisfied by the attachment and sale of the holding for the arrears of the rent of which the decree was passed.

(2) The application referred to in sub-section (1) shall be in the prescribed form, shall contain the prescribed particulars and shall state the mode in which the assistance of the Court is required."

Amendment of section 158B of Act VIII of 1885.

61. In section 158B of the said Act,—

(a) in sub-section (1), after the word " holding ", in the first place

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in which it occurs, the word
“ or ” shall be inserted; and

(b) in sub-section (2),—

(i) for the words “ an applica-
tion is made for execution of
a decree for arrears of rent
due in respect of a tenure or
holding ”, the words “ the
application mentioned in sec-
tion 158AA is made and the
decree-holder wants to pro-
ceed against the tenure or
holding or portion of the
tenure or holding in respect
of which the decree was
obtained,” shall be substi-
tuted; and

(ii) the words “ for execution ”,
in the second place in which
it occurs, shall be omitted.

**Repeal of section
162 of Act VIII
of 1885.**

62. Section 162 of the said Act shall
be omitted.

**Amendment of
section 162A of
Act VIII of
1885.**

63. In section 162A of the said
Act,—

(a) for the word and figures “ sec-
tion 162 ”, the word, figures
and letters “ section 158AA ”
shall be substituted;

(b) in the first proviso, for the words
“ specifies which portion of
the holding ”, the words
“ desires that the portion of
the holding mentioned in the
plaint or any other portion
thereof ” shall be substituted;

(c) in the second proviso, after the
word “ holding ”, the words
“ created before the date of
the institution of the suit in
which the decree was passed ”
shall be inserted; and

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(d) after the said proviso, the following further proviso shall be inserted, namely:—

“ Provided again that nothing in this section shall be deemed to authorise the sale of a portion of a plot comprised in a holding.”

Amendment of section 163 of Act VIII of 1935.

64. In section 163 of the said Act,—

(a) in sub-section (4), for the words and figures “section 289 of the said Code”, the words and figures “rule 67 of Order XXI of the Code of Civil Procedure, 1908” shall be substituted; and ^{V of 1908.}

(b) in sub-section (7), for the word and figures “section 290”, the words and figures “rule 68 of Order XXI” shall be substituted.

Amendment of section 163A of Act VIII of 1935.

65. To section 163A of the said Act, the following provisos shall be added, namely:—

“ Provided that if the highest amount bid for such holding or portion of a holding is less than the price specified for the same in the sale proclamation, the Court may sell such holding or portion for such highest amount if the decree-holder consents in writing to forego so much of the amount of the decree as is equal to the difference between the highest amount bid and the price specified for the holding or portion in the sale proclamation :

Provided further that nothing in this section shall apply to the sale of a holding in execution of a decree passed in a suit in which the defendant has been held to be a habitual defaulter under section 148AA.”

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Amendment of section 163B of Act VIII of 1885.

66. In section 163B of the said Act,—

(a) in sub-section (1), after the word “decree”, the words and figures “or a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914” shall be inserted; and

B. & O. Act IV of 1914.

(b) in sub-section (5), for the words “payable to the Collector”, the words and figures “under the Bihar and Orissa Public Demands Recovery Act, 1914” shall be substituted.

B. & O. Act IV of 1914.

Amendment of section 164 of Act VIII of 1885.

67. In sub-section (1) of section 164 of the said Act, for the words “the last foregoing section”, the word and figures “section 163” shall be substituted.

Amendment of section 165 of Act VIII of 1885.

68. In section 165 of the said Act, for the words and figures “section 289 of the Code of Civil Procedure”, the words and figures “rule 67 of Order XXI of the Code of Civil Procedure, 1908,” shall be substituted.

V of 1908.

Amendment of section 169 of Act VIII of 1885.

69. In sub-section (1) of section 169 of the said Act, for the words and figures “section 295 of the Code of Civil Procedure”, the words and figures “section 73 of the Code of Civil Procedure, 1908” shall be substituted.

V of 1908.

Amendment of section 170 of Act VIII of 1885.

70. In section 170 of the said Act,—

(a) in sub-section (1), for the words, figures, letter and brackets “sections 278 to 283 (both inclusive) and 310A of the Code of Civil Procedure” the words, figures and brackets “rules 58 to 63 (both inclusive) and 89 of Order XXI of the

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Code of Civil Procedure, ^v of 1908.
1908 " shall be substituted;

(b) in sub-section (3), for the words " landlord's fee ", the words " landlord's registration fee " shall be substituted; and for the words " landlord's transfer fee ", the words " landlord's registration fee " shall be substituted; and

(c) sub-section (4) shall be omitted.

Insertion of new section 171A in Act VIII of 1886. 71. After section 171 of the said Act, the following section shall be inserted, namely :—

" 171A. (1) Notwithstanding anything to the contrary contained in any law, when a tenure or holding or portion thereof, mortgaged by a tenant, has been advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914, for default of the mortgagor who was liable under the terms of the contract between him and the mortgagor for payment of the arrears of rent for which the decree or certificate was obtained, and the mortgagor tenant pays into Court the amount requisite to prevent the sale,—

The amount paid by a mortgagor to prevent sale together with fifty *per centum* to be deemed to be debt due from the mortgagee.

B. & O. Act IV of 1914.

(a) the amount so paid by him together with fifty *per centum* of the said amount by way of compensation shall be deemed to be a debt due from the mortgagee; and

(b) the mortgagor shall, on application to the Court executing the

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decree, be entitled to be put in possession of the tenure or holding or portion thereof by ejecting the mortgagee and to retain possession of it until the debt has been discharged.

(2) Nothing in this section shall affect any other remedy to which the mortgagor would be entitled."

Amendment of section 173 of Act VIII of 1885.

72. In sub-section (1) of section 173 of the said Act, for the words and figures " section 294 of the Code of Civil Procedure ", the words and figures " rule 72 of Order XXI of the Code of Civil Procedure, 1908 " shall be substituted. v of 1908.

Amendment of section 174 of Act VIII of 1885.

73. In section 174 of the said Act,—

- (a) in sub-section (1), for the words " landlord's transfer fee ", the words " landlord's registration fee " shall be substituted;
- (b) sub-section (1a) shall be omitted;
- (c) in sub-section (2), for the word and figures " section 315 ", the words and figures " rule 93 of Order XXI " shall be substituted; and after the word " Procedure ", the figures " 1908 " shall be inserted;
- (d) in the proviso to sub-section (2), for the word and figures " section 311 ", wherever they occur, the words and figures " rule 90 of Order XXI " shall be substituted; and after the word " Procedure ", wherever it occurs, the figures " 1908 " shall be inserted; and
- (e) in sub-section (3), for the word and figures " section 313 ", the

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words and figures " rule 91 of Order XXI " shall be substituted; and after the word " Procedure ", the figures "1908 " shall be inserted.

Insertion of new section 174A in Act VIII of 1885.

74. After section 174 of the said Act, the following section shall be inserted, namely :—

" 174A. (1) When a tenure or a holding or a portion of a holding has been sold in execution of a decree for arrears of rent in accordance with the provisions of this Chapter and a certificate in respect thereof has been granted under rule 94 of Order XXI of the Code of Civil Procedure, 1908, the purchaser may, subject to the provisions of this Act, make an application to the Court for an order for delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property.

(2) An application made under sub-section (1) shall be dealt with as if it were an application for delivery of possession under the Code of Civil Procedure, 1908."

V of 1908.

Amendment of section 178 of Act VIII of 1885.

75. In sub-section (3) of section 178 of the said Act,—

(a) in clause (a), after the word " raiyat ", the words " or an under-raiyat " shall be inserted;

(b) in clauses (b) and (bb), after the word " occupancy-raiyat ", wherever it occurs, the words " or an under-raiyat with a right of occupancy " shall be inserted; and

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(c) in clause (g), after the figures " 40 " the words, figures and letter " or section 40B " shall be inserted.

Renumbering of chapters XV, XVI and XVII of Act VIII of 1885.

76. Chapters XV, XVI and XVII of the said Act shall be respectively renumbered as chapters XIV, XV and XVI.

Amendment of section 188 of Act VIII of 1885.

77. For the proviso to section 188 of the said Act, the following proviso shall be substituted, namely :—

“ Provided that one or more co-sharer landlords may file an application under sub-section (1) of section 88E or under sub-section (2) of section 121 making all the remaining co-sharer landlords parties defendant to the proceeding.”

Amendment of section 188A of Act VIII of 1885.

78. In section 188A of the said Act, for the words “ passed in a suit framed under sub-section (1) or sub-section (2) of ”, the words “ referred to in ” shall be substituted; and for the word and figures “ Chapter XIV ”, the word and figures “ Chapter XIII ” shall be substituted.

Substitution of a new section for section 189 of Act VIII of 1885.

79. For section 189 of the said Act, the following section shall be substituted, namely :—

“ 189. (1) The Provincial Government may, from time to time, by notification in the *Bihar Gazette*, make rules for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may, in like manner, make rules consistent with this Act—

(a) to regulate the procedure to be followed by Revenue-officers in

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the discharge of any duty imposed upon them by or under this Act, and may, by such rules, confer upon any such officer—

- (i) any power exercised by a Civil Court in the trial of suits;
 - (ii) 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 ^{Ben. Act} Survey Act, 1875; and ^{V of 1875.}
 - (iii) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil;
- (b) to prescribe the forms, and the mode of service, of notices issued under this Act, where no form or mode is prescribed by this or any other Act;
 - (c) to prescribe the manner in which landlord's registration fees or rent distribution fees shall be transmitted to the landlord;
 - (d) to prescribe the authority by whom the fees deposited under sections 12, 13, 15 and 17, clause (a) of section 18 and section 26A may be declared to be forfeited, and the mode in which such fees, when so forfeited, shall be dealt with;
 - (e) to prescribe the form of notice to be given under sub-section (1) of section 25A and the manner in which such notice shall be served; and'

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- (f) to provide for all or any of the following matters, namely:—
- (i) the process fee mentioned in sub-section (2) of section 12;
- (ii) the form of the notice referred to in section 26B and the particulars to be entered therein;
- (iii) the authority to whom appeals shall lie under sub-section (6) of section 40 and the procedure to be followed by the said authority in hearing and disposing of such appeals:
- (iv) the authority to whom appeals shall lie under sub-section (6) of section 58;
- (v) the particulars to be contained in the notice and the statement referred to in sub-section (2) of section 88A;
- (vi) the particulars to be contained in the receipt mentioned in clause (a) of section 88B;
- (vii) the form of the statement referred to in sub-section (1) of section 88C, the particulars to be entered therein, and the amount of the process fee referred to in the said sub-section;
- (viii) the form of the receipt referred to in sub-section (2) of section 88C;
- (ix) the form of the notice referred to in section 88D and the manner of serving the said notice;
- (x) the form of the application referred to in sub-section (2) of section 88E;
- (xi) the manner of dealing with applications and disposing of undelivered sums referred to in section 88G;

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- (xii) the form of application under sub-section (1) of section 112A;
- (xiii) the procedure to be followed by the Collector in the exercise of the powers conferred on him by section 112A;
- (xiv) the authority to whom appeals shall lie under sub-section (1) of section 112B, and the procedure to be followed by the said authority in hearing and disposing of such appeals;
- (xv) the procedure to be applied for the realisation of rent in cases referred to in section 142, and the authority by whom such procedure may be applied and the rent may be realised; and
- (xvi) the form of applications under section 158AA and the particulars to be contained in such applications.

Amendment of
Schedule III to
Act VIII of 1885.

80. In Schedule III to the said Act, after article 1(a), the following articles shall be inserted, namely:—

- | | | |
|--------------------------------------------------------------------------------------------------------|----------------|--------------------------------------|
| “ 1 (b) To eject an under-
<i>raiyat</i> on the ground
specified in clause (b)
of section 49. | One year. | The date
of the
breach. |
| 1 (c) To eject an under-
<i>raiyat</i> on the ground
specified in clause (c)
of section 49. | Six
months. | The expi-
ration of
the term.” |