

**GOVERNMENT OF BENGAL.**

**LEGISLATIVE DEPARTMENT.**

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**REPORT OF THE COMMITTEE APPOINTED TO CONSIDER  
THE AMENDMENT OF THE BENGAL TENANCY ACT, 1885.**

**Containing—**

- 1. THE REPORT ;**
- 2. PRELIMINARY DRAFT OF A BENGAL TENANCY AMENDMENT  
BILL—**

**WITH**

- 3. NOTES ON CLAUSES, and**
- 4. MINUTES OF DISSENT.**

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## REPORT OF THE COMMITTEE APPOINTED TO CONSIDER THE AMENDMENT OF THE BENGAL TENANCY ACT.

In a Resolution passed on the 7th July, 1921, the Bengal Legislative Council recommended the Government to appoint a Committee consisting of officials and non-officials to consider and report what amendments are needed in the Bengal Tenancy Act. Orders appointing our Committee were issued in Government Resolution No. 7383 L.R., dated the 20th August, 1921.

2. Our task has proved heavy and onerous. The Bengal Tenancy Act was passed in 1885, and the discussions which led up to it are now nearly forty years old. During the last generation great changes have occurred in the economic and agrarian conditions of Bengal. There has been a vast amount of litigation and some conflict of judicial decisions in regard to many of the fundamental provisions of the Act. Moreover, during the last twenty years, a cadastral survey has been made and a record-of-rights prepared for an area covering nearly two-thirds of the Presidency as now constituted, and these operations have brought to light many defects in the working of the Act and have indicated that it is in many respects unsuited to modern conditions. It is no wonder, therefore, that there has, for some time past, been a growing conviction in the minds of the Government and of the public that a radical revision of the Act is required. It has been our task to undertake that revision. We have held no less than 43 meetings during the last year, and have discussed in detail practically all the important sections of the Act. We have not been able to reach complete unanimity in our conclusions, and, in a matter affecting such diverse and complicated interests, unanimity is hardly to be expected. We are, however, agreed on most of the broad principles, which should govern a revision of the Act, and, where we differ as to the details arising out of the application of these principles, we have endeavoured to indicate the various considerations on either side, with the object of lightening the labours of the Government and of the Legislature, with whom the ultimate decision must rest.

3. We desire to make it clear at the outset that the difficulties of the problem are not due in any considerable measure to the existence in Bengal of disturbed agrarian relations or of bad feeling between landlord and tenant. Such questions, which were so prominent in the discussions of earlier tenancy legislation, are now relatively unimportant, but, while our task has been lightened by the absence of unpleasant and unprofitable controversy, it has been sufficiently formidable in other respects. The main defect of the Bengal Tenancy Act at the present day is that it does not provide adequately for the extraordinarily complicated state of agrarian relations which has grown up owing to the widespread adoption both by landlords and by tenants of the practice of subdivision and subinfeudation of rights in land. The most difficult part of our labours has been to adapt the law to meet this state of things. We are conscious that our proposals may be criticised on the ground that they will make the law unduly complicated, but the situation with which we have had to deal is complicated in the extreme, and there is no way of meeting it which is not complicated, short of forbidding subinfeudation and subdivision of tenures and holdings altogether—a measure which it would be impracticable to enforce without wholesale disturbance of existing rights.

4. The essential feature of tenancy legislation in Bengal has always been the recognition of a right of occupancy in certain classes of tenants, that is, broadly speaking, a heritable right to hold land subject to the payment of rent, accompanied by protection from ejection so long as the conditions of the tenancy are fulfilled. The regulations passed in connection with, and subsequent to, the Permanent Settlement recognised the existence of this right in the resident raiyats of the village, who were generally known as

*khud kasht* or *kadimi*. On the other hand, new comers were required to take settlement of lands on the terms imposed by the landlord and might be merely tenants-at-will. The old regulations contained no indication as to the length of time required for the establishment of *kadimi* rights, and no legal definition of the classes of tenants entitled to occupancy rights was attempted until 1859. In Act X of that year, every raiyat who had cultivated or held land for twelve years was declared to have a right of occupancy in that land, so long as he paid the rent payable on account of the same. But this rule did not apply to proprietor's private land let out on lease for a term of years, or year by year, and the accrual of occupancy rights in any land could also be barred by a written contract. In the twenty-six years which followed the passing of the Act of 1859, these provisions were strongly assailed. It was urged that to make the accrual of occupancy rights dependant on twelve years' cultivation of a particular piece of land and to allow such accrual to be barred by a written contract was a serious infringement of the customary rights of the resident raiyats of the country. On the other hand, it was argued that the effect of the twelve years' rule was to confer rights of occupancy on a large class who were previously mere tenants-at-will. The whole question was reviewed by the Rent Commission, which drew up the first draft of what eventually became the Tenancy Act of 1885. In the end, they made an important modification of the twelve years' rule. It was laid down that every person who for a period of twelve years has continuously held as a raiyat land situate in any village shall be deemed to have become at the end of that period a settled raiyat of the village, and that every settled raiyat of a village shall have a right of occupancy in all lands for the time being held by him as a raiyat in that village. As in the Act of 1859, the accrual of occupancy rights can be barred in proprietor's private land let out for a term of years or from year to year.

X 5. The principle of the settled raiyat adopted by the framers of the Bengal Tenancy Act has been generally accepted as a satisfactory recognition of the customary rights of the resident raiyats of a village as introduced in the old regulations. It affords almost a complete solution of the status problem in areas where conditions are simple and there are only two persons interested in the land, namely, the proprietor landlord and the cultivating tenant. But in Bengal, at the present day, conditions are rarely so simple as this. There is often a whole chain of persons interested in the land, both as rent-receivers and as rent-payers, between the proprietor at the top and the cultivating tenant. Under the law as it stands, the occupancy tenant right can only be enjoyed by one person in the chain, and, as the law is not properly adapted to the complicated state of subinfeudation which actually exists, it frequently happens that the occupancy tenant right gets into the hands of the wrong person, and the cultivating tenant who ought to have the right finds himself in the position of a tenant-at-will. It is this limitation of the legal occupancy right to a single individual among the numerous persons who may be interested in the land that is at the root of most of the difficulties experienced in the administration and interpretation of the Act in Bengal, and we are convinced that it is necessary to recast this fundamental provision of the Act, in order to meet the requirements of modern conditions. The problem is beset with difficulties, and no solution that we have considered is entirely free from risks and objections, but it is, in our opinion, essential to tackle the problem and to adopt some solution which, even though it may not be ideal, will be better suited to present day conditions than the existing law.

X 6. The principle which we put forward for consideration is based on the fact that, although the law confers the occupancy tenant right on only one person, yet as a matter of custom and practice the essentials of the occupancy right are ordinarily enjoyed by most of the persons in the chain of those who are interested in the land as rent-receivers or as rent-payers or as both. There are variations for different classes in regard to such matters as the limitations on enhancement and the methods of settlement of rent, the right of transfer and so on, but such matters are merely

incidental and are not essential to what we may call briefly the occupancy status, meaning thereby a heritable right to hold land subject to the payment of the rent legally payable for the time being. This is the essential element of a permanent tenure, which is defined in the present Act as a tenure which is heritable and not held for a limited time, and most tenures in Bengal other than those held under leases for limited periods, fall within this definition. The same essential element attaches under the existing Act to all raiyati holdings other than those of non-occupancy raiyats and under-raiyats, and even in the case of under-raiyats the possibility of the acquisition of a right of occupancy by custom is recognised in section 183, though the precise incidents of such a right in the case of under-raiyats are nowhere defined. We are convinced that no mere tinkering with the description of the differences between a raiyat and tenure-holder contained in section 5 of the Act will meet the case. No definition of the term "raiyat" will serve to prevent the acquisition of the occupancy raiyati status by the wrong person if that status is limited to one person. In these circumstances, we consider that the best solution of the difficulty will be to give to all persons holding land under the person who enjoys the legal status of raiyat a right of occupancy as against his immediate landlord. We would except only cases of temporary subletting by persons who for genuine reasons are unable temporarily to cultivate the land themselves. In such cases we think it is reasonable that the temporary sub-tenants should be debarred from acquiring occupancy rights to the detriment of their lessors if the latter are able within a reasonable time to resume cultivation themselves. But, in all other cases, we would give the tenant an occupancy right as against his immediate landlord, that is, a permanent heritable right to hold the land so long as he pays the legal rent and complies with the conditions of the tenancy, and we would add to this the same protection against unreasonable enhancement of rent as is enjoyed by occupancy raiyats under the present Act and the same rights of transfer as we propose to give to occupancy raiyats. We feel, however, that it would in some cases be unjust to the superior landlord to force him to recognise the under-raiyat as his tenant in the event of the holding of the immediate landlord of the under-raiyat being sold in execution of a decree for arrears of rent, and we do not therefore propose to treat the occupancy right of the under-raiyat as a protected interest under section 160. We also propose some modifications in sections 86 and 87 to meet cases of surrender and abandonment by the immediate landlord.

7. The necessity for a radical alteration in the status provisions of the Act was forcibly brought to our notice in the course of our endeavours to find a solution of the difficulties which have arisen out of the existing law regarding the transfer of occupancy holdings. So far back as 1912, the High Court brought this matter to the notice of Government and represented the desirability of legislation to make it clear whether, in the absence of a usage entitling a raiyat to sell his holding without the landlord's consent, such a sale is void *ab initio* or merely voidable at the will of the landlord. The High Court suggested that the practice of selling holdings has become so universal that to make it wholly invalid would possibly prove unworkable in practice. This view being generally accepted, various attempts were made to devise regulations to govern the transfer of occupancy holdings without touching the main provisions of the Act, but they proved unsuccessful and it was eventually decided that the matter must stand over until a general amendment of the Act was undertaken. It was accordingly put in the forefront of the points which Government desired us to take into consideration. The question was much discussed before the passing of the Bengal Tenancy Act in 1885, and various alternatives were considered and discarded, with the result that the only reference to the matter, which appears in the Act as passed, is contained in the illustration to section 183, which lays down that a usage under which a raiyat is entitled to sell his holding without the consent of his landlord will not be affected by the Act. This provision is useless and mischievous, because it is seldom possible for a raiyat or his transferee to prove the existence of the usage, and no guidance is afforded to the Courts in regard to the law to be applied to the numerous transfers which are effected without

the landlord's consent and without any proof of usage being put forward. We agree therefore with the High Court as to the necessity for positive legislation, but here again no solution of the problem is possible which will be entirely free from objection. It is desirable that the law on the subject should be clear and simple, but unfortunately the problem is far from simple. It has reached its present state of complexity, because the practice has been left to grow up unregulated for more than half a century. Any attempt to regulate it now by simple and direct methods must necessarily interfere with existing rights and customs to some extent, but the longer the matter is left untouched, the more complicated it will become, and it is necessary to ask landlords and tenants to submit to some modification of their existing or potential rights in return for the great advantage of having the matter put on a clear and definite basis.

8. The pressing importance of the question is shown by the fact that the number of transfers of occupancy holdings effected by registered deed has risen from 43,000 in 1884 to over 250,000 in 1913, and with the growing pressure of the population on the soil, leading to an ever-increasing demand for land and an ever-growing rise in the value of land, transfers are certain to increase in number, whatever the law on the subject may be. It is an established fact that occupancy rights are at present freely transferred without reference to and without the knowledge of the landlord. In most cases, the transferee secures recognition by going to the landlord either immediately after the sale or at some later period and paying him a *salami* and the arrears of rent due from the old tenant. In some cases, the landlord is unwilling for some reason or other to accept the transferee as his tenant, and the result is litigation on a question to which no positive law can be applied. We are convinced that, as matters stand, the only remedy is to recognise the existing widespread practice of transfer, and to admit the transferability of occupancy holdings subject to the safeguards necessary to protect the interests of the landlords and to secure the general welfare of the agricultural community. Apart from the question of the transfer fee, the landlord is entitled to object to an undesirable person being forced on him as a tenant, while it is clearly not in the interests of the agricultural community that occupancy holdings should be bought up by money-lenders and non-agriculturists and settled on a rack rent with cultivating tenants who would be mere tenants-at-will. Our proposal to give a limited occupancy right to all under-raiyats of whatever grade will, to a considerable extent, avoid the latter evil, but it is more difficult to meet the reasonable demands of the landlords. Any provision enabling the landlords to sue for the ejection of a transferee whom they considered undesirable might lead to an enormous crop of litigation, and it would be difficult to define the grounds on which such suits should be brought. It is most desirable that these transfer transactions should, as far as possible, be settled by the parties themselves without reference to the Courts, and on the whole we think that the best method of enabling the landlord to get rid of a transferee whom he considers undesirable will be to give the landlord a right of pre-emption or rather of subsequent purchase from the transferee to be exercised within a reasonable time after the transfer is brought to his notice.

9. Our proposals for dealing with the whole question are contained in clause 22 of the draft Bill. Briefly, we provide that all transfers by private sale shall be made by registered instrument, and that the registering officer shall immediately cause a notice of the transfer to be served upon the landlord. The transferee is required within two months to tender payment to the landlord of the transfer fee, which may be deposited in Court on the conditions applicable to the deposit of rent and will be recoverable as an arrear of rent. Except where the transfer is made to a person whom the landlord can have no reasonable objection to accepting as his tenant, such as a natural heir or a co-sharer in the holding, the landlord may within two months of the receipt of the notice of the transfer have the holding transferred to himself on payment to the transferee of the consideration money with 10 per cent. as compensation, together with any sum which

the transferee may have paid in respect of rent or landlord's fee. Analogous provisions, with the necessary modifications, are made to meet the case of transfer by will or bequest or by sale in execution of a decree. We have tentatively proposed to fix the transfer fee at 25 per cent. of the consideration money, because from the enquiries made by Government this appears to be the rate usually levied at present. The rate is however by no means uniform. In some localities more than 25 per cent. is charged, and in others less. Occasionally, the rent is also enhanced. We therefore recommend that the question of the rate to be prescribed by law should be further considered in the light of the opinions which will be received on our Bill.

10. In view of the widespread difficulties and disputes that exist regarding the rights of raiyats in trees, we have endeavoured to introduce some clearer definition of these rights into the law. Under the present law they are practically left to custom. We have not complete information regarding this custom throughout the province, but it has been ascertained that it is variable, and that where disputes have arisen between landlord and tenant regarding trees such disputes have been difficult of decision owing to the uncertainty of that custom. Frequently moreover the right is not of much monetary value. In these circumstances we consider that we are justified in proposing that the rights of the raiyat should be made as uniform as they can reasonably be made. Thus, it is reasonable, in our opinion, that the raiyat should have complete rights in trees on his holding, except in respect of valuable trees. In the latter case, we would provide that the tenant should be required to pay to the landlord a fee equivalent to one-fourth of the value of the timber used, or disposed of; on the precise fraction we are not, however, in agreement. The new section 23 A which we propose regarding trees has therefore been drafted on the above lines; and an explanation has been added indicating what constitutes valuable timber. We also propose to give similar rights to occupancy under-raiyats. The whole matter is however beset with difficulty, and our proposals should be regarded as tentative only and subject to further consideration on the receipt of fuller information as to the custom prevalent in different localities.

11. [We have made important modifications in section 40 of the Act dealing with the commutation of produce-rents into money-rents, because the present section is not generally workable in the province as now constituted. The majority of us are agreed that produce-rents are generally against the public interest; they encourage indifferent cultivation and are against the best interests of agriculture: in but few cases can the rents ever be described as moderate, and they tend to reduce the cultivator to the status of a labourer. We have therefore, having regard also to the fact that a tenant who pays his rent in produce has had for thirty-seven years a statutory right to commutation in the face of any contract to the contrary, retained the provisions for commutation, but have endeavoured to improve them in two important respects. In the first place, we consider that, when the landlord is dependent upon the produce-rent for the subsistence of himself and his household, it is inequitable that such a rent should be converted into a money-rent. There are many cases, particularly in Eastern Bengal, where middle class persons have sublet lands on produce-rents for their own subsistence. We therefore propose to except such and similar cases from commutation.] In the second place, in view of the disparity which exists in many parts of Bengal between the average value of the rent in kind obtained by the landlord and the money-rent into which it can be equitably converted, we consider that some compensation should be payable to the landlord as a premium for commutation. These are the two main principles on which the amendments to the section have been drafted; and, if we are not in agreement as to details, we agree on these two principles. In particular, we consider that the amount of premium payable should be further considered.

Our attention has, however, been drawn to the practice which exists in some parts of treating a person who hands over a part of the produce to the

original owner of the land as a labourer. Some of us consider this is justifiable ; the majority, however, incline to the opinion that the practice has been extended merely to defeat the operation of the section under consideration, and that it is definitely against the public interest to reduce the status of a cultivator to that of a labourer. The majority therefore propose that a *bond fide* cultivator paying a share of the produce to the original owner of the land shall be deemed to be a tenant, notwithstanding any future contracts to the contrary. For this purpose a *bond fide* cultivator is to be defined as a person who himself supplies the ploughs, cattle and implements of agriculture.

We propose to extend the provisions of section 40 to under-raiyats with rights of occupancy, partly in accordance with the general principles already enunciated regarding the rights of such under-raiyats and partly in order to restrict the growth of a large class of under-raiyats holding on produce-rents under money-lenders, which the proposed sections relating to the transferability of occupancy rights might otherwise encourage. In fact, this proposal is a necessary corollary to those sections.

We also propose, in view of the obvious hardship which is caused by the payment of three years arrears of a large produce-rent to make the period of limitation for such rent-suits one year.

12. As our examination of the present Act proceeded it became obvious that, owing to the large number of cases in which many co-sharers were concerned in one tenancy either as landlord or tenant, it was necessary to try to simplify matters both for the landlord and tenant in the application of the law to such cases. Thus, as will appear from the notes on clause 63, we propose to introduce a common agent to act on behalf of co-sharer landlords for the receipt of notices of transfer and for the realisation of transfer fees, and, if the landlords desire it, for the realisation of rent also. Then, in the proposed sections 146A and 146B, we have endeavoured to meet the difficulties which landlords experience in trying to ascertain all the heirs and co-sharers in a holding before a rent-suit is brought with the possibility that a sale of the holding in execution of a decree obtained in that suit may subsequently be held to be invalid as a rent-sale under Chapter XIV on the ground that a small absentee co-sharer had been omitted from the suit. We propose that each co-sharer tenant should be jointly and severally liable for the rent of the tenancy, with the result, as at present, that a decree in a rent-suit purporting to be brought against the entire body of tenants would be a rent-decree. Further, if it appears later that a landlord has made parties to the rent-suit defendants whose shares in the tenancy aggregate three-fourths of the total, the decree obtained would remain a rent-decree, due provision being made for monetary compensation for co-sharers who were not parties to the suit. If, on the other hand, it appears that such shares aggregate less than three-fourths of the tenancy, the decree for rent would become a money-decree binding only on the parties to the suit. We have adopted the fraction of three-fourths, because we consider that any landlord may reasonably be expected to ascertain the owners of three-fourths of the shares of any tenancy under him. We do not, however, propose to interfere with the rulings according to which the decree is a valid rent-decree, if it is proved that the defendants in the suit represented the entire body of tenants in the holding, and we propose that a definite provision should be made in the law to this effect. Again, in section 148A, we have endeavoured to meet the difficulties of co-sharer landlords in realising their individual shares of rents due to them through the Courts. Briefly, we propose that a co-sharer landlord should be allowed to bring a suit for the arrears of rent due to him alone, making the other landlords parties as defendants ; they would then have an opportunity to come forward as plaintiffs, but, if they do not, any decree they might subsequently obtain for rents due to them at the time of the institution of the case would be merely a money decree. The decree obtained by the original plaintiff co-sharer would, however, be a rent-decree valid against the entire tenancy. The same simple principle underlying this amendment we propose should be extended to a number of cases which are



at present governed by section 188 of the Act, which states that, when two or more persons are joint landlords, anything which the landlord is under the Act required to or authorised to do must be done either by both or all those persons acting together, or by an agent authorised to act on behalf of both or all of them. These cases are suits for ejection, suits or applications for the alteration of rent and applications for the determination of the incidents of a tenancy under section 158. In certain other cases at present governed by section 188 we consider that it would suffice if the plaintiff co-sharer landlord made the other landlords parties as defendants. These are applications for the appraisal of produce, regarding improvements, for measurement, for records of private land, for declarations under section 180 (3) and suits under section 106.

13. The proposals in regard to the fundamental question of status and transferability have necessitated a number of further changes in various sections of the Act. These are set out in the Amending Bill and in the notes on the clauses and need not be discussed in detail here. A number of other changes have also been proposed, which are adequately explained in those notes, probably the most important being the simplification of the procedure in connection with the transfer of permanent tenures, the abolition of the chapter on distraint, some simplification of judicial procedure and a reconciliation of the differences between the Bengal Tenancy (Amendment) Act, 1907, and the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908. We have also made proposals for improving the service of processes in rent-suits—a matter of growing importance and difficulty now-a-days, when many of the persons affected by a rent-suit are often non-resident in the village concerned. We recommend that the opinion of the High Court be specially invited on this portion of the Bill.

14. We appointed a Sub-Committee to enquire into the question of modifying the law relating to *utbandi* tenancies and we agree generally with the proposals which they have made for the purpose of enabling such tenancies to be converted into ordinary raiyati holdings. The *utbandi* problem is, however, a local one, affecting portions of a few districts only and having little connection with the main principles underlying the general Amendment Bill. We think that it will be more convenient to deal with this matter by separate legislation, and we have therefore inserted no provision relating to it in this Bill.

15. Another Sub-Committee was appointed to examine the status of the jotedars of Rangpur, and, following their advice, we propose to treat such persons as permanent tenure-holders, subject however in respect of the right of transfer to the provisions which we propose to apply to the transfer of occupancy holdings. Here again the problem is a local one, but it cannot be dealt with apart from the general principles of the law relating to status and transferability, and our proposals on the subject will be found in clause 113 of the Bill.

16. It will be seen that we are not unanimous regarding the detailed amendments proposed in all cases, but we sign this report in token of our agreement in the matter of the general principles which should be followed in the amendment of the Act and of the subjects which should receive consideration in that connection.

17. In conclusion, we desire to express our warm appreciation of the work done in connection with the drafting of the Bill by Mr. C. Tindall, c.i.e., Secretary in the Legislative Department. The amount of labour involved is only partially apparent from the Bill itself, since this merely contains the final draft which, in the case of the more important and difficult clauses, has been adopted after consideration of various alternatives. Mr. Tindall has spared neither time nor trouble in working out our proposals in legislative form and his services have been simply invaluable to the Committee.

18. We recommend that our report and draft Bill be circulated for the purpose of obtaining public opinion on this intricate problem before a Bill is introduced in the Legislative Council.

- \* † J. H. KERR.
- \* KSHAUNISH CHANDRA RAY.
- \* BAN BEHARI KAPUR.
- \* SHIB SHEKHARESWAR RAY.
- \* BRAJENDRA KISHORE RAY CHAUDHURI.
- ASHUTOSH CHAUDHURI.
- \* SURENDRA CHANDRA SEN.
- \* A. K. FAZLUL HAQ.
- \* YAQUINUDDIN AHMAD.
- \* M. C. McALPIN.
- \* SYED ERFAN ALI.
- \* BHISHMADEV DAS.
- \* PANCHANAN BARMA.
- \* L. BIRLEY.
- \* F. A. SACHSE.
- \* W. H. THOMPSON.
- \* MUHAMMAD ABDUL MUMIN.
- PRANANDRA NARAIN CHAUDHURI.

NOTE.—Signed subject to minutes of dissent appended.

†—Signed before making over charge.

Mr. Duval being in England has not been able to sign the report.

**GOVERNMENT OF BENGAL,**

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**LEGISLATIVE DEPARTMENT.**

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**PRELIMINARY DRAFT OF A BENGAL TENANCY  
(AMENDMENT) BILL,—**

**WITH**

**NOTES ON CLAUSES AND MINUTES OF DISSENT.**

*(The 19th December, 1922.)*

**PRELIMINARY DRAFT OF A BENGAL  
TENANCY (AMENDMENT) BILL.**

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31. Amendment of section 50 of Act VIII of 1885.
32. Amendment of section 52 of Act VIII of 1885.
33. Substitution of new sub-sections for sub-sections (1) and (2) of section 54 of Act VIII of 1885—
  54. Time and place for payment of rent.
34. Substitution of new section for section 57 of Act VIII of 1885—
  57. Tenant entitled to statement of account at close of year.
35. Amendment of section 58 of Act VIII of 1885.
36. Amendment of section 61 of Act VIII of 1885.
37. Substitution of new section for section 63 of Act VIII of 1885—
  63. Procedure for payment to the landlord of rent deposited.
38. Amendment of section 64 of Act VIII of 1885.
39. Insertion of new section 64A in Act VIII of 1885—
  - 64A. Penalty for refusing to receive rent tendered by postal money order or deposited.
40. Amendment of section 65 and sub-section (1) of section 66 of Act VIII of 1885.
41. Amendment of section 66 of Act VIII of 1885.
42. Amendment of section 67 of Act VIII of 1885.
43. Amendment of section 68 of Act VIII of 1885.
44. Amendment of section 69 of Act VIII of 1885.

## CLAUSE.

45. Repeal of section 73 of Act VIII of 1885.
46. Amendment of section 74 of Act VIII of 1885.
47. Amendment of sections 76 and 79 of Act VIII of 1885.
48. Amendment of section 76 of Act VIII of 1885.
49. Amendment of section 77 of Act VIII of 1885.
50. Amendment of section 78 of Act VIII of 1885.
51. Amendment of section 80 of Act VIII of 1885.
52. Amendment of sections 82, 83, 86 and 87 of Act VIII of 1885.
53. Amendment of section 82 of Act VIII of 1885.
54. Amendment of section 85 of Act VIII of 1885.
55. Insertion of new section 86A in Act VIII of 1885—
  - 86A. Effect of exemption from payment of rent or abatement of rent on account of diluvion.
56. Amendment of section 87 of Act VIII of 1885.
57. Insertion of new section 87A in Act VIII of 1885—
  - 87A. Power to sub-lessee to take interest of sub-lessor on surrender and abandonment.
58. Amendment of section 88 of Act VIII of 1885.
59. Insertion of new sections 88A and 88B in Act VIII of 1885—
  - 88A. Safeguard to other co-sharer landlords against limitation of interest by a co-sharer landlord.
  - 88B. Safeguard to other co-sharer tenants against action of a co-sharer tenant rendering them liable to penalty.
60. Amendment of section 93 of Act VIII of 1885.
61. Amendment of section 95 of Act VIII of 1885.
- 61A. Amendment of section 96 of Act VIII of 1885.
62. Amendment of section 98 of Act VIII of 1885.

## CLAUSE.

63. Insertion of new section 99A in Act VIII of 1885—
- 99A. Appointment of common agent in respect of transfer fees, and, if so empowered, to receive rent.
64. Amendment of section 100 of Act VIII of 1885.
65. Amendment of section 101 of Act VIII of 1885.
66. Amendment of section 102 of Act VIII of 1885.
67. Amendment of section 103B of Act VIII of 1885.
68. Amendment of section 104H of Act VIII of 1885.
69. Amendment of section 105 of Act VIII of 1885.
70. Amendment of section 105A of Act VIII of 1885.
71. Insertion of new sections 105B and 105C in Act VIII of 1885—
- 105B. Higher court-fees to be paid in certain cases in proceedings under section 105.
- 105C. Costs not to be awarded ordinarily in proceedings under section 105 by Revenue Officer.
72. Amendment of section 106 of Act VIII of 1885.
- 72A. Amendment of sections 107 and 108 of Act VIII of 1885.
73. Amendment of sections 108 and 115B of Act VIII of 1885.
74. Re-numbering of section 108A of Act VIII of 1885 as section 115B and amendment of that section.
75. Amendment of section 109 of Act VIII of 1885.
76. Amendment of section 109A of Act VIII of 1885.
77. Amendment of section 109B of Act VIII of 1885.
78. Amendment of section 109C of Act VIII of 1885.
79. Amendment of section 107 of Act VIII of 1885 and substitution of new section 109D for sections 109C and 109D of Act VIII of 1885—
- 109D. Note of decisions on record.
80. Amendment of section 110 of Act VIII of 1885.
81. Amendment of section 111B of Act VIII of 1885.
82. Amendment of section 112 of Act VIII of 1885.



## CLAUSE.

83. Amendment of section 113 of Act VIII of 1885.
84. Repeal of section 115 of Act VIII of 1885.
85. Amendment of section 115A of Act VIII of 1885.
86. Amendment of section 116 of Act VIII of 1885.
87. Amendment of section 120 of Act VIII of 1885.
88. Repeal of sections 121 to 142 of Act VIII of 1885.
89. Amendment of section 144 of Act VIII of 1885.
90. Insertion of new sections 146A and 146B in Act VIII of 1885—
  - 146A. Joint and several liability for rent of co-sharer tenants in a holding.
  - 146B. Procedure in rent suit against co-sharer tenants in a holding.
91. Amendment of section 147 of Act VIII of 1885.
92. Amendment of section 147A of Act VIII of 1885.
93. Amendment of section 148 of Act VIII of 1885.
94. Substitution of new section for section 148A of Act VIII of 1885—
  - 148A. 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.
95. Amendment of section 153 of Act VIII of 1885.
96. Amendment of section 156 of Act VIII of 1885.
97. Amendment of section 158 of Act VIII of 1885.
98. Amendment of section 158A of Act VIII of 1885.
99. Amendment of section 158B of Act VIII of 1885.
100. Amendment of section 159 of Act VIII of 1885.
101. Amendment of section 160 of Act VIII of 1885.
102. Amendment of section 161 of Act VIII of 1885.
103. Amendment of section 163 of Act VIII of 1885.
104. Amendment of section 166 of Act VIII of 1885.
105. Amendment of section 167 of Act VIII of 1885.

## CLAUSE.

106. Amendment of section 169 of Act VIII of 1885.
107. Amendment of section 170 of Act VIII of 1885.
108. Amendment of section 175 of Act VIII of 1885.
109. Amendment of section 178 of Act VIII of 1885.
110. Amendment of section 179 of Act VIII of 1885.
111. Substitution of new section for section 182 of Act VIII of 1885—  
182. Homesteads.
112. Amendment of section 183 of Act VIII of 1885.
113. Insertion of new Chapter XVA in Act VIII of 1885—  
Chapter XVA—Hybrid tenures.  
183A. Special provisions for certain classes of tenancies in Rangpur and elsewhere.
114. Substitution of new section for section 185 of Act VIII of 1885—  
185. Portions of the Indian Limitation Act not applicable to such suits, etc.
115. Substitution of new section for section 188 of Act VIII of 1885—  
188. Action must be taken collectively by co-sharer landlords or by their common agents except in certain cases.
116. Amendment of section 188A of Act VIII of 1885.
117. Amendment of section 195 of Act VIII of 1885.
118. Formal amendments in Act VIII of 1885.
119. Formal amendments in Act VIII of 1885.
120. Re-arrangement of definitions in section 3 and re-lettering of section 148 of Act VIII of 1885.
121. Substitution of new schedule for Schedule II of Act VIII of 1885—  
Schedule II.—Forms of Receipt and Account.
122. Amendment of Article 1 (a) in Part I of Schedule III of Act VIII of 1885.
123. Amendment of Article 2 in Part I of Schedule III of Act VIII of 1885.
124. Insertion of new Article (2a) in Part I of Schedule III of Act VIII of 1885.
125. Amendment of Article 6 in Part III of Schedule III of Act VIII of 1885.

## BILL

*further to amend the Bengal Tenancy Act, 1885.*

Preamble.

WHEREAS it is necessary further to amend the Bengal Tenancy Act, 1885, in the manner hereinafter appearing;

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

It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called the Bengal Tenancy (Amendment) Act, 192 .

(2) It extends to the whole of Bengal.

Amendment of the Bengal Tenancy Act, 1885.

2. The amendments hereinafter set forth shall be made in the Bengal Tenancy Act, 1885 (as amended by subsequent legislation), hereinafter referred to as "the said Act."

Amendment of section 1 of Act VIII of 1885.

3. For sub-section (3) of section 1 of the said Act the following shall be substituted, namely:—

"(3) It extends by its own operation to the whole of Bengal, except—

(i) the town of Calcutta,

(ii) any area constituted a municipality under the provisions of the Bengal Municipal Act, 1884, or part thereof, and specified in a notification in this behalf by the Local Government,

(iii) the district of Darjeeling and the Chittagong Hill Tracts, and

(iv) those portions of the District of Jalpaiguri to which this Act is not for the time being extended by notification under the Scheduled Districts Act, 1874.

*Explanation.*—The words "the town of Calcutta" mean, subject to the exclusion or inclusion of any local area by notification under section 637 of the Calcutta Municipal Act, 1899, the area described in Schedule I to that Act."

Repeal of sub-section (2) of section 2 of Act VIII of 1885.

4. (1) Sub-section (2) of section 2 of the said Act is repealed.

(2) Sub-sections (3) and (4) are renumbered as sub-sections (2) and (3).

5. In section 3 of the said Act—

(a) To clause (3) the following shall be added, namely:—

“Where a proprietor, tenant or occupant of land permits a person to cultivate such land on condition that the produce is shared between that person and the proprietor, tenant or occupant, and where that person himself provides the ploughs, cattle and implements of agriculture, that person shall, notwithstanding any contract made after the first day of November 1922, be deemed to be a tenant, unless in any contract made before the first day of November 1922, the contrary appears.”

(b) after clause (4) the following shall be inserted, namely:—

“*(4a)* ‘co-sharer landlord’ includes a joint landlord, and ‘co-sharer tenant’ includes a joint tenant”.

(c) the words “or deliverable” in clause (5) shall be omitted,

(d) in clause (9), after the word “raiyat,” the words “or under-raiyat” shall be inserted,

(e) after clause (9) the following shall be added, namely:—

“*(9a)* ‘Homestead’ means a building, not being a shop, occupied by a raiyat or under-raiyat, and required by him, by reason of his connection with his holding, as a dwelling-house, together with the site thereof and the land immediately appertaining thereto and the out-buildings on such land which are required by him as store-houses or for other domestic or agricultural purposes and the sites thereof,”

(f) (i) in clause (10), as inserted by section 4(2) of the Bengal Tenancy (Amendment) Act, 1907, after the words “the Government”, where they occur for the first time, the words “which has been adopted by notification in the Calcutta or Eastern Bengal and Assam Gazette or” shall be inserted,

(ii) to that clause the proviso to clause (10), as inserted by section 4 (2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be added, with the following modifications, namely:—

for the words “Eastern Bengal and Assam Gazette” the words “Calcutta Gazette” shall be substituted, and after the words “Board of Revenue” the words “accorded under the provisions of section 115A” shall be inserted, and

(iii) clause (10), as inserted by section 4 (2) of the Bengal Tenancy (Amendment) Act, 1907, and as so modified, shall be substituted for clause (10) as inserted by section 4 (2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and

(g) for clause (11) the following shall be substituted, namely :—

“(11) ‘Agricultural year’ means the Bengali year commencing on the first day of Baisakh :

Provided that where, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 192 . any other year has prevailed for agricultural purposes that year shall continue to prevail for those purposes until the first day of Baisakh next following the date of the commencement of that Act.”

Substitution of  
new section for  
section 4 of Act  
VIII of 1885.

6. For section 4 of the said Act the following shall be substituted, namely :—

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

Classes of tenants.

(i) tenure-holders including—

(a) permanent tenure-holders, which expression means tenure-holders and under-tenure-holders holding a tenure which is heritable and which is not held for a limited time ;

(b) temporary tenure-holders, which expression means tenure-holders and under-tenure-holders holding for a limited time ;

(ii) raiyats including—

(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, whether such raiyats are or are not occupancy raiyats ;

(b) occupancy raiyats, that is to say, raiyats having a right of occupancy in the land held by them, whether or not such raiyats hold at fixed rates ;

(c) non-occupancy raiyats, that is to say, raiyats not having such a right of occupancy, whether or not such raiyats hold at fixed rates ; and

(iii) under-raiyats including—

(a) occupancy under-raiyats, that is to say, under-raiyats having a right of occupancy in the land held by them ;

(b) non-occupancy under-raiyats, that is to say, under-raiyats not having such a right of occupancy.”

Amendment of  
section 5 of Act  
VIII of 1886.

**7. In section 5 of the said Act—**

(a) in sub-section (2) after the word "land" the words "either immediately under a proprietor or immediately under a tenure-holder" shall be inserted;

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

"(3) 'Under-raiyat' means primarily a person who has acquired a right to hold land under a raiyat or under-raiyat for the purpose of cultivating it by himself or by members of his family or by hired servants or with the aid of partners and includes also the successors in interest of persons who have acquired such a right," and

(c) the *Explanation* below sub-section (2) shall be transferred below sub-section (3).

Amendment of  
section 7 of Act  
VIII of 1886.

**8. For sub-section (3) of section 7 of the said Act the following shall be substituted, namely:—**

"(3) In determining what is fair and equitable the Court—

(a) shall presume, until the contrary is proved, that the rent for the time being payable is fair and equitable;

(b) shall have regard to 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;

(c) shall have regard to the improvements, if any, made by the tenure-holder or his predecessors in interest; and

(d) shall not leave to the tenure-holder as profit less than 10 per cent. of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them."

Substitution of  
new section for  
section 8 of Act  
VIII of 1886.

**9. For section 8 of the said Act the following shall be substituted, namely:—**

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

Power to order gradual  
enhancement.

Amendment of  
section 9 of Act  
III of 1885.

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

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

Substitution of  
new sections for  
sections 12 to 15  
of Act VIII of  
1885.

11. For sections 12 to 15 of the said Act the following shall be substituted, namely :—

“12. (1) A transfer of a permanent tenure by sale, Voluntary transfer of permanent tenure. exchange, gift or mortgage (other than a transfer by 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 shall not register any instrument purporting or operating to transfer by sale, exchange, gift or usufructuary mortgage a permanent tenure, unless it is accompanied by a notice in the prescribed form and by such fee, if any, as may be prescribed for the service of such notice on the landlord.

(3) When the registration of any such instrument is complete, the registering officer shall serve the notice on the landlord named in the notice or on his common agent, if any, in the prescribed manner.

“13. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession in the prescribed form to the lowest Civil Court having jurisdiction to entertain a suit for rent of the tenure and shall deposit therewith the prescribed fee for the service of the notice on the landlord, and the Court shall cause the notice to be served on the landlord or his common agent, if any, in the prescribed manner :

Provided that where mutation is made within six months of the succession at the instance of the person succeeding in the rent rolls of the landlord by the landlord or his agent, the person succeeding shall not be required to give notice under this section.

#### *Explanation.*

In this Chapter “succession” includes relinquishment or surrender by a Hindu widow, accelerating succession to the immediate reversioner.

“13A. If a person succeeding to a permanent tenure and required to give notice of the succession in accordance with the provisions of section 13 fails to do so within six months of the succession, he shall be liable to a fine not exceeding fifty rupees, to be imposed after summary enquiry by the Court.

“ 14. (1) When a permanent tenure is transferred by sale, exchange (other than partition), gift or usufructuary mortgage or by succession, a fee of the following amount (hereinafter called “the landlord’s fee”) shall be payable to the landlord, namely :—

Payment of landlord's fee on transfer of permanent tenure.

(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.

(2) The transferee shall, within two months of the date on which the registration is complete or within six months of the date on which the succession takes place, as the case may be, tender payment of the landlord’s fee to the landlord or his common agent, if any, and the provisions of this Act relating to the tender and deposit in Court of an arrear of rent shall apply to the tender and deposit in Court of the landlord’s fee, and such fee shall be recoverable as an arrear of rent :

Provided that—

(a) in the case of the transfer of a share, that share alone may be sold in execution of a decree for realization of the landlord’s fee ;

(b) in no case shall a tenure or share be sold without due notice to the transferor.

“ 15. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, or when

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

a mortgage of a permanent tenure other than a usufructuary mortgage thereof is foreclosed, the Court shall, before confirming the sale under rule 92 in Order XXI in Schedule I to the Code of Civil Procedure, 1908, or making a decree or order absolute for the foreclosure, require the purchaser or mortgagee to pay into Court the landlord’s fee prescribed by section 14, together with costs necessary for its transmission to the landlord and such further fee as may be prescribed for service on the landlord of notice of the sale or final foreclosure.

(2) When the sale has been confirmed or when a decree or order absolute for the foreclosure has been made, the Court shall send to the landlord or to his common agent, if any, the landlord’s fee and a notice of the sale or final foreclosure in the prescribed form and manner.”



Amendment of section 16 of Act VIII of 1885.

12. In section 16 of the said Act the word "distrain" shall be omitted and for the words "until the Collector has received the notice, fees and costs referred to in the last foregoing section" the words "until the duties imposed on him by section 13 or the proviso to that section have been performed" shall be substituted.

Insertion of new section 16A in Act VIII of 1885.

13. After section 16 of the said Act, the following shall be inserted, namely:—

"16A. In sections 13 to 16 the words 'person succeeding,' 'transferee,' 'purchaser,' 'mortgagee' and 'person entitled to a permanent tenure by succession,' where they occur, include the successors in interest of such persons."

Amendment of section 18 of Act VIII of 1885.

14. (1) Section 18 of the said Act shall be re-numbered as section 18 (1) and in that sub-section as renumbered—

(i) the word "and" at the end of clause (a) shall be omitted;

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

"and

(c) shall be deemed to be a settled raiyat of the village if he complies with the conditions set forth in section 20."

(2) After that sub-section as renumbered the following shall be inserted, namely:—

"(2) The provisions of sections 23 to 39 (both inclusive) shall not apply to raiyats holding at fixed rates, even though such raiyats have a right of occupancy in the lands of their holdings."

Amendment of section 18A of Act VIII of 1885.

15. For section 18A of the said Act, as inserted by section 8 of the Bengal Tenancy (Amendment) Act, 1907, section 18A of the said Act, as inserted by section 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Amendment of section 18B of Act VIII of 1885.

16. For clause (a) of section 18B of the said Act, as inserted by section 8 of the Bengal Tenancy (Amendment) Act, 1907, clause (a) of that section, as inserted by section 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Substitution of new section for section 18C of Act VIII of 1885.

17. For section 18C of the said Act, as inserted by section 8 of the Bengal Tenancy (Amendment) Act, 1907, and for section 18C of the said Act, as inserted by section 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the following shall be substituted, namely:—

"18C. All landlords' fees deposited with the Collector before the passing of the Bengal Tenancy (Amendment) Act, 1922, under Chapter III or Chapter IV may, unless accepted or claimed by the landlord within three years from the date of such deposit, be forfeited to the Government."

Amendment of section 19 of Act VIII of 1885.

18. For section 19 of the said Act, as modified by section 9 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, section 19 of the said Act, as modified by section 9 of the Bengal Tenancy (Amendment) Act, 1907, shall be substituted.

Substitution of new section for section 22 of Act VIII of 1885.

19. For section 22 of the said Act the following shall be substituted, namely :—

“22. (1) Where 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 permanent tenure-holder, as the case may be.

(2) Where the entire raiyati interest in an occupancy holding is acquired by transfer, succession or in any other way whatsoever by a person who is a proprietor or permanent tenure-holder, and is interested in the lands of the holding as a co-sharer immediate landlord, the raiyati interest with all the rights attached thereto in the lands of the holding shall be extinguished and the interest thereafter held by such proprietor or permanent tenure-holder in virtue of such acquisition shall be deemed to be a permanent tenure created in respect of such lands under the operation of this subsection, and he shall pay to the immediate landlords of the former raiyat on account of such tenure the same rent as was paid by the former raiyat on account of the former holding, subject to the principles of this Act regulating the enhancement and reduction of rents of permanent tenure-holders:

Provided that, if the former raiyat held at a rent or rate of rent fixed in perpetuity, such rent or rate of rent shall not be changed except in accordance with the provisions of section 52:

Provided also that the rent of such permanent tenure shall not be limited on the ground that the rate of rent is above the customary rate payable by persons holding similar tenures in the vicinity or that the profit of the permanent tenure-holder is less than ten per cent. of the balance that remains after deducting from his gross rents the expenses of collection.

(3) Subject to the provisions of sub-section (6), the person, if any, who was the immediate under-raiyat of the former occupancy raiyat, if such under-raiyat was an occupancy under-raiyat in respect of such lands or a settled raiyat of the village, shall become an occupancy raiyat in respect of the lands of the former raiyati holding, and, if he

was a non-occupancy under-raiyat of the village, he shall become a non-occupancy raiyat in respect of such lands, and the rent thereafter payable by such person as raiyat shall in either case be the rent that was payable by him as under-raiyat, subject to the provisions contained in this Act as to the enhancement and reduction of the rent of occupancy or non-occupancy raiyats, as the case may be.

(4) If there is any incumbrance on the lands of the former raiyati holding, such incumbrance, unless it is annulled in proceedings under Chapter XIV, shall thereafter be deemed to be an incumbrance on the interest of the landlord, as proprietor or permanent tenure-holder, which continues under sub-section (1) or accrues under sub-section (2) in respect of such lands.

(5) If the right of an occupancy under-raiyat and his immediate landlord becomes united in the same person by transfer, succession or in any other way whatsoever, or if an occupancy under-raiyat becomes an occupancy raiyat under the provisions of sub-section (4), the right of the occupancy under-raiyat, as such, shall be extinguished, and any incumbrance on the holding of such occupancy under-raiyat shall, unless it is annulled under the provisions of Chapter XIV, attach to the interest of the said immediate landlord or to the interest of the said occupancy raiyat, as the case may be.

Any immediate under-raiyat of such occupancy under-raiyat shall, unless his interest is annulled under the provisions of Chapter XIV, hold as under-raiyat under the said immediate landlord, or the said occupancy raiyat, as the case may be, and shall, subject to the provisions of this Act as to the enhancement and reduction of such rent, pay to such immediate landlord or to such occupancy raiyat, as the case may be, the rent that was payable by him to his former landlord immediately before the extinguishment of the interest of that landlord.

(6) Nothing contained in this section shall affect—

(i) the rights of a landlord who purchases a holding at a sale in execution of a decree for arrears of rent to annul incumbrances on such holding in the manner provided in Chapter XIV;

(ii) the rights of purchase conferred on co-sharer immediate landlords by section 26G, where the entire raiyati or under-raiyati interest in an occupancy holding has been acquired by another co-sharer immediate landlord of the same;

(iii) any right of ejectment which may be exercised by a landlord under section 26H.

These rights may be exercised as if the occupancy holding of the former raiyat and any holding of an under-raiyat thereunder had continued to exist.

- (7) 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 becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land as a temporary tenure-holder or in farm.

*Illustrations.*

1. X, a raiyat having the entire raiyati interest in an occupancy holding immediately under A, a sole proprietor, purchases the interest of A. X is a proprietor in respect of the lands formerly held by him as raiyat.
2. A is a sole proprietor. X is a raiyat having the entire raiyati interest in an occupancy holding under A. Y is an under-raiyat under X in respect of half the lands of the holding of X. X cultivates the remainder. A purchases by private purchase the interest of X. Y becomes a raiyat under A in respect of the lands held by him and A holds the remainder *khas* as proprietor. A then settles the *khas* lands with Z, a raiyat. Z is a raiyat under A in respect of those lands.
3. A, B and C are co-sharer permanent tenure-holders, and are the immediate landlords in respect of an occupancy holding held by X. A purchases the raiyati interest of X who cultivates the holding himself. A becomes a permanent tenure-holder under A, B and C in respect of the lands, and, if he thereafter settles them with Z, a raiyat, Z becomes raiyat under the permanent under-tenure-holder A.

Amendment of section 23 of Act VIII of 1885.

20. In section 23 of the said Act the words "but shall not be entitled to cut down trees in contravention of any local custom" shall be omitted.

Insertion of new section 23A in Act VIII of 1885.

21. After section 23 of the said Act the following shall be added, namely :—

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

Rights of occupancy raiyats in trees.

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

any tree on such land :

Provided that, if any such raiyat fells any valuable tree on such land or utilizes or disposes of the timber of any such tree which has fallen or been felled, he shall pay to the proprietor, or, where tenure-holders intervene, then subject to the provisions of any contract reserving the right to any landlord of a superior grade, to the tenureholder, who is the immediate landlord of the raiyati holding, a fee of 25 per cent. of the value of such timber.

*Explanation.*—“ Valuable trees ” include jack fruit (kathal) trees, tal trees, jan trees, mango trees and trees valuable for their timber.”

Insertion of new sections 26A to 26K in Act VIII of 1895. **22.** After section 26 of the said Act the following shall be inserted, namely :—

“ 26A. The provisions of sections 26B to 26K shall apply to all transfers of holdings or portions or shares of holdings of occupancy raiyats and the occupancy rights therein made after the , 192 .

Application of sections 26B to 26K.

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

Holdings of occupancy raiyats and occupancy rights transferable.

“ 26C. Every transfer shall be made by registered instrument, except in the case of a bequest or a sale in execution of a decree. The registering officer shall not register any such instrument unless it is accompanied by a notice giving particulars of the transfer in the prescribed form and accompanied by the fee prescribed for the service of such notice on the landlord, and in the case of a transfer of more than one holding, or of portions or shares of more than one holding, or of a holding and a portion or share of another holding, unless the sale price of each holding, portion or share transferred is stated separately in the instrument. The registering officer shall cause the notice to be served upon the landlord or upon his common agent, if any, appointed under section 99A, in the prescribed manner. In the case of a transfer by bequest, the transferee shall within two months of taking possession or obtaining probate or letters of administration, whichever is earlier, cause a notice in the same form to be served on the landlord or his common agent, if any, in the prescribed manner through the lowest Civil Court having jurisdiction to entertain a suit for the rent of the holding.

Manner of transfer and notice to landlord.

“ 26D. The transferee shall, except in the case of the transfer of a rent-free holding or of a transfer by bequest in favour of a natural heir, within two months of the date on which the notice is presented to the registering officer or to the Civil Court, as the case may be, tender payment to the landlord or his common agent, if any, of a fee which shall amount—

Landlord's fee for transfer.

- (a) in the case of the sale of a holding or portion or share of a holding, in respect of which a produce rent is payable in whole or in part, to 25 per cent. of the consideration money ;
- (b) in the case of the sale of a holding or portion or share of a holding, in respect of which a money rent is payable, to 25 per cent. of the consideration money or to six times the annual rent of the holding or of the transferred portion or share thereof, whichever is greater ;
- (c) in the case of a transfer by exchange, gift or bequest, to six times the annual rent of the holding, or of the transferred portion or share :

Provided that—

- (i) in the case of a transfer of a holding or portion or share thereof by exchange, gift or bequest ; and
- (ii) in the case of the transfer, other than a sale in execution of a decree, of a portion or share of a holding, if the division of the holding or distribution of the rent payable in respect thereof has not been made with the express consent of the landlord or of his agent duly authorized in that behalf,

the landlord may within two months of the receipt of the notice of transfer apply to the lowest Civil Court having jurisdiction to entertain a suit for rent of the holding or of the transferred portion or share, and the landlord's fee shall amount to 25 per cent. of such market value :

“ 26E. The provisions of this Act relating to the deposit in Court and tender of an arrear of rent shall apply to the deposit in Court and tender of a landlord's fee payable under section 26D, and such fee may be recovered by the landlord as an arrear of rent, together with interest or damages :

Tender, recovery and deposit of landlord's fee.

Provided that—

- (a) in the case of the transfer of a share that share alone may be sold in execution of a decree for realization of the fee ;

(b) in no case shall the holding or share be sold without due notice to the transferor.

"26F. (1) When the holding of an occupancy raiyat or a portion or share thereof is sold in execution of a decree other than

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

a decree for an arrear of rent or dues recoverable as such, and neither the purchaser nor decree-holder is the sole landlord, the Court shall, before confirming the sale, require the purchaser to deposit in addition to the purchase money a fee calculated at the rate of 25 per cent. of the purchase money, or six times the annual rent of the holding or portion or share thereof, whichever is greater, and to file a notice in the prescribed form. The Court shall then cause the fee to be paid to the landlord and notice of the sale to be served upon him:

Provided that the landlord may within one month of receiving the notice apply to the Court to fix the market value of the holding or portion or share thereof, and the purchaser shall be liable to pay to the landlord any additional fee calculated upon such market value in excess of the fee which he has already paid.

(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, determine the market value of the holding and require the mortgagee to deposit a fee calculated at 25 per cent. of such market value and to file a notice in the prescribed form, and on making such decree or order absolute shall forward the fee, together with the notice of the foreclosure, to the landlord.

"26G. (1) Except in the case of a transfer by bequest in favour of a natural heir, or to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or of the transfer of a rent free occupancy holding or portion or share thereof, the immediate landlord of the holding may, within two months of the completion of the registration of the instrument of transfer or of the service of the notice of the transfer issued under section 26C, or, in cases to which section 26F applies, of the service of the notice issued under that section, apply to the Court that the holding or portion or share thereof shall be transferred to himself. The application shall be dismissed, unless such landlord at the time of making it, or within such period as the Court may fix, deposits in Court the amount of the consideration money paid by the transferee, as stated in the notice served on him, together with compensation at the rate of 10 per

Power to immediate landlord to purchase.

cent. of such consideration money, or, if the transfer is made by way of exchange, gift or bequest, such sum as the Court may, in the first instance, approximately estimate to be the market value of the holding, portion or share, together with compensation on such market value at the above rate. If there is any dispute as to whether the amount of the consideration money has been stated correctly in the notice, the Court shall decide the same and shall allow to the landlord such further time as it may think fit for him to deposit the balance, if any.

- (2) 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 landlord's fee, and, if the transferee complies, the Court shall direct the immediate landlord to deposit such amount as the transferee has paid on this account, together with interest with effect from the date on which such rent or landlord's fee has been paid at a rate not exceeding 12½ per cent. per annum, within such period as the Court thinks reasonable. The Court shall also in the case of a transfer by exchange, gift or bequest finally determine the market value of the holding or portion or share thereof and shall direct the landlord to deposit, or shall return to the landlord, as the case may be, the balance due on such market value with compensation at the above rate.
- (3) If the deposits required under sub-sections (1) and (2) are made within the period fixed by the Court, they shall be paid to the transferee, and from the date of the order for payment—
- (i) the right, title and interest of the transferee in the holding or portion or share thereof shall, subject to the provisions of section 22, be deemed to have vested in the immediate landlord, and
  - (ii) the liability of the transferee for the rent due on account of the holding shall cease.

The Court on the application of the immediate landlord may also place him in possession of the property so transferred to him. When a transferee is divested of his right, title and interest under the provisions of this sub-section, 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).

- (4) The powers and rights conferred and duties imposed by sub-sections (1), (2) and (3) on the immediate landlord shall, in cases where there are co-sharer immediate landlords of the holding, be conferred and imposed on the entire body of immediate landlords:



Provided that, if the entire body of immediate landlords do not apply to the Court in accordance with the provisions of sub-section (1), such proportion of the co-sharer immediate landlords as have an aggregate of interests in the lands of the holding not less than one-half of the entire interest of all the co-sharer immediate landlords therein may apply to the Court in accordance with the provisions of that sub-section, and in that case such proportion of co-sharers shall for all the purposes of this section be deemed to be the immediate landlord to the exclusion of those co-sharers who do not so apply and without any further power of purchase under this section to any co-sharer landlord :

Provided also that when application has been made under sub-section (1) by co-sharer immediate landlords in accordance with the first proviso to this sub-section, any of the remaining co-sharer immediate landlords, including the transferee, if one of them, may within the period of two months referred to in sub-section (1) apply to join in the application of the co-sharer immediate landlords aforesaid. Such application shall be granted if at the time of making the application or within such period as the Court may fix [not extending beyond the period of two months referred to in sub-section (1)] the co-sharer landlord applying under this proviso deposits in Court, for payment to the co-sharer landlords by whom the deposit has been or is to be made, such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section (1).

“ 26 H. Where a landlord acquires a holding or a share or portion thereof under the provisions of section 26G, he shall be entitled, notwithstanding anything contained elsewhere in this Act, to bring a suit, within one year of the date on which he acquired the holding, portion or share, as the case may be, for the ejectment of any under-raiyat holding land within such holding, if—

Ejectment by landlord of certain under-raiyats after purchase of holding under section 26G.

- (i) the tenancy of such under-raiyat or his predecessor in interest was created after the thirty-first day of December, 1914, and
- (ii) the transferee from whom the landlord has purchased under that section, or the predecessor in interest of such transferee, was the sole immediate landlord of such under-raiyat in respect of such land :

Provided that, where the under-raiyat or any of his predecessors in interest held such lands before the first day of January, 1915, as an immediate under-raiyat under a predecessor in interest of the transferee, the

tenancy of such under-raiyat shall be deemed to have been created before that date, and to continue, notwithstanding any re-settlement of the lands that may have been made with him or any of his predecessors in interest.

- “ 26I. (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 can not, in any possible event, by any agreement, express or implied, exceed nine years.
- (2) Every mortgage so entered into shall be registered under the Indian Registration Act, 1908.
- (3) Notwithstanding anything contained elsewhere in this Act or in any other law, no other form of usufructuary mortgage for any term entered into by an occupancy raiyat in respect of his holding or portion or share thereof shall have any force or effect, and no document creating or purporting to create a 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 nine years, or an usufructuary mortgage for any term 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 of law, or by any public servant.

*Explanation.*

A “complete usufructuary mortgage” in this section has the meaning set forth in the Explanation to sub-section (2) of section 49E.

“26J. 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 14 or section 15, 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 (2) of section 12, section 13 or section 15 according to the circumstances of the transfer.

“ 26K. (1) In sections 26C, 26D, 26E, 26G, 26H and 26J “transferee” includes the successors in interest of the transferee, and in section 26F and in this section “purchaser” includes the successors in interest of the purchaser.

- (2) In sections 26C, 26D and 26G “transfer” 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) For the purposes of sections 26D and 26G the term "consideration money" shall be deemed to include any sum due at the date of sale on account of mortgage of the land transferred and also any sum which the purchaser has paid or agreed to pay on account of rent due before the date of the transfer, whether such sums are or are not included in the consideration money as set forth in the instrument of transfer.

(4) Neither the acceptance of a landlord's fee on account of the transfer of an occupancy holding or portion or share thereof nor the making of an application to the Court to fix the market value in accordance with the first proviso to section 26D or the proviso to section 26F shall operate as an admission of the amount or fixity of rent or the area or any incident of such occupancy holding other than the existence of an occupancy right 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."

Substitution of  
new section for  
section 36 of Act  
VIII of 1886

23. For section 36 of the said Act the following shall be substituted, namely:—

"36. If the Court passing a decree for enhancement considers that the <sup>Power to order</sup> immediate enforcement of <sup>progressive enhancement.</sup> the decree to its full extent will be attended with hardship to the riyat, 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."

Amendment of  
section 38 of Act  
VIII of 1886.

24. In sub-section (1) of section 38 of the said Act—

(i) after the words "of his rent on" the words "one or more of" shall be inserted, and the word "or" at the end of clause (a) shall be omitted,

(ii) at the end of clause (b), the following shall be added, namely:—

"(c) on the ground that the landlord has failed to carry out the arrangements, in respect of irrigation or the maintenance of embankments which were in force at the time when the rent was settled,

Substitution of  
new section for  
section 40 of  
Act VIII of 1885.

25. For section 40 of the said Act the following shall be substituted, namely:—

“40. (1) When a raiyat or an under-raiyat having occupancy rights in a holding pays for the holding rent in kind or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, or partly in any of those ways and partly in cash, either the tenant or the landlord may apply to have the rent commuted to a money rent.

Commutation.

(2) The application may be made to the Collector or to a Sub-divisional 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 in this behalf by the Local Government.

(3) A case for commutation may be determined by the officer who receives the application, or by some other officer competent under sub-section (2) to receive applications for commutation, to whom the case is transferred by him.

(4) 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 determination of the case.

(5) If the application is opposed, the said officer shall decide whether in all the circumstances of the case it is reasonable to grant it, and, in particular, he shall have regard to the following circumstances:—

(a) whether the rent in kind is mainly required for the subsistence of the landlord and his household, and not for purposes of trade;

(b) in the case of land held under trust or other legal obligation for a religious or charitable purpose, whether the rent in kind is required for consumption by, or for the subsistence of, the beneficiaries of the endowment, or for the due performance of worship;

(c) whether the landlord of the applicant pays in kind or otherwise as specified in sub-section (1) his rent for the tenure or holding;

(d) whether the tenant receives in respect of any portion of the land rent in kind or otherwise as specified in sub-section (1) from a sub-lessee;

(e) if the land is in an area under reclamation, whether it would be inequitable to fix a money rent in the conditions prevailing at the time when the application is made.

- (6) If the application is unopposed or if the said officer after considering the case put forward by both parties decides to grant it, he shall determine the sum to be paid on commutation as money rent and the premium, if any, to be paid to the landlord for the commutation, and shall order that the tenant shall, in lieu of paying the rent in kind or otherwise as specified in sub-section (1), pay the sum so determined and the premium, if any.
- (7) In making the determination of the sum to be paid as money rent, the officer shall have regard to—
- (a) the average money rent payable by occupancy raiyats or occupancy under-raiyats, as the case may be, for land of a similar description and with similar advantages in the vicinity;
  - (b) the average value of the rent actually received by the landlord during the preceding ten years, or during any shorter period for which evidence may be available;
  - (c) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges;
  - (d) improvements effected by the landlord or by the tenant in respect of the holding and the rules laid down in section 33 regarding enhancement of rent on the ground of a landlord's improvement; and
  - (e) any sum agreed to by the parties to be paid as money rent:

Provided that—

- (i) the officer shall in no case determine a rent which is unfair or inequitable, or, except for special reasons to be recorded in writing, which exceeds the average value of the rent actually received, as determined under clause (b); and
  - (ii) if at any time during the preceding fifteen years the rent in kind or otherwise as aforesaid has been substituted for a money rent, or if the rent has been enhanced, regard shall be had to the rent paid before the substitution or enhancement took place and to the rules laid down in this Act for the guidance of the Civil Court in enhancing rents.
- (8) If the average value of the rent actually received, as determined under clause (b) of sub-section (7), is materially in excess of the sum determined as rent under sub-section (6), then the officer shall determine a sum to be paid as premium. In determining the premium the officer shall

primarily have regard to the market value of the land less the capitalized value of the rent settled, but the amount so determined shall not exceed fifteen times the rent determined under sub-section (6).

- (9) The order for commutation 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 to be recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is passed.
- (10) The officer may on the application of the tenant order that the premium shall be paid by instalments not exceeding fifteen in number, that the first instalment shall be paid at the beginning of the agricultural year, in which the rent settled under clause (6) 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.
- (11) The premium or the instalments thereof shall be payable and recoverable as rent, but interest shall only be awarded in respect of such instalments as are not paid by the dates fixed under sub-section (10).
- (12) If the officer refuses the application, or determines a rent or premium or both, his order shall be subject to appeal to the Special Judge appointed under section 115C, unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply :

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 circumstances have in the meantime changed.

- (13) Notwithstanding anything contained else where 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 provided in this section."

Amendment of section 44 of Act VIII of 1885.

**26.** For clause (c) of section 44 of the said Act the following shall be substituted, namely:—

"(c) On the ground that the lease or the period of the settlement, under which he has been admitted to occupation of the land, has expired."

Amendment of section 46 of Act VIII of 1885.

**27.** In sub-sections (1), (2) and (3) of section 46 of the said Act for the words "an agreement" the words "a draft of an agreement" shall be substituted.

Substitution of  
new section for  
section 48 of Act  
VIII of 1885.

**28.** For section 48 of the said Act the following shall be substituted, namely :—

“ 48. All under-raiyats, other than under-raiyats holding only by reason of a temporary lease for a term not exceeding nine years granted by or on behalf of a raiyat or under-raiyat, who is disabled by age, sex, disease, accident or temporary absence from home from cultivating his land by himself or by members of his family or by hired servants or with the aid of partners, shall be occupancy under-raiyats :

Provided that under-raiyats who have been holding under a temporary lease for a term not exceeding nine years granted by or on behalf of persons of the classes referred to above shall not become occupancy under-raiyats on the expiry of the lease—

- (i) if they are sued for ejection within one year of the date of expiry of the lease and ejected by means of such suit,
- (ii) if they surrender the land voluntarily within one year of the expiry of the lease, or
- (iii) if during the currency of the lease or within one year of its expiry they take a new lease which fulfils the conditions set forth in this section and is granted by a person of the classes referred to above.

*Explanation.*

An under-raiyat who has become an occupancy under-raiyat in respect of any land shall thereafter for the purposes of this section be deemed to hold such land in virtue of his occupancy right therein and not only by reason of any lease which may thereafter be granted by a person of the classes referred to above.

*Illustrations.*

1. A, an under-raiyat, holds under a lease given for nine years by B, a disabled person. B dies and his holding is inherited by C, who is not disabled. A continues to be a non-occupancy under-raiyat under C till the expiry of the lease, but if C does not sue A for ejection within one year of the date of expiry of the lease, A becomes an occupancy under raiyat under C.
2. A has become an occupancy under-raiyat under C, who is not a disabled person. C sells his interest to D, a disabled person. A continues to be an occupancy under-raiyat under D notwithstanding any lease granted by D to him.”

Insertion of  
new section 48A  
in Act VIII of  
1885.

**29.** After section 48 of the said Act the following section shall be added, namely :—

“ 48A. (1) An occupancy under-raiyat shall have as against his immediate landlord all the rights and liabilities of a raiyat with occupancy rights as set forth in

Chapter V, other than those conferred by sub-section (1) of section 19 and by sections 20, 21 and 22 (save as expressly provided in that section), and his holding shall as against such landlord be deemed to be the holding of an occupancy raiyat :

Provided that the fee payable under section 26D shall, in the case of the sale of a holding of an occupancy under-raiyat in respect of which a money rent is payable, amount to 25 per cent. of the consideration money or to six times the annual rent of the holding or share or portion of the holding transferred, whichever is less, and, in the case of a transfer by exchange, gift or bequest, to twice the annual rent of the holding, and that the provisos to section 26D shall not apply thereto.

(2) The interest of an occupancy under-raiyat shall not be deemed to be a protected interest under clause (d) of section 160."

Amendment of section 49 of Act VIII of 1885.

**30.** (1) Section 49 of the said Act shall be re-numbered as section 49 (1) and in that sub-section as re-numbered—

(a) for the words "An under-raiyat" at the beginning of the sub-section the words "A non-occupancy under-raiyat" shall be substituted;

(b) in clause (b) after the words "written lease" the words "for a term" shall be inserted.

(2) After sub-section (1), as so re-numbered, the following sub-section shall be added, namely:—

"(2) Subject to the provisions of this Act, and in so far as such terms are not inconsistent therewith, the terms of the lease shall govern the remaining incidents of the holding of an non-occupancy under-raiyat."

Amendment of section 50 of Act VIII of 1885.

**31.** In section 50 of the said Act—

(a) sub-section (2) is repealed, and

(b) in sub-section (3)—

(i) after the words "held by a" the words "tenure-holder or a" shall be inserted;

(ii) for the word "holding" in the two places where it occurs the word "tenancy" shall be substituted.

Amendment of section 52 of Act VIII of 1885.

**32.** For sub-section (6) of section 52 of the said Act the following shall be substituted, namely:—

"(6) When in a suit under this section the landlord or tenant proves that at or about the time when the area was recorded in any *patta* or *kabuliyat* there existed in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situated a practice of settlement being made after measurement of the land assessed with rent, or, where the landlord or tenant



proves that the area entered in the counter-foil receipts corresponds with the area in the rent-roll on which the claim is based and that a longstanding 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."

Substitution of new sub-sections for sub-sections (1) and (2) of section 54 of Act VIII of 1885.

**33.** For sub-sections (1) and (2) of section 54 of the said Act the following shall be substituted, namely:—

"54. (1) Every tenant shall pay each instalment Time and place for payment of rent. of rent before sunset of the day on which it falls due.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord, or the rent may be paid by postal money order in accordance with such rules, as the Local Government may from time to time make either generally or for any specified local area authorizing a tenant to pay his rent by postal money order, and, where rent may be paid by postal money order in accordance with such rules, and the postal receipt in the prescribed form for a money order alleged to have been sent in payment of such rent to the address of the landlord or of his agent, is produced in support of a plea of tender, the Court shall presume, until the contrary is proved, that such tender has been made:

Provided that, when a landlord accepts rent sent by postal money order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money order form."

Substitution of new section for section 57 of Act VIII of 1885.

**34.** For section 57 of the said Act the following shall be substituted, namely:—

"57. (1) Each tenant shall be entitled to receive Tenant entitled to statement of account at close of year. from the landlord free of charge, on demand on the expiry of three months after the end of each agricultural year, a statement of account for that year specifying the several particulars shown in the form of account given in 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.

The entry of area in such statement of account shall not be binding on the landlord or the tenant in any suit or proceeding for the alteration of the rent of the tenure or holding.

(2) The year and instalment to which a payment is credited under section 55 shall be clearly specified in the statement of account furnished to the tenant under sub-section (1).

(3) The landlord shall prepare and retain a copy of the statement giving the same particulars."

**35.** In section 58 of the said Act—

Amendment of  
section 58 of Act  
VIII of 1886.

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

"(2) if after the expiry of two months from the date of the demand made under section 57 a landlord, without reasonable cause, refuses or neglects to deliver the statement of account prescribed in section 57 for that year to a tenant demanding the same, the tenant may, within six months of the demand, 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 account should have been delivered ;"

(b) in sub-section (4) for the words "one year" the words "two years" shall be substituted ;

(c) after sub-section (8) the following shall be added, namely :—

"(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall in no case be considered a reasonable cause for not tendering a receipt for any instalment actually paid, or for failure to furnish the statement of account prescribed in section 57, and the refusal of the tenant to accept the receipt shall not be deemed to be a reasonable excuse for not retaining a counterfoil fully filled up."

Amendment of  
section 61 of  
Act VIII of 1886.

**36.** In section 61 of the said Act for the words "the full amount of the money then due" at the end of sub-section (1), the words "a sum not less than the amount of the money then due" shall be substituted, and in sub-section (2) after the words "the deposit is to be entered" the words "and the name of his common agent, if any," shall be inserted.

Substitution of  
new section for  
section 63 of  
Act VIII of 1886.

**37.** For section 63 of the said Act the following shall be substituted, namely:—

Procedure for payment  
to the landlord of rent  
deposited.

“63. The Court receiving  
a deposit—

- (i) in case (a) or (b) of section 61 shall forthwith forward the same by postal money order to the address of the landlord or of the common agent, if any, of the landlord empowered to receive rent;
- (ii) in case (c) or (d) of that section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under the next following section 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 or in some conspicuous place in the village in which the holding 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.”

Amendment of  
section 64 of  
Act VIII of 1886.

**38.** In section 64 of the said Act—

- (a) in sub-section (1) after the words “amount of the deposit” the words “notified under section 63” shall be inserted;
- (b) sub-section (2) shall be omitted; and
- (c) sub-sections (3) and (4) shall be re-numbered as sub-sections (2) and (3).

Insertion of  
new section 64A  
in Act VIII of  
1886.

**39.** After section 64 of the said Act the following shall be added, namely:—

“64A. If a landlord or his agent refuses without reasonable excuse to receive payment of rent remitted by postal money order or deposited in Court, he 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 25 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 holding shall not be considered a reasonable excuse under this section:

Provided that, when a landlord accepts rent, which has been deposited, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application to deposit or in the postal money order form."

Amendment of section 65 and sub-section (1) of section 66 of Act VIII of 1885.

**40.** In section 65 of the said Act and in sub-section (1) of section 66 of the said Act after the words "raiyat holding at fixed rates" for the words "or an occupancy raiyat" the words "an occupancy raiyat or an occupancy under-raiyat" shall be substituted.

Amendment of section 66 of Act VIII of 1885.

**41.** In section 66 of the said Act—

(a) in sub-section (1) for the words "Bengali year" the words "agricultural year" shall be substituted, and the words "where that year prevails or at the end of the month of Jeth where the Fasli or Amlī year prevails" shall be omitted;

(b) in sub-sections (2) and (3) for the words "fifteen days" the words "thirty days" shall be substituted and for the word "fifteenth" in sub-section (2) the word "thirtieth" shall be substituted.

Amendment of section 67 of Act VIII of 1885.

**42.** In section 67 of the said Act the words "or of the institution of the suit, whichever date is earlier" shall be omitted.

Amendment of section 68 of Act VIII of 1885.

**43.** After the proviso to sub-section (1) of section 68 of the said Act the following shall be inserted, namely:—

"Provided also that where damages are awarded—

(i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and

(ii) interest on the arrear shall be awarded from that date up to the date of payment."

Amendment of section 69 of Act VIII of 1885.

**44.** In sub-section (3) of section 69 of the said Act as amended by the Bengal Tenancy (Amendment) Act, 1907, and the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the portion of the sub-section after the words "has been effected" shall be omitted.

Repeal of section 73 of Act VIII of 1885.

**45.** Section 73 of the said Act is repealed.

Amendment of section 74 of Act VIII of 1885.

**46.** To sub-section (3) of section 74 of the said Act the following shall be added, namely:—

"and registered before the first day of November, 1922."

Amendment of sections 76 and 79 of Act VIII of 1885.

**47.** In clause (f) of sub-section (2) of section 76 of the said Act and in section 79 of the said Act the word "suitable" shall be omitted.

Amendment of section 76 of Act VIII of 1885.

**48.** In section 76 of the said Act—

(a) in sub-section (1) the word "raiyat's" shall be omitted;

- (b) to clause (a) of sub-section (2) the words "or for the purpose of providing drinking water for the tenant or his family" shall be added;
- (c) in clause (f) of sub-section (2) after the words "the raiyat" the words "or under-raiyat" shall be inserted; and
- (d) in sub-section (3) after the word "raiyat" the words "or under-raiyat" shall be inserted.

Amendment of section 77 of Act VIII of 1885.

**49.** In section 77 of the said Act—

- (a) in sub-section (1) for the words "or has an occupancy right in his holding, neither the raiyat" the words "or where a raiyat or an under-raiyat has an occupancy right in his holding, neither the tenant" shall be substituted;
- (b) in sub-section (2) for the words "the raiyat," in the two places where they occur, the words "the tenant" shall be substituted; and
- (c) after sub-section (2) the following shall be added, namely:—

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

Amendment of section 78 of Act VIII of 1885.

**50.** In section 78 of the said Act for the words "the raiyat" the words "the tenant" shall be substituted.

Amendment of section 80 of Act VIII of 1885.

**51.** To section 80 of the said Act the following shall be added, namely:—

"Provided that the immediate landlord of an occupancy under-raiyat may apply for the registration of an improvement made in accordance with the provisions of sub-section (1)—

- (i) in the case of improvements made before the day of \_\_\_\_\_, 192 , within twelve months from that date,
- (ii) in the case of improvements made after that date, within twelve months from the date of the completion of the work."

Amendment of sections 82, 83, 86 and 87 of Act VIII of 1885.

**52.** In sections 82, 83, 86 and 87 of the said Act after the word "raiyat," wherever it occurs, the words "or under-raiyat" shall be inserted.

Amendment of section 82 of Act VIII of 1885.

**53.** In sub-section (4) of section 82 of the said Act after the words "commencement of this Act" the words "and improvements made by an occupancy under-raiyat between the first day of November, 1922, and the day of \_\_\_\_\_, 192 " shall be inserted.

Amendment of  
section 85 of Act  
VIII of 1845.

**54. In section 85 of the said Act—**

(a) in sub-section (1) after the word "raiyat" the words "or under-raiyat" shall be inserted and the words "otherwise than by a registered instrument" shall be omitted;

(b) sub-sections (2) and (3) shall be omitted; and

(c) after sub-section (1) the following shall be inserted, namely:—

"Provided that any under-raiyat who holds under a lease registered before the first day of November, 1922, shall not be liable to ejectment as a result of the sale of the raiyati holding in execution of a decree for arrears of rent, unless a notice of annulment has been duly served under the provisions of section 167."

Insertion of new  
section 86A in Act  
VIII of 1885.

**55. After section 86 of the said Act the following shall be inserted, namely:—**

"86A. (1) If—

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

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

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

the tenant shall, unless there is a contract to the contrary made by registered instrument, be deemed to have surrendered his right to such lands 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.

Amendment of  
section 87 of Act  
VIII of 1885.

**56. In section 87 of the said Act—**

(a) in sub-section (3) after the word "compensation" the words "including the repayment of any premium paid under section 87A." shall be inserted, and to that sub-section the following shall be added, namely:—

"and, if it orders recovery of possession by the raiyat, the rights under the raiyat of any sub-lessee by whom the premium has been paid under section 87A shall also revive and his possession as sub-lessee shall continue as though there had been no abandonment;"

(b) in sub-section (4) after the word "sublet" the words "to a non-occupancy under-raiyat" shall be inserted.

**57.** After section 87 of the said Act the following shall be inserted, namely:—

“87A. (1) If the immediate sub-lessee of an occupancy holding, which has been surrendered or abandoned by an occupancy raiyat is an occupancy under-raiyat, and has himself or through his predecessors in interest held as an under-raiyat any of the lands of such holding since the first day of January, 1915, he shall on application to the landlord of the former raiyat within three months of the date of surrender or within three months of the date of the publication of the notice under sub-section (2) of section 87, as the case may be, be entitled to take the occupancy right that was enjoyed by his sub-lessor in the holding—

- (i) at the same rent as was payable by the former raiyat before the surrender or abandonment, in which case he shall pay to the landlord a premium equal to six times that rent, or
- (ii) at the same rent as was payable by all the sub-lessees of the holding to the raiyat before the surrender or abandonment, in which case no premium shall be paid, subject to the provisions contained in this Act in regard to the subsequent enhancement or reduction of such rent and provided that he pays to the landlord any arrears of rent due from the former raiyat on account of the holding.

The landlord of such sub-lessee may within one month of the date of receipt of the application under this sub-section by notice in writing elect for payment by the tenant of rent and premium under clause (i) or of rent under clause (ii). If he does not so elect, the sub-lessee shall take under whichever of those clauses he may prefer.

(2) If there are two or more sub-lessees of the lands of such holding, or of any portion of such lands, who have held any of such lands as under-raiyats since the first day of January, 1915, any of such sub-lessees, who shall apply within the period allowed by sub-section (1) and pay the premium, if any, required by the provisions of that sub-section, shall be entitled to take the holding under that sub-section as if they had been the sole sub-lessee of such holding, provided that they apply for or take a joint settlement of the entire holding with themselves and with any other sub-lessees who have applied or who may thereafter apply in accordance with the provisions of this sub-section.

(3) The premium payable under sub-section (1) may be paid or deposited in Court for payment to the landlord as though it were an arrear of rent.

(4) If, within the period allowed by sub-section (1), no application is made to the landlord in accordance with the provisions of that sub-section, or if the premium, if any, payable under that sub-section is not paid or deposited in Court within that period or within one month of the date of election by the landlord under sub-section (1), whichever is later, the landlord may, subject in the case of abandonment to the provisions of sub-section (3) of section 87, avoid the sub-lease or sub-leases and may enter on the holding and let it to another tenant or take it into cultivation himself."

Amendment of section 88 of Act VIII of 1885.

**58.** Section 88 of the said Act, as modified by section 18 of the Bengal Tenancy (Amendment) Act, 1907, shall be substituted for section 88, as first enacted.

Insertion of new sections 88A and 88B in Act VIII of 1885. •

**59.** After section 88 of the said Act the following shall be inserted, namely :--

"88A. If any co-sharer landlord limits by contract his rights as landlord in respect of his share in a holding of which he is co-sharer landlord, such holding not having been divided in accordance with the provisions of section 88, the contract shall be void as against the other co-sharer landlords or any of them, and the lands in respect of which such contract is made shall not be deemed to form the subject of a separate tenancy by virtue of such contract to the prejudice of any such other landlords.

Safeguard to other co-sharer landlords against limitation of interest by a co-sharer landlord.

*Illustration.*

A and B are co-sharer landlords, each holding a half share in respect of a tenure. A and B jointly settle a holding with X, a raiyat. B later grants to X *mukarari* rights in respect of B's 8 annas interest as landlord in the lands of the holding without the written consent of A. A, acting under the provisions of section 188, may sue X for enhancement of the rent of the holding on the basis of the former settlement, disregarding the subsequent grant of *mukarari* rights by B, and will get the benefit of such enhancement, if any, to the extent of half of the increased amount of the new rent over the old rent of the holding. B, being estopped by his contract, cannot take his share of the relief.

"88B. If any co-sharer tenant in a tenure or holding, which has not been sub-divided in accordance with the provisions of section 88, without the written consent of all the co-sharer tenants or of their agent, duly authorized in this behalf, and not being the representative of all of them in respect of the contract or permission, grants to any

Safeguard to other co-sharer tenants against action of a co-sharer tenant rendering them liable to penalty.



immediate under-tenant any permission to use any of the lands of the tenure or holding in a manner whereby the co-sharer tenants thereof would be liable to ejection or any other penalty, any other of such co-sharer tenants may bring a suit or make an application in manner provided in clause (a) of sub-section (1) of section 188 for the ejection of such under-tenant, and he shall be held to be the landlord of such under-tenant for the purpose of his ejection and the permission granted by the co-sharer tenant shall be void for the purposes of such suit or application.

*Illustration.*

B and C take joint settlement of a tenure from A, a landlord, the lease providing that they shall be liable to ejection, if the lands of the tenure are used otherwise than for agricultural purposes. C lets out certain lands of the tenure to X, a raiyat, without the written consent of B, and permits X to make a brickfield on the lands, thereby rendering both B and C liable to ejection by A. B, acting under the provisions of section 188, may sue X for ejection, and shall be his landlord for the purposes of the suit, notwithstanding that there is no settlement between him and X, and he may eject X."

Amendment of  
section 93 of Act  
VIII of 1886.

**60.** In section 93 of the said Act—

- (a) at the commencement of the section the figure and brackets "(i)" shall be inserted,
- (b) after the words "co-owners of an estate or tenure" the words "or of lands held jointly between two or more estates or tenures" shall be inserted,
- (c) after the words "injury to private rights" the words, figures and brackets "or (ii) where owing to the existence of a large number of small co-sharers in an estate or tenure the tenants are put to inconvenience and harassment in the payment of their rent," shall be inserted,
- (d) before the letters and brackets "(a)" and "(b)" where they occur for the second time the figure and brackets "(i)" shall be inserted,
- (e) after the words "interest in the estate or tenure" the words "or in the said lands as the case may be and in case (ii) on the application of more than half the tenants," shall be inserted, and
- (f) after the words "common manager," the words "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, or for the estate or tenure in which the tenants are put to inconvenience or harassment as aforesaid" shall be inserted.

Amendment of section 95 of Act VIII of 1885.

**61.** For clause (b) of section 95 of the said Act the following shall be substituted, namely:—

“(b) direct the Collector to appoint a manager.”

Amendment of section 96 of Act VIII of 1885.

**61A.** In section 96 of the said Act for the words “District Judge” and “Judge” the word “Collector” shall be substituted.

Amendment of section 98 of Act VIII of 1885.

**62.** In section 98 of the said Act—

(a) for the words “District Judge” in the seven places where they occur the word “Collector” shall be substituted; and

(b) in sub-section (7) after the words and figures “section 103” the words, figures and letter “or section 158A” shall be inserted.

Insertion of new section 99A in Act VIII of 1885.

**63.** After section 99 of the said Act the following shall be added, namely:—

“99A- (1) Where two or more persons are co-sharer landlords, they shall, within six months of the commencement of the Bengal Tenancy (Amendment) Act, 192 , or, in cases to which this section becomes applicable only after that date, within six months of the date on which the rent so becomes payable to more than one person, appoint a common agent for the whole of their joint property or a common agent for each portion thereof to receive on behalf of all of them notices of transfers under sections 12, 13, 15, 18, 26B to 26J and 48A of tenures or holdings or portions or shares thereof held under them, and the fees payable in respect of such transfers shall be paid to the common agent for the area in which the tenure or holding transferred is situated and his receipt shall be deemed to be a full acquittance for the same.

(2) The name and address of the common agent for the area in which the tenure or holding is situated shall be entered upon the receipts required under section 56 to be given on the payment of rent for the tenure or holding.

(3) If no such common agent has been appointed or if after the appointment of such common agent rent has been paid, but the name and address of the common agent have not been entered upon the rent receipts, no Court shall entertain a suit for the recovery of the fees payable in respect of the transfer of the tenure or holding until such common agent is appointed, and the landlords shall not recover interest, damages or costs in respect of any such fees which may have accrued in respect of such lands—

(i) between the date on which the common agent should have been, and the date on which he was, appointed, and

- (ii) during any period in respect of which it is proved that a receipt has been granted on which the name and address of the common agent have not been entered.
- (4) If the co-sharer landlords are unable to agree as to the common agent to be appointed, or fail to appoint him within the period fixed by sub-section (1), any of them may apply to the Collector to appoint on behalf of the landlords a common agent, and, after giving to the landlords an opportunity to show cause, the Collector may appoint a common agent, and such common agent shall be deemed to have been appointed by all such landlords.
- (5) When a common agent is appointed under this section, or at any time after such appointment, the landlords may authorize the common agent to receive rents on their behalf, and the fact that he is so authorized shall thereafter be noted against the name of the common agent on all the rent receipts given on behalf of such landlords in respect of tenancies within the area for which he is appointed, and if such note is not so made, the provisions of sub-section (3) shall apply in respect of the recovery by such landlords of interest, damages and costs on arrears of rent and dues recoverable as such.
- (6) Where a common agent has been authorized under sub-section (5) to receive rents, no application by the tenants for the appointment of a common manager on the ground specified in case (ii) in section 93 shall lie.
- (7) The appointment under sub-section (1) of a common agent and the authorization under sub-section (5) of a common agent to receive rents shall be made by instrument in writing and, where the rent roll of the tenancy or tenancies for that portion of the joint property for which the common agent is appointed exceeds rupees one hundred, the appointment or authorization shall be made by registered instrument."

Amendment of section 100 of Act VIII of 1885.

**64.** In section 100 of the said Act—

- (a) for the words "High Court" the words "Board of Revenue" shall be substituted, and
- (b) after the words "managers" the words "and common agents" shall be inserted.

Amendment of section 101 of Act VIII of 1885.

**65.** In clause (c) of sub-section (2) of section 101 of the said Act for the words "District Judge" the word "Collector" shall be substituted.

Amendment of section 102 of Act VIII of 1885.

**66.** In clause (b) of section 102 of the said Act after the word "class" the words "or classes" shall be inserted, and for the words "or under-raiyat" the comma and words ", occupancy under-raiyat or non-occupancy under-raiyat" shall be substituted.

Amendment of section 103B of Act VIII of 1885.

**67.** For section 103B of the said Act, as inserted by section 22 of the Bengal Tenancy (Amendment) Act, 1907, section 103B of the said Act, as inserted by section 21 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Amendment of section 104H of Act VIII of 1885.

**68.** In sub-section (3) of section 104H of the said Act for clause (g), as modified by section 25 of the Bengal Tenancy (Amendment) Act, 1907, clause (g), as enacted by the Bengal Tenancy Act, 1885, and clause (h), as inserted by section 24 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Amendment of section 105 of Act VIII of 1885.

**69.** (1) In sub-sections (1) and (2) of section 105 of the said Act, as modified by sections 23 (1) and 25 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and by the Devolution Act, 1920, for the words "two months" the words "four months" shall be substituted.

(2) The said section 105 as so modified shall be substituted for section 105, as modified by section 24 (1) of the Bengal Tenancy (Amendment) Act, 1907, and by the Devolution Act, 1920.

Amendment of section 105A of Act VIII of 1885.

**70.** In section 105A of the said Act after clause (f) the following shall be inserted, namely:—

"(g) whether the rent payable at the time of final publication of the record-of-rights was correctly entered, and if not, what the rent payable at that time was."

Insertion of new sections 105B and 105C in Act VIII of 1885.

**71.** After section 105A of the said Act the following shall be inserted, namely:—

"105B. When any issue is raised under section 105A, the party raising it shall pay, in addition to court-fees under section 105, such court-fees as he would have had to pay if he had claimed relief under section 106.

Higher court-fees to be paid in certain cases in proceedings under section 105.

105C. Except for reasons to be recorded in writing, no Revenue-officer shall award to any party any portion of his costs in a proceeding under section 105."

Costs not to be awarded ordinarily in proceedings under section 105 by Revenue-officer.

Amendment of section 106 of Act VIII of 1885.

**72.** (1) Section 106 of the said Act, as substituted by the Bengal Tenancy (Validation and Amendment) Act, 1903, shall be re-numbered as section 106 (1), and in that sub-section, as re-numbered, and in sub-section (1) of section 106 of the said Act, as re-numbered by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, for the words "three months" the words "four months" shall be substituted.

(2) To section 106 (1) of the said Act, as re-numbered by sub-section (1), sub-section (2) of section 106 of the said Act, as inserted by sub-section (3) of section 27 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1903, shall be added.

Amendment of sections 107 and 108 of Act VIII of 1885.

**72A.** In sections 107 and 108 of the said Act for the figures and letter "109A" where they occur, the figures and letter "115C" shall be substituted.

Amendment of sections 108 and 115B of Act VIII of 1885.

**73.** In section 108 of the said Act and in section 115B of the said Act, as re-numbered by section 74, for the words "is pending" the words "has been filed" shall be substituted.

Re-numbering of section 108A of Act VIII of 1885 as section 115B and amendment of that section.

**74.** Section 108A of the said Act shall be transferred to Part IV of Chapter X and shall be re-numbered 115B, and in that section, as re-numbered, for the figures and letter "109A" the figures and letter "115C" and for the words "twelve months" the words "two years" shall be substituted.

Amendment of section 109 of Act VIII of 1885.

**75.** In section 109 of the said Act—

(i) for the figures and letter "109A" the figures and letter "115C" shall be substituted, and

(ii) after the words "both inclusive" the following shall be added namely :—

"Provided that nothing contained in this section shall debar a Civil Court from entertaining a suit concerning any matter which was the subject-matter of an application under section 105, or section 105A, or of a suit under section 106, which application or suit has been withdrawn with or without liberty to make a fresh application or to file a fresh suit, as the case may be, or concerning any matter which has not been finally adjudicated upon in any such proceeding or suit."

Amendment of section 109A of Act VIII of 1885.

**76.** (1) Section 109A of the said Act shall be transferred to Part IV of Chapter X and shall be re-numbered section 115C.

(2) In sub-section (1) of that section, as re-numbered, after the word "under" the word, figures and comma "section 40," and after the word "inclusive" the words, figures and letter "and section 115B" shall be inserted.

(3) In sub-section (2) of that section, as re-numbered, for the words, figures and letter "105 to 108A, both included" the words, figures and letter "105 to 108, both inclusive, and section 115B" shall be substituted.

(4) After sub-section (2) of that section, as re-numbered, the following shall be added, namely :—

"(2a) No appeal shall lie against the order of a Revenue-officer refusing to exercise his powers of revision under section 108, or from the order of a superior Revenue-officer refusing to revise an order passed under section 115B, and no appeal shall lie to the Special Judge from any order passed under Part II of this Chapter."

Amendment of section 109B of Act VIII of 1885.

**77.** Section 109B of the said Act, as inserted by section 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted for section 109B of the said Act, as inserted by section 33 of the Bengal Tenancy (Amendment) Act, 1907.

Amendment of section 109C of Act VIII of 1885.

**78.** (1) In sub-section (1) of section 109C of the said Act, as inserted by section 33 of the Bengal Tenancy (Amendment) Act, 1907, the words "specially empowered in this behalf by the Local Government" shall be omitted.

(2) The said sub-section 109C, as so modified, shall also be inserted after section 109B of the said Act, as inserted by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908.

Amendment of section 107 of Act VIII of 1885 and substitution of new section 109A for sections 109C and 109D of Act VIII of 1885

**79.** For sub-section (2) of section 107 of the said Act, as inserted by section 28(b) of the Bengal Tenancy (Amendment) Act, 1907, and section 109D, as inserted by section 33 of the same Act, and for sub-section (2) of section 107, as inserted by section 28(b) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and section 109C, as inserted by section 33 of the same Act, the following shall be substituted, namely :—

“109D. A note of all rents commuted under section 40 in the course of proceedings under this Chapter, 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.”

Amendment of section 110 of Act VIII of 1885.

**80.** In section 110 of the said Act for the words “settlement rent-roll” the words “record-of-rights” shall be substituted.

Amendment of section 111B of Act VIII of 1885.

**81.** (1) In sub-sections (1) and (4) of section 111B of the said Act, as inserted by section 35 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, for the words “three months” the words “four months” shall be substituted.

(2) The said section 111B as so modified shall be substituted for section 111B of the said Act, as inserted by section 35 of the Bengal Tenancy (Amendment) Act, 1907.

Amendment of section 112 of Act VIII of 1885.

**82.** In section 112 of the said Act—

(1) In sub-section (1), for the portion commencing with the words “or that any landlord is demanding,” and ending with the words “a Revenue-officer,” as inserted by section 36 (1) of the Bengal Tenancy (Amendment) Act, 1907, the corresponding portion, as inserted by section 36 (1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted ; and

(2) After sub-section (2a), as inserted by section 36(2) of the Bengal Tenancy (Amendment) Act, 1907, and after sub-section (2a), as inserted by section 36 (2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the following shall be added, namely :—

“ (2b) If any rent other than rent for which a decree has already been obtained is in arrear in respect of a tenancy at the time when

a settlement of rents is made under this section, such arrear shall not be recoverable in any Court in so far as it exceeds the amount which would have been due as rent of the tenancy had the settlement of rent taken place at the commencement of the period for which such rent is claimed."

Amendment of section 113 of Act VIII of 1885.

**83.** In sub-section (1) of section 113 of the said Act the words "or the holding of an under-raiyat having occupancy rights" and the words "or the holding of an under-raiyat not having occupancy rights" shall be omitted.

Repeal of section 115 of Act VIII of 1885.

**84.** Section 115 of the said Act is repealed.

Amendment of section 115A of Act VIII of 1885.

**85.** For section 115A of the said Act, as inserted by section 38 of the Bengal Tenancy (Amendment) Act, 1907, section 115A of the said Act, as inserted by section 38 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Amendment of section 116 of Act VIII of 1885.

**86.** In section 116 of the said Act—

(a) After the words "Railway Company," where they occur for the second time, the words "or to lands belonging to the Government or to any local authority which are used for any public work, such as a road, canal or embankment, or are required for the repair or maintenance of the same," shall be inserted, and

(b) For the words "known in Bengal as *khamar*, *nij* or *nij-jot*, and in Bihar as *ziraat*, *nij*, *sir* or *khamat*" the words "known as *khamar*, *nij*, *nij-jot*, *zirat*, *sir* or *khamat*" shall be substituted.

Amendment of section 120 of Act VIII of 1885.

**87.** In section 120 of the said Act for the word "*kamat*" in the two places where it occurs the word "*khamat*" shall be substituted.

Repeal of sections 121 to 142 of Act VIII of 1885.

**88.** Sections 121 to 142 of the said Act are repealed.

Amendment of section 144 of Act VIII of 1885.

**89.** In section 144 of the said Act—

(a) To sub-section (1) the following shall be added, namely:—

"and no suit between landlord and tenant as such shall be instituted in any Court other than a Court within the local jurisdiction of which the lands of the tenure or holding, as the case may be, are wholly or partly situated."

(b) After sub-section (1) the following shall be added, namely:—

"(2) A landlord may institute one suit in respect of the rent of more than one tenancy, if the entire 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;
- (c) sub-section (2) shall be re-numbered as sub-section (3).

Insertion of  
new sections 146A  
and 146B in Act  
VIII of 1886.

90. After section 146 of the said Act the following shall be added, namely:—

“146A. Notwithstanding anything contained in the Indian Contract Act, 1872, all co-sharer tenants in a 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 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 holding.

146B. (1) Notwithstanding anything contained in the Indian Limitation Act, 1908, any person who claims that he should have been joined as a co-tenant defendant in a suit for the recovery of arrears of rent due in respect of a holding may at any time before the hearing of the suit has been completed 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.

Procedure in rent suit against co-sharer tenants in a holding.

(2) Notwithstanding anything contained in sub-section (3), any person, who should have been joined as a co-tenant defendant if he had applied in accordance with the provisions of sub-section (1), shall be deemed to be entitled to pay into Court, when the holding has been advertised for sale in execution of the decree, the amount requisite to prevent the sale, and he shall thereafter have the rights conferred by clauses (a), (b) and (c) of section 171 in respect of the payment so made.

(3) If the Court finds in delivering judgment or at any stage in the proceedings after the decree has been passed (including proceedings after confirmation of the sale), or in a suit to set aside the sale, that a person or persons in possession of a portion or a share



in the holding should have been, but have not been, made parties defendant to the suit, and that the portion or share of the holding held by those persons comprises more than one-fourth of the entire interest of the whole body of co-tenants therein, the decree for rent and sale in execution of that decree shall have the effect of a decree in a suit for money and of a sale in execution of a decree in such a suit, and shall be binding only on those co-tenants who have been made parties defendant to the suit. In the absence of such finding or proof, notwithstanding anything contained elsewhere in this Act or in any other law, the decree for rent and the sale in execution thereof shall be valid also against the holding; and, subject to the provisions of section 158B, the holding shall pass to the auction-purchaser in the manner provided in Chapter XIV:

Provided that, unless the decree has been found under this sub-section to have the effect of a decree in a suit for money, any co-tenant or co-tenants who should have been, but have not been, made parties defendant to the suit, shall be entitled to obtain from the auction-purchaser or his successors in interest, as the case may be, money compensation to the extent of their portion or share of the holding taken at its full market value. Such persons may apply to the Court by which the decree has been passed to fix the amount of compensation at any time within six months of the date of sale, or may thereafter bring a suit to obtain the compensation. An order of the Court passed on an application so made shall have the force and effect of a decree, and any co-tenants who have been awarded such compensation shall be deemed to have been duly made parties to the suit for the purpose of computing the amount of the interest in the holding held by co-tenants who have been made parties.

(4) Notwithstanding anything contained in sub-section (3), a decree for arrears of rent of a 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 manner provided in Chapter XIV, if it is proved that the defendants to the suit represented the entire body of co-sharer co-tenants in the holding, for the rent of which the suit was brought, and the provisions contained in sub-section (3) and the proviso thereto shall not apply to such decree."

Amendment of  
section 147 of Act  
VIII of 1896.

91. To section 147 the following shall be added, namely:—

" Provided that nothing contained in this section or in rule 2 in Order II in the First Schedule to the Code of Civil Procedure, 1908, shall apply to the recovery of a landlord's fee for the transfer of a tenure or holding, or shall prevent a landlord from recovering the same by separate suit "

Amendment of  
section 147A of  
Act VIII of 1885.

**92.** (1) In section 147A of the said Act, as inserted by section 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908,

(a) for the words and figures "section 373 of the Code of Civil Procedure" the words and figures "rule 1 in Order XXIII in Schedule I to the Code of Civil Procedure, 1908" shall be substituted, and

(b) after the words "the Court", where they occur for the first time, the words "shall not order an agreement or compromise to be recorded and" shall be inserted.

(2) The said section, as so amended, shall be re-numbered as sub-section (1) of section 147A.

(3) (a) After that sub-section as re-numbered, sub-section (4) of section 147A of the said Act, as inserted by the Bengal Tenancy (Amendment) Act, 1907, with the illustration thereto, shall be inserted as sub-section (2).

(b) In the illustration aforesaid for the words and figures "sub-section (4)" the words "this sub-section" shall be substituted.

(4) Section 147A of the said Act, as inserted by section 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and as modified by sub-sections (1), (2) and (3) of this section, shall be substituted for section 147A, as inserted by the Bengal Tenancy (Amendment) Act, 1907.

Amendment of  
section 148 of Act  
VIII of 1885.

**93.** In section 148 of the said Act—

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

"(a) sections 68 to 72 of the Code of Civil Procedure, 1908, and rules 1 to 13 in Order XI, rule 83 in Order XXI and rule 2 in Order XLVIII in Schedule I to the said Code, and Schedule III to the said Code, shall not apply to any such suit;"

(b) in clause (b)—

(i) for the words and figures "section 50 of the Code of Civil Procedure" the words and figures "rules 1, 2, 4, 5 and 6 and sub-rule (2) in rule 9 in Order VII in Schedule I to the Code of Civil Procedure, 1908", shall be substituted, and

(ii) after the words "sufficient for identification" the words "and the plaint shall further contain a statement as to whether a record-of-rights has been prepared and finally published in respect of such land" shall be inserted;

(c) for the second proviso to clause (b1) as inserted by section 43 (1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the following shall be substituted, namely :—

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 prescribed by clause (b) shall be required ;"

(d) the said clause (b1), as so modified, shall be substituted for clause (b1) as inserted by section 43 (1) of the Bengal Tenancy (Amendment) Act, 1907;

(e) to clause (c) the following shall be added, namely:—

“and it shall contain a concise statement of the facts alleged in the plaint, and shall be in the prescribed form, and, notwithstanding anything contained in rule 2 in Order V in Schedule I to the Code of Civil Procedure, 1908, it shall not be necessary to serve on the defendant any copy of the plaint;”

(f) for clause (d) the following shall be substituted namely:—

“(d) (i) the service of the summons may 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 Chapter VI of the Indian Post Office Act, 1898;

(ii) when a summons is so forwarded and it is proved that the letter was duly registered, the Court may presume that the summons has been duly served at the time at which it would have been delivered in the ordinary course of post;

(iii) when the summons is issued by registered post in the manner provided in sub-clause (i) it may be issued simultaneously by ordinary post, a certificate of posting being obtained;”

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

“(dd) Notwithstanding anything contained in rule 4(3) in 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;”

(h) to clause (e) the following shall be added, namely:—

“but the Court shall record its reasons for granting or refusing such leave;”

(i) in clause (f) for the words and figures "section 189 of the Code of Civil Procedure" the words and figures "rule 13 in Order XVIII in Schedule I to the Code of Civil Procedure, 1908," shall be substituted;

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

"(fa) on or before the date of hearing, the plaintiff may file an affidavit in proof of the facts stated in the plaint, and, notwithstanding anything contained in the Indian Evidence Act, 1872, the Code of Civil Procedure, 1908, or in any rules made thereunder, such affidavit may be used by the Court as evidence in the suit, and further the Court may accept one affidavit for all the cases brought by one plaintiff which come up for hearing on the same day;"

(k) (a) in clause (ff), as inserted by section 43(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908,—

(i) for the words "the landlord" in the first place where they occur the words "a party" and in the second place where they occur the words "the party" shall be substituted;

(ii) after the words "such documents" the words "may be" and after the words "copies or extracts", the words "without the payment of any court-fee, and such copies or extracts" shall be inserted;

(b) the said clause, as so modified, shall be substituted for clause (ff) as inserted by section 43 (2) of the Bengal Tenancy (Amendment) Act, 1907; and

(l) in clause (h) for the words and figures "section 232 of the Code of Civil Procedure" the words and figures "rule 16 in Order XXI in Schedule I to the Code of Civil Procedure, 1908" shall be substituted.

Substitution of  
new section  
for section 148A  
of Act VIII of  
1886

94. For section 148A of the said Act the following shall be substituted, namely:—

"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 as the date on which he is called on to appear 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 prescribed court-fee on the amount of his claim, he shall be joined as a co-plaintiff in respect of all rent 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 summons under sub-section (2) instituted a separate suit to recover his share of the rent of the tenure or holding, the suit shall be consolidated with that brought by the plaintiff under this section and he shall be deemed to be a co-plaintiff in the suit brought under this section and he shall be permitted to amend his claim so as to include all rent due to him up to the date of the institution of the suit, and any claim for rent made by him subsequent to that date shall be expunged from the plaint and may be recovered under the provisions of clause (c) of sub-section (7) or under sub-section (9), as the case may be.
- (5) The Court, when satisfied that summons has been served on all the defendants, shall, after taking such action, if any, as may be required under sub-sections (3) and (4) in view of applications received under those sub-sections, proceed to the trial of the suit.
- (6) A decree passed by the Court for the rent claimed by the plaintiff or plaintiffs, as the case may be, in a suit brought in accordance with the provisions of this section 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) (i) In disposing of the proceeds of the sale in execution of a decree passed under this section, the following rules, instead of those prescribed by section 73 of the Code of Civil Procedure, 1908, shall be observed, that is to say:—
  - (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 the confirmation of the sale, in proportion to their respective shares in the tenure or holding;

(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.

(ii) If the judgment-debtor disputes the decree-holder's or the co-sharer landlord defendant'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.

(3) When a suit has been instituted under the provisions of this section, no co-sharer landlord, who has been made a party defendant thereto, 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, except by means of a suit for money brought under the Code of Civil Procedure, 1908 :

Provided that, where a suit brought under this section has been withdrawn with leave to bring a fresh suit, the procedure, remedies and disabilities provided by this section shall, subject to the law of limitation, again apply to such fresh suit when instituted and to the parties thereto.

(9) Nothing contained in rule 2 in Order II in Schedule I to the Code of Civil Procedure, 1908, shall preclude a co-sharer landlord who has been joined under sub-section (3) as plaintiff in a suit brought under, or consolidated in accordance with, the provisions of this section from recovering by suit, in the event of the holding or tenure not being sold as a result of the suit brought under this section, 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.

(10) A suit brought in accordance with the provisions of this section shall for the purposes of section 146B be deemed to be a suit brought for the recovery of arrears of rent due in respect of a holding."

Amendment of  
section 153 of Act  
VIII of 1886.

**95.** In section 153 of the said Act—

(a) after the words "recovery of rent where" the words "the decree or order is passed by any District Judge, Additional Judge, or Subordinate Judge or by any judicial officer specially empowered by the Local Government to exercise final jurisdiction

under this section and the amount claimed in the suit including interest or damages under section 67 or section 68 does not exceed one hundred rupees" shall be inserted;

(b) clauses (a) and (b) up to and including the words "fifty rupees" shall be omitted;

(c) after the proviso to that section the following shall be inserted, namely:—

"Provided also that a decision of a question relating to title to land made in a rent-suit, from the decree or order in which no appeal lies, shall not be deemed to bar the consideration and decision of the same question in a subsequent title-suit."

Amendment of section 156 of Act VIII of 1885.

**96.** In section 156 of the said Act after the word "raiyat", wherever it occurs the words "or under-raiyat" shall be inserted.

Amendment of section 158 of Act VIII of 1885.

**97.** In clause (c) of sub-section (1) of section 158 of the said Act after the word "class" the words "or classes" shall be inserted and for the words "or under-raiyat" the words "occupancy under-raiyat or non-occupancy under-raiyat" shall be substituted.

Amendment of section 158A of Act VIII of 1885.

**98.** In section 158A of the said Act—

(a) in sub-section (1) the words "and in which such record is maintained" shall be omitted;

(b) in sub-section (2) after the words "Local Government" the words "after considering the manner in which the landlord maintains his record, and after ascertaining in such manner as it thinks fit the views of the tenants" shall be inserted.

Amendment of section 158B of Act VIII of 1885.

**99.** In sub-clause (iii) of sub-section (1) of section 158B of the said Act for the words "to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit" the words "in respect of a tenure or holding in manner provided in section 148A" shall be substituted.

Amendment of section 159 of Act VIII of 1885.

**100.** Section 159 of the said Act shall be re-numbered as sub-section (1) of section 159 and to that sub-section as re-numbered the following shall be added, namely:—

"(2) Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchaser shall take with effect from the date of confirmation of the sale."

Amendment of  
section 160 of Act  
VIII of 1886.

**101.** (1) Section 160 of the said Act shall be re-numbered as section 160 (1).

(2) After that sub-section as re-numbered the following shall be added, namely :—

“(2) The right of a raiyat at fixed rates having a right of occupancy in the lands of a holding to continue to hold at such rates shall not be deemed to be a protected interest under sub-section (1), but such raiyat shall continue to hold the lands on payment of rent at the rate paid by occupancy raiyats not holding at fixed rates for land of a similar description with similar advantages in the same village, or at such other rate as may be deemed to be fair and equitable by a Court”.

Amendment of  
section 161 of Act  
VIII of 1886.

**102.** In clause (a) of section 161 of the said Act for the words “the last foregoing section” the words “section 160, but does not include any right arising merely by reason of adverse possession” shall be substituted.

Amendment of  
section 163 of Act  
VIII of 1886.

**103.** In section 163 of the said Act—

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

“(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when the decree-holder makes the application mentioned in section 162, the Court shall, if under rule 17 in Order XXI in Schedule I to the said Code it admits the application and orders execution of the decree as applied for, issue a combined order of attachment and proclamation in the prescribed form.”

(b) in sub-section (2) for the words and figures “section 287 of the said Code” the words and figures “rule 66 in Order XXI in Schedule I to the said Code” shall be substituted, and after the words “occupancy holding” the words “not held at fixed rates” shall be inserted.

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

“(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 proclamation 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 a concise statement of the order of attachment and proclamation at the time of the issue of the proclamation in the prescribed form by registered post to the judgment-debtor, and

(d) in such other manner, if any, as the Local Government may by rule direct,"

(d) in sub-section (4) for the words and figures "section 290 of the said Code" the words and figures "rule 63 in Order XXI in Schedule I to the said Code" shall be substituted.

Amendment of section 166 of Act VIII of 1886.

**104.** In section 166 of the said Act after the words "occupancy holding" the words "not held at fixed rates" shall be inserted.

Amendment of section 167 of Act VIII of 1886.

**105.** In section 167 of the said Act—

(a) in sub-section (1) after the words "within one year from the date of the" the words "confirmation of the" shall be inserted, and

(b) in sub-sections (1) and (3) after the word "Collector" the words "or Subdivisional Officer" shall be inserted.

Amendment of section 169 of Act VIII of 1886.

**106.** In section 169 of the said Act—

(a) in sub-section (1) after the words "under this chapter" the words "other than a sale in execution of a decree passed under section 148A" shall be inserted;

(b) in clause (c) after the word "therefrom" the words "the costs of the application under this section and" shall be inserted; and

(c) the proviso to the sub-section shall be omitted.

Amendment of section 170 of Act VIII of 1886.

**107.** Section 170 of the said Act, as modified by section 54 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted for section 170, as modified by section 54 of the Bengal Tenancy (Amendment) Act, 1907.

Amendment of section 175 of Act VIII of 1886.

**108.** In section 175 of the said Act, for the figures "1877" the figures "1908" shall be substituted.

Amendment of  
section 178 of Act  
VIII of 1885.

**109.** In section 178 of the said Act—

(a) after clause (d) of sub-section (1) the following shall be added, namely:—

“ or

(e) shall entitle a landlord to recover from a raiyat or under-raiyat, as rent, produce in excess of half the gross produce of the holding, or

(f) shall, save as is provided in section 48, take away or limit the occupancy right of an under-raiyat as against his immediate landlord, or

(g) shall take away or limit the right of an occupancy raiyat or an occupancy under-raiyat to transfer his holding or any share or portion thereof in accordance with the provisions of sections 26B to 26J of this Act, or

(h) shall take away or limit the rights of occupancy raiyats and occupancy under-raiyats in trees on their holdings, as provided in section 23A, and ”

(b) in sub-section (3)—

(i) in clauses (a), (c) and (f) after the word “ raiyat ” the words “ or under-raiyat ” and in clauses (b) and (e) after the words “ occupancy raiyat ” the words “ or occupancy under-raiyat, ” shall be inserted, and

(ii) clause (d) shall be omitted.

Amendment of  
Section 179 of Act  
VIII of 1885.

**110.** To section 179 of the said Act the following shall be added, namely:—

“ Provided that nothing contained in any contract made after the first day of November 1922, shall make it legal to recover interest at a rate exceeding that set forth in section 67 or anything that is an *abwab* or the recovery of which is illegal under the provisions of section 74 or sub-section (3) of section 77.”

Substitution of  
new section for  
section 182 of Act  
VIII of 1885.

**111.** For section 182 of the said Act the following shall be substituted, namely:—

“ 182. The homesteads of raiyats and under-  
Homesteads. raiyats shall be governed  
by the provisions of this  
Act applicable to their holdings :

Provided that a person owning or occupying a dwelling-house or other building, or having any other interest therein but not holding

land as a raiyat or under-raiyat, shall not obtain any rights under this section in the dwelling-house or building which he so owns, or occupies or in which he is so interested, or in the lands or out-buildings immediately appertaining thereto, or in the sites of such dwelling-house or out-buildings, if he subsequently acquires a right to hold land as a raiyat or under-raiyat."

Amendment of section 183 of Act VIII of 1885.

112. The illustrations to section 183 of the said Act shall be omitted.

Insertion of new Chapter XVA in Act VIII of 1885.

113. After section 183 of the said Act the following shall be inserted, namely :—

#### " CHAPTER XVA.

##### *Hybrid tenures.*

Special provisions for certain classes of tenancies in Rangpur and elsewhere.

" 183A. Where a tenure-holder, himself or through his predecessors in interest, has been in continuous possession of a tenure in the district of Rangpur since the fourteenth day of March, 1885, or any date previous thereto, such tenure shall be deemed to be a permanent tenure, notwithstanding the terms of the contract by which the tenure was created, or any subsequent contract, lease or settlement of the lands within the tenure, and notwithstanding any portion of such lands having been separated from the other lands which formed with them a separate tenure, or amalgamated with other lands into one tenancy, and such tenure shall include any lands added thereto :

Provided that unless such tenure is a permanent tenure in virtue of the terms of any contract or settlement made in respect thereof —

(i) the provisions of sections 26A to 26H and of section 26K shall, and

(ii) the provisions of sections 12 to 17 shall not

apply to transfers of any such tenures except in so far as the provisions of sections 26D and 26F in regard to the amount of landlords' fee payable on transfer of any such tenure are modified by any contract subsisting on the first day of November, 1922; and any suit or proceeding for the ejection of such tenure-holder as a temporary tenure-holder instituted after the first day of November, 1922, or pending on that date shall be null and void.

(2) The Local Government may by notification in the *Calcutta Gazette* declare the provisions of this chapter to apply also to tenures of any class or description in areas in Bengal, other than Rangpur, as specified in such notification, and such tenures in such areas shall thereafter be deemed to be permanent tenures of the nature described in sub-section (1) from the date of such notification."

Substitution of  
new section for  
section 185 of Act  
VIII of 1885.

**114.** For section 185 of the said Act the following shall be substituted, namely :—

“185. (1) Sections 6, 7, 8 and 9 and sub-section (2) of section 29 of the Indian Limitation Act, 1908, shall not apply to the suits and applications mentioned in section 184.

(2) Subject to the provisions of this chapter, the remaining provisions of the Indian Limitation Act, 1908, shall apply to all suits, appeals and applications mentioned in section 184.”

Substitution of  
new section for  
section 188 of  
Act VIII of 1885.

**115.** For section 188 of the said Act the following shall be substituted, namely :—

“188. (1) Subject to the provisions of section 148A where two or more persons are co-sharer landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together or by an agent authorized to act on behalf of both or all of them, with the following exceptions :—

(a) One or more co-sharer landlords may—

(i) bring a suit for ejectment of a tenant on the grounds specified in section 10, clause (b) of section 18, section 25, or clause (a), clause (b) or clause (c) of section 44, or in accordance with the provisions of section 49 or section 66,

(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) file an application under section 105,

(iv) apply for the determination of the incidents of a tenancy under section 158 :

Provided that 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.

(b) Any one or more co-sharer landlords may—

- (i) apply to the Collector for appraisal or division under section 69,
- (ii) make applications as regards improvements under sections 78, 79, 80 and 81,
- (iii) apply for measurement under sections 90 and 91,
- (iv) bring a suit under section 106,
- (v) apply for record of private lands under section 118,
- (vi) apply to the Collector for a declaration under section 180 (3):

Provided the remaining co-sharer landlords are made parties defendant to the suit or proceeding.

(2) Any decree or order which is passed in a suit or proceeding in which the conditions set forth in clause (a) or clause (b) of sub-section (1) as the case may be, are 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 addition or reduction made in the same between the co-sharer landlords of the 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 the orders passed, they shall be deemed to have sued or applied under clause (a) of sub-section (1) together with the co-sharer plaintiffs or applicants."

Amendment of  
section 188A of  
Act VIII of 1896.

**116.** For section 188A of the said Act, as inserted by the Bengal Tenancy (Amendment) Act, 1907, section 188A of the said Act, as inserted by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Amendment of  
section 195 of  
Act VIII of 1885.

117. For clause (e) of section 195 of the said Act the following shall be substituted, namely :—

“(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 Patni Taluqs Regulation (VIII of 1819) shall be deemed to include all raiyats having a right of occupancy, or ”

Formal amend-  
ments in Act  
VIII of 1885.

118. For the references to foregoing sections or sub-sections, where they occur in the sections set forth as items in the second column of the Table annexed to this section, the words and figures entered in the fourth column against those items shall be substituted—

TABLE.

Item No.	Section in which the change is to be made.	Words to be deleted.	Words and figures to be substituted.
1	Section 17 ...	“the foregoing sections.”	“sections 12 to 16.”
2	“ 21 ...	“the last foregoing section.”	“section 20.”
3	“ 35 ...	“the foregoing sections.”	“sections 30 to 34.”
4	“ 59 ...	“the foregoing sections.”	“sections 56 to 58.”
5	“ 62 ...	“the last foregoing section.”	“section 61.”
6	“ 64 ...	“the foregoing sections.”	“section 62 or 63.”
7	“ 70 ...	“the last foregoing section.”	“section 69.”
8	“ 83 ...	“the last foregoing section.”	“section 82.”
9	“ 86 ...	“the last foregoing sub-section.”	“sub-section (6).”
10	“ 91 ...	“the last foregoing section.”	“section 90.”
11	“ 94 ...	“the last foregoing section.”	“section 93.”
12	“ 95 ...	“the last foregoing section.”	“section 94.”
13	“ 96 ...	“the last foregoing section.”	“section 95.”
14	“ 100 ...	“the foregoing sections.”	“sections 95 to 99.”

Item No.	Section in which the change is to be made.	Words to be deleted.	Words and figures to be substituted.
15	Section 117 ...	"the last foregoing section."	"section 116."
16	" 119 ...	"either of the two last foregoing sections."	"section 117 or 118."
17	" 151 ...	"either of the two last foregoing sections."	"section 149 or 150."
18	" 164 ...	"the last foregoing section."	"section 163."
19	" 165 ...	"the last foregoing section."	"section 164."

Formal amendments in Act VIII of 1986.

**119.** For the references to the Code of Civil Procedure mentioned in the third column of the Table annexed to this section, where they occur in the sections of the said Act set forth as items in the second column of the same Table, the words, letters and figures set forth in the fourth column thereof shall be substituted.

TABLE.

Item No.	Section of the Bengal Tenancy Act, 1986, in which the change is to be made.	Reference to the Code of Civil Procedure which is to be deleted.	Reference to the Code of Civil Procedure, 1908, or the Bengal Tenancy Act, 1986, which is to be substituted.
1	Section 31, clause (b).	"chapter XXV of the Code of Civil Procedure."	"Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908."
2	Ditto ...	"section 392 of the said Code."	"rule 9 in Order XXVI in Schedule I to the said Code."
3	Section 37, sub-section (2).	"section 373 of the Code of Civil Procedure."	"rule 1 in Order XXIII in Schedule I to the Code of Civil Procedure, 1908."
4	Section 58, sub-section (8).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
5	Section 61, sub-section (2).	"section 52 of the Code of Civil Procedure."	"sub-rules (2) and (3) in rule 15 in Order VI in Schedule I to the Code of Civil Procedure, 1908."
6	Section 107, sub-section (1).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
7	Section 109A, sub-section (2).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
8	Section 109A, sub-section (3).	"chapter XLII of the Code of Civil Procedure."	"sections 100 to 103, section 107, section 108 and section 144 of, and Order XLII in Schedule I to, the Code of Civil Procedure, 1908."
9	Ditto ...	"the first section of that chapter."	"section 100 of that Code."

Item No.	Section of the Bengal Tenancy Act, 1885, in which the change is to be made.	Reference to the Code of Civil Procedure which is to be deleted.	Reference to the Code of Civil Procedure, 1908, or the Bengal Tenancy Act, 1885, which is to be substituted.
10	Section 143, sub-sections (1) and (2).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
11	Section 144, sub-section (1).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
12	Section 145 ...	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
13	Section 146 ...	(a) "referred to in section 58 of the Code of Civil Procedure."  (b) "that section"	"mentioned in rule 1 in Order VII in Schedule I to the Code of Civil Procedure, 1908."  "rule 2 in Order IV in Schedule I to the said Code."
14	Section 147 ...	"section 373 of the Code of Civil Procedure."	"rule 1 in Order XXIII in Schedule I to the Code of Civil Procedure, 1908."
15	Section 153A ...	"section 108 of the Code of Civil Procedure."	"rule 13 in Order IX in Schedule I to the Code of Civil Procedure, 1908."
16	Ditto ...	"section 623 of the said Code."	"section 114 and rule 1 in Order XLVII in Schedule I to the said Code."
17	Section 158, sub-section (2).	"chapter XXV of the Code of Civil Procedure."	"Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908."
18	Ditto ...	"section 392 of the said Code."	"rule 9 in Order XXVI in Schedule I to the said Code."
19	Section 162 ...	"section 235 of the Code of Civil Procedure."	"rule 11 (2) in Order XXI in Schedule I to the Code of Civil Procedure, 1908."
20	Section 165, sub-section (1).	"section 289 of the Code of Civil Procedure."	"Section 163."
21	Section 169, sub-section (1).	"section 295 of the Code of Civil Procedure."	"section 73 of the Code of Civil Procedure, 1908."
22	Section 170, sub-section (1).	"sections 278 to 283 (both inclusive) of the Code of Civil Procedure."	"rules 58 to 63 (both inclusive) in Schedule I to the Code of Civil Procedure, 1908."
23	Section 170, sub-section (4).	"section 310A of the Code of Civil Procedure."	"rule 89 in Order XXI in Schedule I to the Code of the Civil Procedure, 1908."
24	Section 173, sub-section (1).	"section 294 of the Code of Civil Procedure."	"rule 72 in Order XXI in Schedule I to the Code of Civil Procedure, 1908."
25	Section 174, sub-section (2).	"section 315 of the Code of Civil Procedure."	"rule 93 in Order XXI in Schedule I to the Code of Civil Procedure, 1908."
26	Section 174, sub-section (2), proviso (in two places)	"section 311 of the Code of Civil Procedure."	"rule 90 in Order XXI in Schedule I to the Code of Civil Procedure, 1908."
27	Section 174, sub-section (3).	"section 313 of the Code of Civil Procedure."	"rule 91 in Order XXI in Schedule I to the Code of Civil Procedure, 1908."



Re-arrangement of definitions in section 3 and re-lettering of section 148 of Act VIII of 1885.

**120.** The definitions as set forth in section 3 of the said Act as hereby amended shall be re-arranged in alphabetical order and shall be re-numbered accordingly and the clauses of section 148 of the said Act shall be numbered from (a) to (m), and the necessary amendments consequential to such re-arrangement and re-numbering shall be made throughout the said Act.

Substitution of new Schedule for Schedules II of Act VIII of 1885.

**121.** For Schedule II of the said Act the following shall be substituted, namely:—

**“ SCHEDULE II.**

**Forms of Receipt and Account.**

**FORM OF RECEIPT.**

*Landlord's portion.*

1. Serial No. of receipt
2. Estate.....Village.....Thana
3. Name of common agent, if any, { appointed under sub-section (1) of section 99A. authorized under sub-section (5) of section 99A to receive rents.
- Address  
Village Thana
4. Khattian No. of the tenancy in record-of-rights (if any)
5. Name of tenant
6. Father's name
7. Annual rent
8. Annual cess
9. Jolkar, pholkar, etc., if any
10. Total

**FORM OF RECEIPT.**

*Tenant's portion.*

1. Serial No. of receipt
2. Estate.....Village.....Thana
3. Name of common agent, if any, { appointed under sub-section (1) of section 99A. authorized under sub-section (5) of section 99A to receive rents.
- Address  
Village Thana
4. Khattian No. of the tenancy in record-of-rights (if any)
5. Name of tenant
6. Father's name
7. Annual rent
8. Annual cess
9. Jolkar, pholkar, etc., if any
10. Total

[Reverse]

[Reverse]

Date of payment.	Name of person through whom paid.	Year and instalment to which the payment is credited.	Rent.	Cess.	Interest.	Total.	Date of payment.	Name of person through whom paid.	Year and instalment to which the payment is credited.	Rent.	Cess.	Interest.	Total.

*Signature of landlord or agent.*

*Signature of landlord or agent.*

*Signature of tenant.*

*Signature of tenant.*

Section 55 of the Bengal Tenancy Act, 1885, provides as follows:—

(1) When a tenant 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, 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 instalment as the landlord thinks fit.

Section 55 of the Bengal Tenancy Act, 1885, provides as follows:—

(1) When a tenant 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, 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 instalment as the landlord thinks fit.

FORM OF ACCOUNT.					FORM OF ACCOUNT.						
<b>Estate</b> Name of agent Address Tenant's name Father's name Khatian No. (if any) Village number Thana Area of tenure or holding if known Demand of previous years unpaid					Rent Com.	<b>Estate</b> Name of agent Address Tenant's name Father's name Khatian No. (if any) Village number Thana Area of tenure or holding if known Demand of previous years unpaid					Rent Com.
Demand of the year					Rent Com.	Demand of the year					Rent Com.
					Total						Total
Amount paid					Rent Com. Interest.	Amount paid					Rent Com. Interest.
					Total						Total
Balance outstanding with details—					Balance outstanding with details—						
	Rent.	Com.	Interest.	Total.		Rent.	Com.	Interest.	Total.		
1923					1923						
1924					1924						
1925					1925						
1926					1926						
<i>Signature of landlord or agent.</i>					<i>Signature of landlord or agent.</i>						
<i>Signature of tenant.</i>					<i>Signature of tenant.</i>						

Amendment of Article 1 (a) in Part I of Schedule III of Act VIII of 1885.

**122.** In the first column of Article 1 (a) in Part I of Schedule III of the said Act after the word "lease" the words "or settlement" shall be inserted.

Amendment of Article 2 in Part I of Schedule III of Act VIII of 1885.

**123.** (a) In Article 2 in Part I of Schedule III of the said Act in sub-clause (a) in the first column for the word "holding" the words "tenure or holding" shall be substituted, and in the third column after the word "deposit" the words "or presentation of the postal money order, as the case may be," shall be inserted.

(b) For clause (b) the following shall be substituted in the first, second and third columns, namely:—

<p>"(b) in all cases where the rent is payable in kind in whole or in part.</p>	<p>One year</p>	<p>The last day of the agricultural year in which the arrear fell due.</p>
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<p>(c) where the rent is a money rent.</p>	<p>Three years.</p>	<p>The last day of the agricultural year in which the arrear fell due."</p>
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Insertion of new Article (2a) in Part I of Schedule III of Act VIII of 1885.

**124.** After Article 2 in Part I of Schedule III of the said Act the following shall be inserted, namely:—

<p>"(2a) For the recovery of a landlord's fee on transfer of an occupancy holding.</p>	<p>Three years.</p>	<p>Two months from the date of registration of the instrument of transfer, or, in the case of a transfer by bequest, two months from the date on which the transferee took possession or obtained probate or letters of administration, whichever is earlier."</p>
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Amendment of  
Article 6 in Part  
III of Schedule  
III of Act VIII  
of 1886.

**125.** (1) In the first column of Article 6 in Part III of Schedule III of the said Act for the figures " 1877 " the figures " 1908 " shall be substituted.

(2) To column 1 of the said Article as so amended the following shall be added, namely :—

" Provided 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."

## NOTES ON CLAUSES.

*Clause 3.*—It is proposed to remove the references to areas outside the province and to simplify section 1 by stating definitely the areas to which the Act does not apply instead of referring to the Scheduled Districts Act.

*Clause 4.*—The reference to Orissa in section 2 has been omitted.

*Clause 5.*—(a) As it is proposed to treat joint and co-sharer landlords and joint and co-sharer tenants alike under the Act, a definition has been inserted to include joint and co-sharer landlords under the term co-sharer landlord, and joint and co-sharer tenants under the term co-sharer tenant.

(b) This sub-clause introduces in section 3 the presumption that a *bona fide* cultivator who is permitted to cultivate land on condition that he hands over a share of the produce is a tenant of that land. For an explanation of the necessity for this provision the main report should be read.

(c) The words "or deliverable" are redundant.

(d) In view of the general principle adopted regarding the occupancy rights of under-riyats, the definition of holding has been extended to include that of an under-riyat.

(e) This sub-clause introduces a definition of homestead, in order to make it clear that the provisions of section 182 as amended by clause 111 do not apply to shops, hotels and similar premises.

(f) Of the alternative definitions of village in the West Bengal and Eastern Bengal Acts, the Eastern Bengal form has been adopted with necessary modifications.

(g) This sub-clause defines the agricultural year as the Bengali year. This year is in force throughout Bengal, except in a part of Midnapore and in Chittagong. Unless there is a serious objection to its adoption in these areas, it is desirable to make the year uniform throughout Bengal for the purposes of the Act.

It is proposed in clause 120 to re-arrange the definitions in section 3 in alphabetical order.

*Clause 6.*—Section 4 has been recast so as to include the two classes of occupancy and non-occupancy under-riyats which it is proposed to recognize. Tenure-holders have also been divided into two classes permanent and temporary.

*Clause 7.*—Section 5 has been modified in view of the introduction of a definite class of under-riyats with occupancy rights.

*Clause 8.*—The drafting of sub-section (3) to section 7 has been amended, and the usual presumption that the present rent is fair and equitable has been introduced.

*Clause 9.*—This clause introduces a revised section 8 giving power to the Court to allow a period of ten years instead of five years, during which the rent may be gradually increased to the amount settled by the Court. It will also be open to the Court to fix the instalments as it may think best instead of being compelled to decree annual increases as under the present law.

*Clause 10.*—This addition has been made to section 9, in order to remove any misapprehension by the Courts as to the application of the section when there have been gradual enhancements.

*Clause 11.*—The object of the proposed sections 12—15 is to simplify the cumbrous procedure of the present sections of the Act in respect of the realization of landlords' fees for the transfer of permanent tenures. The lines adopted are those proposed later for the realization of the same fees for the transfer of occupancy rights.

Briefly, the proposed procedure will leave the actual payment of the landlord's fee a matter between the parties concerned, the amount being payable and recoverable as rent. At the time of the registration of the document of transfer, a notice must be filed with the registering officer for service on the landlord giving the particulars of the transfer. The result is that the Collector will have no responsibilities in the matter. For the same reason, in the case of succession, the notice will be served through the Civil Courts instead of through the Collector, and an additional penalty is provided for failure to give notice of succession within six months.

Provision is made for the service of the notice on, and the payment of the fee to the common agent, who will be appointed under clause 63.

*Clause 12.*—This clause is consequential on the amendments made by clause 11.

*Clause 13.*—This clause makes it clear that the transferee of a permanent tenure includes his successors in interest.

*Clause 14.*—Section 18 has been amended so as to make it clear that a raiyat holding at a rent or rate of rent fixed in perpetuity can acquire the status of a settled raiyat of a village and that certain sections of the Act shall not apply to such a raiyat.

*Clauses 15, 16 and 17.*—These clauses reconcile the verbal differences between the Western Bengal Amendment Act of 1907 and the Eastern Bengal Amendment Act of 1908 in Chapter IVA and provide for the forfeiture of all landlord's fees deposited before the passing of the new Act and not claimed within three years from the date of the deposit.

*Clause 18.*—It is proposed to extend the Western Bengal section 19 to Eastern Bengal.

*Clause 19.*—The principle underlying section 22 of the Act is that it is undesirable to encourage the acquisition of raiyati rights by persons belonging to the class of landlords and it is carried into effect so far as their own tenures or estates are concerned. Neither forms, however, of the section make the position definite either of an immediate co-sharer landlord, who purchases an occupancy holding in his own estate or tenancy, or of an under-raiyat on an occupancy holding, which comes into the possession of a landlord. Having regard therefore to the principle underlying the section, it is proposed in the case of the co-sharer landlord to insert a provision for the conversion of the raiyati interest purchased by him into a permanent tenure, and in the case of the under-raiyat to make it clear that he becomes a raiyat. In both cases necessary provisions and modifications are proposed regarding rent. It is also proposed to safeguard the rights of third parties by a definite provision that an encumbrance on the holding shall continue to be attached not to the holding but to the interest of the landlord as proprietor or tenure-holder as the case may be.

The provision in the proposed sub-section 6(ii) is necessary in view of the drafting of the remaining sections. Without it no right of pre-emption under proposed section 26G could accrue.

Certain consequential amendments regarding the merger of the occupancy rights of under-raiyats are also proposed.

These proposals have rendered a re-draft of the major part of the section necessary, but no essential change of principle has been introduced.

It is proposed to substitute the words "a right to hold as a raiyat any land" for the words "right of occupancy in any land" in present sub-section (4), in order to meet certain rulings which seem to imply that a temporary tenure-holder, though he cannot acquire an occupancy right in any land which he has purchased, can hold it as a non-occupancy raiyat and becomes an occupancy raiyat as soon as the temporary tenure expires.

It is further proposed to substitute the term "temporary tenure-holder" for the term "ijaradar."

*Clause 20.*—The provision in section 23 relating to the cutting of trees has been omitted and dealt with in the following clause.

*Clause 21.*—The amendments proposed in regard to the raiyat's rights in trees are explained in the main report.

*Clause 22.*—This clause deals with the transferability of occupancy holdings on the lines indicated in the main report.

*Clause 23.*—It is proposed to amend section 36 on the lines proposed in clauses 9 and 10.

*Clause 24.*—It is reasonable that where a raiyat has had his rent settled when certain arrangements in respect of irrigation or maintenance of embankments were in force that he should receive a reduction of his rent so long as the landlord fails to carry out his obligations in this respect. It is proposed to amend section 38 accordingly.

*Clause 25.*—It is proposed to modify the provisions of section 40 regarding the commutation of produce-rents on the lines indicated in the main report.

*Clause 26.*—It is reasonable that a non-occupancy raiyat should be liable to ejection on the expiry of his lease, whether that lease has been registered or not, and it is not desirable to put non-occupancy raiyats to the trouble and expense of registering their leases in all cases. It is proposed to amend clause (c) of section 44 accordingly.

*Clause 27.*—This amendment of section 46 is merely verbal.

*Clauses 28—30.*—For the reasons stated in the main report, it is proposed to give the majority of under-raiyats rights of occupancy as against their immediate landlords, but there are certain cases in which this provision would operate harshly on persons who find it necessary to sublet their land temporarily. It is proposed therefore to amend section 48 so as to protect such persons.

Clause 28 enumerates the classes of under-raiyats on whom it is proposed that occupancy rights should not be conferred.

Clause 29 explains the nature of the occupancy right which it is proposed to confer upon under-raiyats other than those who are excepted under clause 28. Briefly, the major portion of Chapter V is made applicable to occupancy under-raiyats by virtue of this clause, but, in cases where the other sections of the Act are applicable to occupancy raiyats, their extension to occupancy under-raiyats is specifically mentioned in the other clauses of the Bill.

*Clause 30.*—This clause amends section 49 so as to define the restrictions on the ejection of non-occupancy under-raiyats.

*Clause 31.*—The presumption contained in section 50 (2) that where the rent of a holding has not been changed for 20 years, it shall be presumed that the holding has been held at that rate from the time of the permanent settlement, operates inequitably now that 130 years have elapsed since the date of the permanent settlement. The existing section penalizes these landlords who have not enhanced rents in recent years and gives an advantage to landlords who have disregarded the provisions of the law relating to the granting of rent-receipts. It is proposed therefore to omit sub-section (2). It is proposed, however, to extend the provision of sub-section (3) to tenure-holders.

*Clause 32.*—In order to meet certain doubts which have arisen, it is proposed to amplify sub-section (6) of section 52, in order to make it clear that an entry of area in a document may be presumed to have been ascertained on measurement if it is shown that a practice of settlement after measurement was in use at or about the date on which such document was drawn up.

*Clause 33.*—It is proposed to amplify the provisions of section 54 relating to the remittance of rent by money order, in order to remove certain practical difficulties which discourage the tenants from making use of this method of payment and make the landlords reluctant to accept rents tendered in this way.

*Clause 34.*—The provisions of the Act relating to the grant of rent-receipts are frequently disregarded, because the landlords and tenants fear that they will be prejudiced by the entries made on the prescribed form of receipt. It is important that the tenants should receive a receipt for any money paid on account of rent immediately it is paid, and it is proposed to simplify the form of rent-receipt by the omission of all entries which are not essential for this purpose. Each tenant will, however, be entitled to receive without payment of fee a statement of account on the expiry of three months after the end of each year containing certain other particulars, and, in order to remove any reasonable reluctance to the issue

or acceptance of such statement, it is provided that the entry of area in such statement shall not be binding on the landlord or tenant in any suit or proceeding for the alteration of the rent of the tenancy. It is proposed to amend section 57 accordingly.

*Clause 35.*—Section 58 has been re-drafted, in order to provide penalties for withholding receipts and statements of account, and the period during which action may be taken by the Collector has been extended from one year to two years. The landlord has been given two months after the date of the demand in which to prepare the statement of account for each year before he becomes liable to a penalty.

*Clause 36.*—A slight modification has been made in section 61, in order to remove certain difficulties raised by the Courts.

*Clauses 37 and 38.*—Changes have made in sections 63 and 64, in order to make it compulsory on the Courts in certain cases to send rents deposited under sections 61A and 61B by money order to the landlord. The drafting of section 63 has been amended.

*Clause 39.*—In order to prevent landlords from harassing tenants by means of suits for rent which the latter have already tendered by money order or deposited in the Civil Court, it is proposed to preclude the landlord from recovering in such suits damages, interest or costs, and also to make him liable for damages.

*Clause 40.*—This amendment of section 65 is consequential on the proposal to give occupancy rights to certain classes of under-raiyats.

*Clause 41.*—The change here made in section 66 (1) is consequential on the proposal to adopt the Bengali year for the whole Presidency [*vide* clause 5(f)]. The period in sub-clause (2) has been extended to 30 days.

*Clause 42.*—It is proposed by an amendment of section 67 to charge interest on arrears between the date of the institution of the suit and the date of realization at the same rate as is now prescribed in section 67 for the period before the institution of the suit. On the whole it seems advisable to make the rate uniform for both the periods, and this should tend to discourage the defendants from protracting the proceedings.

*Clause 43.*—It is reasonable, owing to the circumstances in which damages are awarded, that such damages should not be less than the interest which would otherwise be given under section 67. The proposed amendment of section 68 gives effect to this proposal.

*Clause 44.*—The change made by this clause is consequential on the proposed repeal of the chapter on distraint.

*Clause 45.*—In view of the detailed proposals regarding the transferability of occupancy rights, it is no longer necessary to retain section 73.

*Clause 46.*—This change in section 74 is consequential on the proposed change made in section 179, which will make a contract for the payment of an *abwab* illegal in the case of permanent *mukarari* tenures, but it is not proposed to interfere with existing contracts regarding such tenures.

*Clauses 47 to 53.*—These clauses provide that an under-raiyat shall have the same privileges and liabilities as regards improvements as a raiyat. It is also proposed to make it clear that the construction of a well, tank, etc., for the purpose of drinking water is an improvement, and that a fee for the construction of any legal improvement is an *abwab*. The interpretation of the word "suitable" before dwelling-house in sections 76 (f) and 79 is doubtful, and the word has therefore been omitted in both cases. Clause 52 introduces certain consequential changes in sections 86 and 87 due to the new provisions relating to under-raiyats.

*Clause 54.*—At present it is necessary in consequence of section 85 for a landlord to serve a notice of annulment under section 167 on under-raiyats holding under a registered lease, in cases where the holding of a superior raiyat is sold in execution of a decree for arrears of rent due from that raiyat. As the interest of an occupancy under-raiyat will not be

treated as a protected interest under section 160 (d), it is proposed to make it unnecessary in future to serve a notice under section 167 on any under-riyat, whether holding under a lease or not. The existing rights of under-riyats holding under leases registered before the 1st of November, 1922, are, however, retained.

*Clause 55.*—It is reasonable that when a tenant takes abatement of rent on account of diluvion, he should cease to have any right in the land subject to the ordinary law of alluvion and diluvion. There has, however, been a decision to the contrary. It is therefore proposed to embody the above principle in the law.

*Clauses 56 and 57.*—Clause 57 gives protection to existing occupancy under-riyats who have been in existence since the 1st January, 1915, in the event of the surrender or abandonment of the holdings of their landlords, if the latter are riyats, on complying with certain conditions. The date is an arbitrary date, but in view of section 85 (2) of the Act it should not exceed nine years before the passing of the amending Bill. The present section 87(4) will then apply only to non-occupancy under-riyats. This has been provided for in clause 56, which also contains certain consequential amendments.

*Clause 58.*—Of the alternative forms of section 88 in the Western Bengal and Eastern Bengal Tenancy Acts, it is proposed to adopt the Western Bengal form.

*Clause 59.*—The first part of this clause (new section 88A) makes it clear that no co-sharer landlord can enter into a contract with a tenant to the prejudice of the other co-sharer landlords. The second part (new section 88B) safeguards co sharer tenants against any sub-letting by other co-sharer tenants of any of the lands in a manner, which would render them liable to ejection or a penalty, by allowing the former to sue the sub-tenant for ejection.

*Clause 60.*—At present it is necessary, when action is taken under section 93, to appoint a common manager for the whole of the estate or tenure concerned, although a dispute may exist in only a small portion. Under the section as amended by this clause it will be possible to appoint the common manager for those portions of the estate or tenure which are affected by the dispute.

Provision is also made for enabling the tenants to apply for the appointment of a common manager in cases where, owing to the existence of a large number of small co-sharers in the estate or tenure, the tenants are put to inconvenience and harassment in the payment of their rent. It is proposed, however, later under clause 63 to allow the landlords to avoid the appointment of a common manager by the appointment of a common agent.

*Clauses 61 and 62.*—It is proposed that in cases where a common manager is appointed he should be nominated and controlled by the Collector instead of by the District Judge.

In section 98 (7) it has been proposed to give the common manager power to apply for the extension of section 158A to the estate or tenure.

*Clause 61A.*—Makes an amendment consequential on renumbering (*vide* clause 76).

*Clause 63.*—This clause introduces a common agent appointed by co-sharer landlords where they agree, or by the Collector on their behalf when they do not, for the receipt of notices of transfer and the realization of transfer fees on account of tenures and holdings, and, where the landlords so desire, for the collection of rent also. The proposal is intended to simplify the procedure both for the payment of transfer fees and rents by tenants and their collection by landlords, and it is practically essential for the proper working of the proposed procedure regarding the transferability of occupancy holdings.

*Clause 64.*—As it is proposed that the Collector should nominate and control the work of common managers, the rules defining their powers and duties should be made by the Board of Revenue instead of by the High Court. It is proposed to amend section 100 accordingly.



- (4) If the Court accepts or refuses a written statement, it must record its reasons.
- (5) One affidavit may be used in several cases tried on the same day.
- (6) Any party who files collection papers or extracts from records-of-rights as evidence may take them back for use in other cases, with the permission of the Court, and in that case copies of the relevant entries will be made and certified by the Court without charge and kept with the record of the case.

*Clause 94.*—This clause provides a procedure for the recovery of rent by co-sharer landlords for the reasons explained in the main report.

*Clause 95.*—It is proposed by an amendment of section 153 specially to empower judicial officers below the rank of a Subordinate Judge to exercise final jurisdiction in cases where the amount of rent claimed, including interest and damages, does not exceed Rs. 100 instead of Rs. 50 as at present.

It has also been made clear that no issue relating to the title to land in a rent-suit from which no appeal lies shall be considered *res judicata* in a subsequent title-suit.

*Clause 96.*—This clause amends section 156 so as to make the rules which apply in the case of a raiyat ejected from his holding applicable in the case of an under-raiyat similarly ejected.

*Clause 97.*—The changes proposed in section 158 are consequential on the proposal to recognize occupancy under-raiyats.

*Clause 98.*—When section 158A was introduced into the Bengal Tenancy Act in 1907, it was expected that a general system of maintenance of the record-of-rights would be introduced by Government, and it was intended that the privilege of the certificate procedure for the realization of rents should be granted to a landlord only if the record-of-rights was maintained by Government. As the idea of general maintenance has now been abandoned, it is proposed to remove this compulsory condition, but in its place to impose on Government the obligation of considering how the landlord himself maintains his record and of ascertaining the views of the tenants on the question of the introduction of the procedure.

*Clause 99.*—The change proposed in section 158B is verbal, consequent upon the proposed alteration of section 148A.

*Clause 100.*—This clause amends section 159 so as to make it clear that the title of a purchaser of a tenure or holding in a sale in execution of a rent-decree takes effect from the date of the confirmation of the sale in conformity with section 169 (1) (c).

*Clause 101.*—Under the present law there are doubts whether the right of a raiyat holding at a fixed rent or rate of rent is a protected interest. It is therefore proposed to make it clear that it is a protected interest; but to amend section 160, in order to prevent a purchaser being defrauded by the outgoing tenure-holder or proprietor giving *mukarari* rights on unduly small rents on payment of a premium, by enacting that such rents are not protected.

*Clause 102.*—This clause makes it clear by an amendment of section 161 that adverse possession is not an incumbrance.

*Clause 103.*—The use of a single form for the order of attachment and the proclamation of sale of property is proposed, in order to simplify the procedure for the execution of rent-decrees. It is also proposed, in lieu of the present law, which prescribes a large number of methods of publication of this notice, to insert in section 163 three essential methods of advertising the property for sale.

*Clause 104.*—This proposed amendment of section 166 is consequential upon the proposal to allow a raiyat at fixed rates to acquire the status of a settled raiyat.

*Clause 105.*—The proposed amendment of section 167 regarding the date is consequential upon the proposed amendment in section 159 and on the present section 169 (1) (c). It is proposed to give all sub-divisional officers powers under section 167 (1) and (3).

treated as a protected interest under section 160 (d), it is proposed to make it unnecessary in future to serve a notice under section 167 on any under-raiyat, whether holding under a lease or not. The existing rights of under-raiyats holding under leases registered before the 1st of November, 1922, are, however, retained.

*Clause 55.*—It is reasonable that when a tenant takes abatement of rent on account of diluvion, he should cease to have any right in the land subject to the ordinary law of alluvion and diluvion. There has, however, been a decision to the contrary. It is therefore proposed to embody the above principle in the law.

*Clauses 56 and 57.*—Clause 57 gives protection to existing occupancy under-raiyats who have been in existence since the 1st January, 1915, in the event of the surrender or abandonment of the holdings of their landlords, if the latter are raiyats, on complying with certain conditions. The date is an arbitrary date, but in view of section 85 (2) of the Act it should not exceed nine years before the passing of the amending Bill. The present section 87(4) will then apply only to non-occupancy under-raiyats. This has been provided for in clause 56, which also contains certain consequential amendments.

*Clause 58.*—Of the alternative forms of section 88 in the Western Bengal and Eastern Bengal Tenancy Acts, it is proposed to adopt the Western Bengal form.

*Clause 59.*—The first part of this clause (new section 88A) makes it clear that no co-sharer landlord can enter into a contract with a tenant to the prejudice of the other co-sharer landlords. The second part (new section 88B) safeguards co-sharer tenants against any sub-letting by other co-sharer tenants of any of the lands in a manner, which would render them liable to ejection or a penalty, by allowing the former to sue the sub-tenant for ejection.

*Clause 60.*—At present it is necessary, when action is taken under section 93, to appoint a common manager for the whole of the estate or tenure concerned, although a dispute may exist in only a small portion. Under the section as amended by this clause it will be possible to appoint the common manager for those portions of the estate or tenure which are affected by the dispute.

Provision is also made for enabling the tenants to apply for the appointment of a common manager in cases where, owing to the existence of a large number of small co-sharers in the estate or tenure, the tenants are put to inconvenience and harassment in the payment of their rent. It is proposed, however, later under clause 63 to allow the landlords to avoid the appointment of a common manager by the appointment of a common agent.

*Clauses 61 and 62.*—It is proposed that in cases where a common manager is appointed he should be nominated and controlled by the Collector instead of by the District Judge.

In section 98 (7) it has been proposed to give the common manager power to apply for the extension of section 158A to the estate or tenure.

*Clause 61A.*—Makes an amendment consequential on renumbering (*vide* clause 76).

*Clause 63.*—This clause introduces a common agent appointed by co-sharer landlords where they agree, or by the Collector on their behalf when they do not, for the receipt of notices of transfer and the realization of transfer fees on account of tenures and holdings, and, where the landlords so desire, for the collection of rent also. The proposal is intended to simplify the procedure both for the payment of transfer fees and rents by tenants and their collection by landlords, and it is practically essential for the proper working of the proposed procedure regarding the transferability of occupancy holdings.

*Clause 64.*—As it is proposed that the Collector should nominate and control the work of common managers, the rules defining their powers and duties should be made by the Board of Revenue instead of by the High Court. It is proposed to amend section 100 accordingly.

- (4) If the Court accepts or refuses a written statement, it must record its reasons.
- (5) One affidavit may be used in several cases tried on the same day.
- (6) Any party who files collection papers or extracts from records-of-rights as evidence may take them back for use in other cases, with the permission of the Court, and in that case copies of the relevant entries will be made and certified by the Court without charge and kept with the record of the case.

*Clause 94.*—This clause provides a procedure for the recovery of rent by co-sharer landlords for the reasons explained in the main report.

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*Clause 104.*—This proposed amendment of section 166 is consequential upon the proposal to allow a raiyat at fixed rates to acquire the status of a settled raiyat.

*Clause 105.*—The proposed amendment of section 167 regarding the date is consequential upon the proposed amendment in section 159 and on the present section 169 (1) (c). It is proposed to give all sub-divisional officers powers under section 167 (1) and (3).

*Clause 106.*—The proposed amendments of section 169 are consequential upon those proposed in section 148A.

*Clause 107.*—Of the alternative section 170 now in force in Western Bengal and Eastern Bengal, respectively, the Eastern Bengal form has been adopted, in order to avoid possible hardship to persons interested in the tenancy who have not been made parties to the suit.

*Clause 108.*—This clause makes a formal amendment in the reference to the Indian Registration Act in section 175.

*Clause 109.*—The changes proposed in section 178 are mainly consequential upon the general principles adopted regarding occupancy rights of under-raiyats and transferability. In particular, it is proposed to prevent any contract, whether made before or after the passing of the Bengal Tenancy Act, from taking away or limiting the occupancy right of an under-raiyat as against his immediate landlord or the right of transferability of an occupancy raiyat or under-raiyat or their rights regarding trees.

It is also proposed to limit the right of a landlord to recover from a raiyat or under-raiyat as rent produce in excess of half the gross produce of the holding.

*Clause 110.*—Under the present interpretation of section 179, conditions for *abwabs* [which are illegal under section 74 or section 77 (3)] or for interest on arrears of rent in excess of that allowed by section 67 can be embodied in permanent *mukarari* leases. It is proposed to make such conditions in future leases of this description invalid.

*Clause 111.*—The existing provision regarding homesteads in section 182 leaves the law in a state of great doubt and uncertainty. It is proposed therefore to provide generally that the homestead rights of a raiyat or under-raiyat shall ordinarily be regulated by the provisions of the Act, but that if a person is not originally a raiyat or under-raiyat, he shall not acquire any statutory rights in his dwelling-house, etc., by subsequently acquiring a right to hold land as a raiyat or under-raiyat.

*Clause 112.*—It is proposed to omit both illustrations to section 183 in view of the general principles adopted in the report regarding transferability and the rights of under-raiyats.

*Clause 113.*—In the district of Rangpur there exist certain tenancies called *jotes*, which form one class of tenancy, but vary in size from small raiyati holdings *de facto* to large tenures. Under the Act they have to be classified as either raiyati holdings or tenures. If they were classified as raiyati holdings, they would be given the right of occupancy mentioned in paragraph 4 of the main report. If they are classified as tenures, they lose this permanent right, the period of the tenancy being limited by the terms of the contract. There is, however, good reason to believe that they were originally raiyati in origin, and therefore a permanent right should be attached to them. Moreover, they have been in the undisturbed possession of the *jotedars* for generations, and there are authorities who have recognized them as permanent or as containing a permanent element. The position is anomalous and unsatisfactory; and as there is justification for regarding the *jotedars* as permanent, it is proposed to confer on those *jotedars* who have been in possession of their *jotes* since 1885 permanent rights as tenure-holders, but as a set-off to allow the landlord to treat them as raiyats in respect of transferability, that is to say, to give the landlord both the right to realize a fee on transfer, which, subject to any existing contract, would be equivalent to 25 per cent. of the purchase-money, and the right of pre-emption in accordance with the provisions proposed in the case of transfers of raiyati holdings. For the present it is proposed to restrict the operation of the section to the district of Rangpur, but further enquiry may elicit the fact that it should be applied elsewhere. It is also proposed to give the Local Government power to extend the operation of the section to other areas.

*Clause 114.*—The Indian Limitation (Amendment) Act, 1922, X of 1922, appears to have made some changes in the law of limitation as regards cases under the Bengal Tenancy Act. It is proposed, however, to retain the substance of the law as at present in the Bengal Tenancy Act by the necessary changes in section 185.

*Clause 115.*—The changes made in section 188 are explained in the main report.

*Clause 116.*—Of the two alternative forms of section 188A, the Eastern Bengal form has been adopted.

*Clause 117.*—The Patni Taluk Regulation deals with *khudkast* or resident raiyats, and not with occupancy raiyats. All occupancy raiyats are not therefore protected in the event of the patni taluk being sold up for arrears of rent. It is proposed to remedy this by an amendment of section 195.

*Clause 118.*—This clause makes formal drafting amendments in regard to certain references in the Act.

*Clause 119.*—This clause substitutes references to the present Code of Civil Procedure for the references to the previous Code contained in the present Act.

*Clause 120.*—This clause makes certain formal re-arrangements in sections 3 and 148.

*Clause 121.*—*Vide* note on clause 34.

*Clause 122.*—This amendment is consequential on clause 26.

*Clause 123.*—In view of the hardship that may be caused to tenants holding on produce rents if they are called upon to pay up the rent for three years at one time, it is proposed to limit the period of limitation for rent-suits in such cases to one year. An error in drafting in the omission of the word "tenure" has also been corrected.

*Clause 124.*—In view of the proposal to make landlords' fees on transfer recoverable as rent, it is proposed in this clause to apply the period of limitation in the case of rent-suits to such fees from the dates given in the clause.

*Clause 125.*—Sub-clause (1) introduces a necessary change in the date of the Indian Limitation Act.

By sub-clause (2) it is proposed to enact that the time spent on the execution of a decree for rent on a sale which is subsequently set aside on application shall be excluded from the calculation of the period of limitation for the execution of such a decree.

**Note of dissent by Raja Ban Behari Kapur Bahadur, C.S.I.**

I regret I am unable to agree with the principles upon which the proposed legislation has been based, not to say I am at variance with most of the details arising out of the applications of these principles. In view of my wholesale disagreement with the main purpose of the Bill I feel called upon to give reasons for my disagreement specially seeing that my connection with this piece of legislation is likely to end here.

2. The history of occupancy rights as has been stated to be in paragraph 4 of the Report has not in my opinion been correctly recited. Before the Rent Act of 1859 Bengal was aware of only two classes of raiyats—the *khodkast* and the *paikast*. The *khodkast* raiyats were resident and hereditary cultivators of village lands and the *paikast* raiyats were non-resident cultivators. The resident cultivators were not liable to be ejected on the sale of the superior estate or tenure for arrears of rent while the non-resident cultivators were. Both sorts of raiyats however held their lands while they paid the rents. There was therefore no raiyat with a right of occupancy as the expression has now come to be understood. Occupancy raiyats in a sense akin to its present meaning were first created by the legislation of 1859 and under that legislation in order to acquire such a right a raiyat had to hold the same land continuously for 12 years and that again only so long as he paid the rent payable on account of the same. Of course this right could only be acquired in communal lands and not on the proprietor's desmesne land generally known by the names of *Sir*, *Khamar*, *Khamat*, etc. Then came the legislation of 1869 which did not make any material changes in this respect. Lastly came the Act of 1885 in which this right has been made much more elastic and to the advantage of the raiyat. Up to this time, and even to the present day, occupancy raiyats' holdings have been held to be non-transferable without the landlords' consent, in the absence of any established custom or usage. The reason of this rule is obvious to any one who pretends to have read even cursorily the literature that preceded the Permanent Settlement of Bengal. That literature is voluminous. Any one who will dare attempt legislation on the question of the relation of landlord and tenant must not risk the task without being a master of the revenue administration of Bengal from the earliest times to the present day. The Permanent Settlement of the Revenue of Bengal was based upon the then existing assessment derivable from the cultivators of the soil at the time, and as the Government revenue was fixed in perpetuity it was thought quite fair and reasonable to legislate for the fixity of the rent of these raiyats who have been described in the Revenue Sale Regulation of Bengal as *istmurari* raiyats. The lands not under cultivation at the time were made subject to the revenue assessed on the estate as a whole, leaving the profits of such lands to the proprietors, as they could be made profitable only by the employment of their capital and labour. Occupancy raiyats therefore must have come out of those who were brought upon these lands by the proprietors, and evidently the capital must have been found by them and it is in the nature of things to suppose that the cultivators contributed their labour and the proprietor found the funds under a contract which completely regulated the relation between them. This contract has been, from time to time, interfered with by legislation and the occupancy raiyat has been created without proper regard to the fact that the proprietor's side of the question has not been dealt with with the care it deserves, and the present legislation aims at the last stroke to the proprietor's interest in the land for which he has been spending money since the Permanent Settlement.

3. The proposed legislation attempts to make the holdings of occupancy raiyats transferable without the landlords' consent and 25 per cent. of the price is made payable to the landlord as a solatium. This question of transferability of occupancy holdings has a close bearing with the question of the conferment of occupancy rights to under-raiyats. My views on this most important question I have fully set out in Paper No. 52 (see Extract A at end of note).

4. Then I come to the question of commutation. In my view the principle of commutation should not at all find a place in the Bengal Tenancy Act. The system of payment of labour by produce not only conduces to the advantage of the landlord but it is a source of general well-being to

the country at large. Even at the present day in large parts of Bengal the system of barter is not unknown, and payment of service by land is an institution which prevails in the most enlightened parts of the Province. In every village in the country barbers, washermen, potters, ferrymen, *paiks*, carpenters, blacksmiths, etc., are paid by land and sometimes in kind. Cultivators of land similarly have been paid and are paid for their labour in kind. These cultivators are not tenants but mere labourers. The definition that has been attempted in clause 3 of section 3 is therefore not only uncalled for, but a great infringement on the rights of the owner of the land. This definition fails to take account of the variety of circumstances that contribute in particular cases to the creation of the contract between the labourer and the owner of the soil. One instance out of many may be noticed here by way of illustration. Suppose a cultivator answers the definition entirely, but a further incident turns up to the effect that the owner of the soil supplies the manure or the cost of irrigation. Would the cultivator still be a tenant though he provides the ploughs, cattle and implements of agriculture? I can conceive a variety of other circumstances that is likely to control this sort of contract and I make no doubt that these and other varieties do exist in the country, complicating necessarily the problem between the parties. A definition on the line suggested should not therefore be attempted. The question should be left entirely to the courts that may have to deal with any particular case. What I particularly object to in the definition as drafted is that it has been given retrospective effect from the first day of November 1922, a principle shocking, to say the least of it, to a legally constituted mind. On the faith of the legislation as it at present stands extensive and far-reaching contracts have been brought to being, and these contracts are being attempted to be done away with by one thrust, as it were, of the assassin's dagger. Retrospective legislation, if deemed at all required by circumstances, may be made to take effect from the date of introduction of a Bill in Council and not earlier. If commutation as conceived in the Bill be at all adopted it should be the earnest endeavour of all right thinking men to give the law effect at least 3 years after the legislation. Full reasons I have given in Paper 60 (*see* Extract B at end of note).

5. I do not approve of the principle of compulsory appointment of a common agent to receive notices of transfer of tenures or holdings and the fees payable in respect of such transfers. It is common knowledge that in a small estate or tenure there are such a number of co-sharers that their profits are insignificant and on occasions the property is a losing concern. Further, the common agent is not likely to be a person who can be entirely depended on. Suits for accounts of money received by him will not be few and the cost likely to be incurred in such suits compared with the gain will be prohibitive. The appointment of a common agent then will be tantamount to a compulsory transfer of the fee without consideration and an expensive luxury to petty landholders. The compulsory appointment of a common agent seems to me a very grave innovation sought to be introduced into the law, and the more I have thought over the matter the more have I been convinced of the mischievousness of the proposed measure. The practical effect of this will be that by far the greater portion of the landlord's fee will in the end be forfeited to the Government. Various other objections to this proposal may be put forward, but I do not think I need encumber this note by such dilatation. In short I am absolutely opposed to this proposal. In my opinion the procedure at present in force in the case of transfers of permanent tenures and holdings at fixed rates may be adopted for the cases of transfers of occupancy holdings as well. Objection has been made to the present system on the score of the Collector's office being overworked, but the machinery proposed in the Bill will not only be an equal source of over-work to the office concerned but will also be burdensomely expensive to the poor raiyat, considering the trouble he will have to go through and the various sorts of expenses, legitimate or illegitimate, he will have to incur, added to loss of work and the time he will have to wait upon the officers dealing with his case. He will, to avoid all this trouble, expense and loss, gladly agree to the payment of a small percentage for the upkeep of an establishment to send on the notices and the fees to his landlords.

6. With regard to co-sharer tenants, it has been assumed that any landlord may reasonably be expected to ascertain the owners of  $\frac{1}{4}$ th share of any tenancy under him. This assumption does not represent the real state of things. Suppose the raiyat of an occupancy holding is a Mahomedan or

an Indian Christian. The wives, sons, daughters and even distant kindred may be among his heirs and a large number of these heirs may be non-resident of the village. Similarly, of a Christian raiyat governed by the Indian Succession Act. His heirs may be many, and many of them again may be non-residents of the village. The landlord may of course go upon the land of the holding and may ascertain who among them are in actual cultivating possession, but it turns out more often than not that the persons in possession only form an insignificant portion of the whole. How is the landlord to shape his course for a rent suit? The whole legislation seems to be based upon the assumption that the whole duty of ascertaining the body of raiyats of all the holdings in his estate or tenure entirely and uncompromisingly lies on him, as if the raiyats have no duty by their landlords with regard to the conveyance of information of successions to the landlord.

7. To sum up the position of the landlord and the raiyat under the proposed legislation:—

#### THE LANDLORD.

(a) The right of vetoing a transfer made without the previous consent of the landlord is sought to be snatched away from him and a right of so-called pre-emption is proposed to be thrust instead. The price to be paid for this sham of a right is the loss of 25 per cent. of the consideration money that the landlord would otherwise have got. The penalty for objecting to a transferee on personal grounds is the payment of a further 10 per cent. from the landlord's own pocket.

(b) In the case of a transfer of an occupancy holding, the 25 per cent. of the consideration money hitherto paid as the landlord's *salami* will recede and recede until it will altogether vanish like smoke into the air. An instance may be taken. A holds 20 bighas for Rs. 30 as annual rent. His net profit after deducting the rent and expenses of cultivation is Rs. 5 per bigha or Rs. 100 in all. A sells the land to B and gets Rs.  $100 \times 10 =$  Rs. 1,000, of which the landlord will receive 25 per cent. or Rs. 250. Now that occupancy right is proposed to be conferred on under-raiyats A would sublet to B for Rs. 40 as rent and realise from B a *salami* of  $(Rs. 100 - Rs. 10) \times 10 =$  Rs. 900, of which the landlord would get nothing. Subsequently A sells to B or to somebody else and gets  $(Rs. 40 - Rs. 30) \times 10 =$  Rs. 100. The landlord receives Rs.  $100 \times 25\% =$  Rs. 25. Thus the landlord's portion dwindles from Rs. 250 to Rs. 25 or from 25 per cent. to 2.5 per cent., which may be made to vanish altogether if a nominal sub-lease is first created and then a few days after a sale is effected.

(c) In case of surrender or abandonment the landlord cannot have the benefit of taking into his *khas* possession and under his own cultivation any portion of the holding the raiyat held under his own cultivation, simply because a microscopic portion of the holding happened to have been sublet to an under-raiyat with occupancy right.

(d) A landlord does not often mean a big landlord. 'Small fry' are more numerous. The inclusion of a *bhagdar* in the category of a tenant coupled with commutation will either compel the 'small fry' to hold the plough himself or to find himself deprived of livelihood for himself, family and dependants.

(e) However small the landlord may be, he must have the luxury of a common agent if he happens to have co-sharers. This means that the larger the number of co-sharers and the smaller the income, the greater the burden of maintaining a common agent. In fact the one principle pervading all through the Bill appears to be that the tenant has no duty by his landlord, and that however hoarse the landlord may cry the one invariable response is "go to Court," a procedure which cannot be beneficial to the raiyat in the long run.

#### THE RAIYAT.

(a) As soon as a raiyat sublets he steps into the shoes of a landlord and makes himself subject to all the disabilities set forth above in the case of a landlord. He would no longer be his raiyati-self, an object of sympathy and protection.



(b) With occupancy right conferred upon under-riyats and inclusion of *bhag-chasis* in the class of tenants the *mahajan* will no longer have the same interest in purchasing riyati holdings as he now has. But it should not be forgotten that the *mahajan* is an essential element in Bengal social economy. The effect of the proposed legislation will be in the direction of reducing the value of the riyati holdings and in reducing the riyat's credit.

(c) A riyat who cultivates his own land will not dare, even under temporary pinch of circumstances, either to sublet or to let out in *bhag-chas*. With his credit reduced or gone his capacity to tide over difficulties will also diminish.

(d) The riyat's time will be divided between the Registration Office, the Civil Court, the Collector and the landlord, leaving him very little time and funds to devote to cultivation.

In short, the effect of the proposed legislation will be enormously to increase litigation rather than diminish it, and to impoverish both the landlord and the riyat. The Bill, if passed as it is, will prove an ill wind that would blow nobody any good.

8. I now propose to give my views clause by clause.

*Bill Clause 3 [Sec. 1(3)].*—In section 1, sub-section (3), the sub-clause (4) as proposed should be omitted as there is no reason why tenants holding agricultural lands within municipalities should not have the benefit of the Act, specially in view of the fact that the expression "homestead" has been defined in the Bill.

*Bill Clause 5 (a) [Sec. 3].*—The expression "occupant of land" is very vague and it is not understood why it has been introduced seeing that the tenancy legislation should deal with landlords and tenants only.

The addition proposed to Clause (3) should be omitted for reasons given in my note (Paper No. 60).

*Bill Clause 5 (d) [Sec. 3].*—As I am against the proposal of conferring occupancy rights upon under-riyats, *vide* Paper 60 (*see* Extract B at end of note) the proposed insertion should not find place.

*Bill Clause 5 (e) [Sec. 3].*—The words "or under-riyats" should be omitted for reasons stated above.

*Bill Clause 5 (f) [Sec. 3].*—I am opposed to the principle of changing the village unit of the Revenue Survey, *vide* Paper 51 (*see* Extract C at end of note).

*Bill Clause 6 [Sec. 4].*—In section 4 as proposed the words "held for ever" should be substituted for the words "not held for a limited time" Paper 51 (*see* Extract D at end of note). Clause (iii) of the proposed section 4 should be omitted for reasons given in Paper 60 (*see* Extract B at end of note).

*Bill Clause 11 [Secs. 12—15].*—The proposed changes will prove a fruitful source of litigation, while they serve no useful purpose. The present law regarding the payment and transmission of the landlord's fee is working smoothly and can be further simplified if the registering officer serves the notice and transmits the landlord's fee without the intermediary of the Court.

In the case of succession the wording of section 15 of the present Act may be retained. In the case where there are several landlords the money shall be transmitted to and the notice shall be served upon the co-owner landlord named by the transferor, and the landlords among themselves may adjust accounts either amicably or through Court.

A new section as suggested in Paper 51, page 2 (*see* Extract E at end of note) should be added as no provision has been made regarding temporary tenures.

*Bill Clause 17 [Sec. 18C].*—The process of claiming the fee will swallow the whole amount of fees and something more, not to speak of the troubles the operation will entail. It would be cheaper to deny one self the fees altogether than attempt at their realisation.

*Bill Clause 19 [Sec. 22].*—If the right of occupancy is not conferred on under-raiyats certain corresponding changes will have to be made in this section.

*Bill Clause 22 [Secs. 26D, 26K].*—Provision should be made for the transmission of the landlord's fee by money order either by the registering officer or the Civil Court, as is at present done by the Collector. The procedure suggested for the transmission of the landlord's fee on the sale of tenure should be adopted. It may be noted that provision has been made in section 26F for the transmission of the landlord's fee in case of the sale in execution of a decree by Court. There is no reason why similar procedure should not be adopted in the case of a private sale.

*[Section 26F].*—The apportionment of rent that may be required to be made in certain cases for computing the landlord's fees should not be binding upon landlords, and a provision to that effect seems called for.

*[Section 26G].*—The deposit is required to be made at the time of making the application or within such period as the Court may fix. It is not understood how these two alternatives can be brought into practical operation. The first alternative should be deleted.

The landlord should be accorded the advantage of the 25 per cent. made payable as landlord's fee in case of a transfer, and as a solatium to the transferee the compensation the landlord may have to pay should not exceed 5 per cent. of the consideration money, as provided in the case of sale under the Bengal Tenancy Act, the Civil Procedure Code, etc.

*Bill Clause 25 [Sec. 40].*—Commutation should not be on the rent "actually received" but on the rent "actually payable" by the tenant. This section should not be made applicable to raiyats holding at fixed rates, and to under-raiyats holding at fixed rents. The provision regarding instalments of premium should altogether be omitted as instalments would be tantamount to depriving the landlord of the solatium that the Bill pretends to give him.

I am altogether opposed to the principle of reducing rent for a premium, *vide* Paper 60, page 5 (*see* Extract B at end of note).

*Bill Clause 28 [Sec. 48].*—A provision should be added to section 48 to the following effect:—

"Provided that the under-raiyat is a settled raiyat of the village. This section shall come into force three years after the passing of the Amending Act."

*Bill clauses 34 and 35 [Secs. 57 and 58].*—Sections 57 and 58 of the present Act should not be interfered with. The proposed changes unnecessarily lay great burdens upon the landlord without any corresponding benefit. The fee now payable by the tenant should be maintained to cover the additional cost of the landlord, seeing, moreover, that any co-sharer tenant may demand a statement of account and this may entail the preparation of as many accounts as there are co-sharer tenants, whether they choose to pay their rents or not.

*Bill clause 44 [Sec. 69].*—The words proposed to be omitted should be retained if the provisions regarding distraint be decided to be retained as in my opinion they should be.

*Bill clause 45 [Sec. 73].*—This section should be retained to avoid difficulty in the case of a sale effected close upon the sun-set day.

*Bill clause 47 [Secs. 76 and 79].*—The word "suitable" should be retained as meaning suitable to the holding.

*Bill clause 48 [Sec. 76].*—The provision for the purpose of providing drinking water for the tenant or his family seems nugatory, as no such tank can be excavated on a small plot of land. On the other hand it will become a source of nuisance. If any concession in this respect be accorded to the the raiyat it should be in the shape of wells.

*Bill Clause 54 [Sec. 85].*—The proviso proposed is unnecessary if my suggestion in Paper 51 on sections 165, 166, 167 and 168 (*see* Extract F at end of note) be accepted. On principle the proviso should not be made applicable to under-raiyats holdings entered into by registered instruments before the 1st of November 1922.

**Bill Clause 55 [Sec. 86A].**—This section seems not to be clearly worded and as it stands it seems to add nothing to the present law. On the contrary it introduces a good deal of confusion into the present law. Sub-section (2) should therefore be omitted.

**Bill Clause 57 [Sec. 87A].**—The proposed section 87A seems inequitable. Suppose there is a holding consisting of 20 bighas held by an occupancy raiyat on an annual rent of Rs. 10. He sublets 1 bigha out of it to an occupancy under-raiyat at an annual rental of Re. 1. The raiyat abandons the holding. The effect of the proposed amendment would be that the under-raiyat will be entitled to purchase the complete occupancy right in the holding on payment of Rs. 60 only to the landlord, i.e., he gets 19 bighas for Rs. 60 only. In the supposed case if a non-occupancy under-raiyat held 12 bighas on a rental of Rs. 24 the occupancy under-raiyat of 1 bigha will be entitled to oust the non-occupancy under-raiyat, and will have the whole holding for Rs. 60 only. The most equitable provision should be such that the landlord may reap the benefit of the abandonment and the occupancy under-raiyat may not be prejudiced thereby, which is to say that he will retain his portion of the holding as an occupancy under-raiyat on payment of a fair and equitable rent to the landlord, in which case his status will be raised from an under-raiyat to a raiyat.

**Bill Clause 63 [Sec. 99A].**—The legislation proposed in this clause seems uncalled for. There are a very large number of estates and tenures the rental of which does not cover the revenue or rent payable for the same and the pay of an agent. The proprietors or the tenure-holders as the case may be do the work of collection themselves. The compulsory appointment of a common agent for such estate or tenure would be an absolute infliction on them.

**Bill Clause 90 [Sec. 146B].**—“ Before the trial of the suit has commenced ” should be substituted for the words “ before the hearing of the suit has been completed. ”

Sub-section (3) seems to have been based upon a misconception, to the effect that the sale was initially as if it were a sale in execution of a money-decree and the auction purchaser did not pay the full market value of the holding, though this result transpires only after the suit or proceeding in which the question has been litigated. This sub-section should be redrafted so that the purchaser shall not have to pay any additional amount, while the aggrieved co-sharers should participate in the purchase money according to their shares.

**Bill Clause 94 [Sec. 148A].**—No provision seems to have been made for the case where some of the co-sharers may combine with the tenants to oust a certain co-sharer whose name therefore is not at all brought out before the Court.

**Bill Clause 95 [Sec. 153].**—In the proviso proposed the words “ from the decree or order in which no appeal lies ” should be deleted. The procedure in rent suits is a summary procedure. The Court takes only notes of evidence and does not record the evidence *in extenso*. The appellate Court therefore is often unable to make a proper estimate of the evidence and therefore the decision on a question of title is generally unsatisfactory. But if a regular suit for establishment of title is brought the Court is bound to record the evidence *in extenso* and the appellate Court is in a position to make a proper estimate of the evidence.

**Bill Clause 98 [Sec. 158A].**—The amendment proposed to sub-section (2) of 158A seems uncalled for specially in view of the fact that the words “ and in which such record is maintained ” in sub-section (1) are omitted. It will moreover only hamper the hand of the Local Government.

**Bill Clause 102 [Sec. 161].**—I am quite agreeable to the legislation proposed in this clause with the rider that the sale in execution of decree for arrears of rent to which the person in adverse possession is not a party will carry the whole tenure or holding, including the interest of the person in adverse possession.

**Bill Clause 109 [Sec. 178].**—Section 178(e) requires further consideration. There may be circumstances in a particular case which may justify a landlord in being entitled to a higher proportion of the gross produce.

*Bill, Clause 113 [Chap. XVA].*—The word “hybrid” in hybrid tenures may be replaced by the word “anomalous.” This section aims at giving rights to tenure-holders which they do not possess under the present law and at depriving the landlords of rights which they do. It should always be remembered that these rights are the offspring of the present law and the parties entered into contracts which are the basis of these rights with a full knowledge of the position as the law conferred upon them. Rights thus created on the faith of the existing legislation should not be disturbed before giving the parties sufficient time, say 3 years, to adjust their relations.

The power to extend the section by notification to places other than Rangpur should not be conferred upon the Local Government, as several matters and circumstances may have to be discussed before such power can be used and as the proposed section will be discussed in Council before it can be enacted into law the matters and circumstances concerning other places should also be similarly discussed in Council before its extension.

*Bill, Clause 114 [Sec. 185].*—The reference to sub-section (2) of section 29 of the Limitation Act does not seem to be clear.

*Bill, Clause 117 [Sec. 195 (e)].*—*Khodkhast* raiyats are resident and hereditary cultivators of a village, while an occupancy raiyat may reside in one village and cultivate land in another. The expression *Khodkhast* raiyat cannot therefore include all occupancy raiyats. The law as it stands should remain.

#### Extract A.

All the landlords object to under-raiyats being given occupancy-rights, and it may be said that the landlords object very rightly. Restrictions on enhancement of rent result in subinfeudation as long as there remains sufficient margin of profit and competition for land. Subinfeudation again creates problems of status. A dual status is sure to lead to legal complications, and is prejudicial to the interests of the landlord as well as to those of raiyats. Apart from the objections raised by the landlords a tenancy at its inception is a matter of contract between the lessor and the lessee. The character of the tenancy and therefore of the contract should not be changed without the consent of the parties. Nor does it change by lapse of time. In the long run presumptions as to tenures and holdings will have to be extended to raiyats and under-raiyats. The Secretary to the Committee rightly observed that it was undoubtedly necessary to discourage the sub-letting of the whole holdings in substitution for transfer. No occupancy-status need be given to under-raiyats.

#### Extract B.

Among the most important features of the proposed amendment of the Bengal Tenancy Act are the conferment of the right of transfer of their holdings to occupancy-raiyats and conferment of the right of occupancy to under-raiyats. These two apparently distinct subjects are so closely connected with each other that I propose to deal with them together.

Those who advocate the cause of occupancy-raiyats want to make holdings with occupancy-rights freely transferable, and by so doing they believe that they are making such raiyats owners of property, their right of transfer not being dependant upon the landlord's pleasure. Apparently this is giving them a substantial interest in the land in one sense, and this may have the effect of raising them in their own estimation, they being regarded as having entered the class of the landed interest of Bengal. But this question needs must go with the other proposition by which it is intended to give under-raiyats right of occupancy in the land held by them under occupancy-raiyats. To give a concrete example, suppose A, an occupancy-raiyat, holds a holding of 50 *bighas* bearing a rental of Rs. 100. He wants to sell it. In the present state of the law under-raiyats having no occupancy-status, the holding may be regarded as in the direct cultivating possession of the raiyat. In these circumstances, suppose (and this supposition is a moderate one) the price which each *bigha* will fetch is Rs. 100. The price would thus come to Rs. 5,000. The purchaser will have to pay Rs. 1,250 to the landlord as the landlord's fee, and this he will deduct from the price. The occupancy-raiyat thus gets Rs. 3,750 for his holding. Now then the proposed law gives right of occupancy to under-raiyats, and suppose the holding is sub-let to under-raiyats fetching a rental of Rs. 150. Under-raiyats having right of occupancy cannot be ejected by the purchaser, and under this circumstance what would be the price of this holding? The income is Rs. 50 a year, and at 20 years' valuation the price would be Rs. 1,000, out of which the superior landlord gets Rs. 250, leaving Rs. 750 only to the raiyat. Now, I ask which position would the raiyat prefer? He would certainly prefer his present position rather than be ruined by accepting the position the law now proposes to offer him. The conferment of occupancy-right to under-raiyats has thus the effect of

considerably reducing the value of occupancy-holdings; *a fortiori*, therefore, it will fetch less value in the case of mortgage. Another circumstance may also be here considered. Many persons have paid considerable sums upon the faith of the existing law that under-raiyats are ejectible. Would it be at all fair to these people to reduce the value of their property by one stroke of the pen? If you give the right of free transfer to the occupancy-raiyat, do not give right of occupancy to the under-raiyat, for in giving this right to the under-raiyat you only ruin the occupancy-raiyat. Further, the proposed amendment materially trenches upon the superior landlord's rights as his income will be materially curtailed—

- (1) by giving the occupancy-raiyat the right of free transfer;
- (2) by giving the under-raiyat right of occupancy in the land held by him.

By the first he is deprived of his right to make the transferred holding *khas*; by the second the pittance of landlord's fee on transfer of an occupancy-holding is greatly reduced.

2. It may be said in answer to the above observations that the proposed enactment does away with the limitation of rent of under-raiyats, leaving the parties to fix as high a rent as they may choose upon the under-raiyati holding. But it should be considered that, however high the rent may be fixed, it can never reach the price of the paddy that is likely to be grown on the land. The above observations therefore equally stand good even in the case of the abrogation of the sections regarding the limitation of rent of under-raiyats.

Then I have a word or two to say on the proposition that a raiyat at fixed rate of rent should be given the status of a settled raiyat where he complies with the requirements of section 20. Indeed the same difficulties will arise as in the case of the conferment of occupancy-right to under-raiyats even in this case. Suppose A, a *putnidar*, lets out certain lands as a *mokrari mourasi* holding to B for a big *salami* on a nominal rent or to a near relation of his for a nominal rent as is not unfrequently the case. In case of the *patni* being sold under Regulation VIII of 1819, the purchaser gets it free of all encumbrances created thereon by the defaulting *putnidar*. In the present state of the law, this *mokrari* being an incumbrance is *ipso facto* annulled by the sale, but as occupancy-right may be acquired by the raiyat being a settled raiyat of the village, he cannot be ejected and the purchaser is only entitled to the nominal rent reserved. It may be argued that he may enhance the rent under the provisions of the sections relating to the enhancement of rent of occupancy-raiyats. It is submitted that these provisions, for the most part, will not apply to such cases, especially as the chapter on occupancy-raiyats deals with a special class of raiyats and not the other classes, viz., raiyats at fixed rates or non-occupancy raiyats or under-raiyats, and this brings me to the case of the general scheme of the Act. The Bengal Tenancy Act, as it at present stands, divided raiyats into certain classes and these classes are exclusive, one separate chapter being allotted to each to prevent confusion and overlapping. An amending Act should keep the original scheme intact and only introduce amendments consistent with the scheme of the original Act. Simply because occupancy-right is conferred upon raiyats at fixed rates and under-raiyats, only as an incident, that does not make these other classes occupancy-raiyats attracting all the provisions of the chapter on occupancy-raiyats to these classes. These classes of raiyats should be treated separately and exclusively of each other as has been done in the main Act. The High Court no doubt have held that, under certain circumstances, a raiyat at fixed rates may acquire occupancy-right; but that does not mean that all raiyats at fixed rates will acquire occupancy-right, as is sought to be given by the proposed amendment, and further that is no reason why this decision should be given legislative effects, if the general policy of land legislation of the Government does not agree with the view; rather than give occupancy-right to raiyats at fixed rates, a provision should be made to avoid the effect of the High Court Ruling, viz., that raiyats at fixed rates shall have no occupancy-rights. This creates no hardship on the raiyats at fixed rates, considering that this provision will apply only to raiyats at fixed rates created by contract between the raiyat and the landlord for the time being. Raiyat's holdings existing from the time of Permanent Settlement are saved both by the Revenue Sale Law and as protected interest by the Bengal Tenancy Act. The suggestion is made only to prevent the consequences flowing from the settlement of rent at an abnormally low rent for some consideration of which the purchaser at revenue or rent sale cannot possibly partake.

3. Then I propose to discuss the question of commutation under section 40 of the Act. Mr. McAlpin has written a learned and elaborate note on the question of commutation regarding *bhagchasis*, *bhagdars*, *burgadars*, *bataidars* and *adhiars*. I regret I have not been able to follow the arguments he offers in the cause of the *burgadars*, *bhagchasis*, etc. Shortly he contends that the classes known in the different parts of the province as *bhagchasis*, *bhagdars*, *burgadars*, *bataidars* and *adhiars* should be classed as raiyats and should be accorded all the rights and privileges of raiyats. In advocating their cause he seems to take it for granted that the various names given above are but *aliases* of one and the same class of persons. This, I think, is not a very accurate statement of the real position. Bengal is a large country and it is well known that different local customs prevail in different districts, nay in different villages in the same district.

I should think that each case will be governed by its own merits and the Civil Court will give the *burgadar*, or by whatever name he may be called, the status of a raiyat if the evidence justified the conclusion and will not give him that status if the evidence in the case led otherwise. The notes on pages 4, 5, 19 and 64 of Mr. Sen's work on Bengal Tenancy may usefully be referred to on this subject.

Then to come to the rulings referred to by Mr. McAlpin, viz.,—

14 C. W. N. 629

23 C. W. N. 614

19 C. W. N. 1,205

21 C. W. N. 505

Upon a close study of the first case I find that the plaintiff's case was that the *jote* "had been taken in *burga* settlement by the principal defendants" and the case was brought in the Small Cause Court. This case would lie in that Court only if the defendants were not the plaintiff's tenants, otherwise it would lie as a rent suit in the regular Civil Court. The plaintiff, therefore, evidently understood that the *burga* settlement was only a labouring contract. The defendants pleaded that "they had never taken a *burga* settlement of the plots in question." Thus the parties agreed as to the meaning of the expression "*burga* settlement" and the defendants wanted to get rid of this liability by altogether denying this settlement. The Small Cause Court Judge in reporting the case to the High Court said, and said distinctly, "the term *burgadar* in this district is ordinarily understood to mean a cultivator, who, under the terms of the contract, is a servant or a labourer under the holder of the land." We thus come to this position—

- (1) *burgadar* in the district means a servant or labourer ;
  - (2) plaintiff says the defendants took a *burga* settlement.
- ∴ the defendant was a servant or labourer.
- ∴ the case lay in the Small Cause Court.

This case, therefore, shows that the word "*burgadar*" in the district of Pabna does not connote a tenancy. A *burgadar* in Pabna cannot then be given the status of a raiyat.

The second case, that reported in 23 C. W. N. 614, went upon the terms of the contract, and thus supports my view that the agreement between the parties must govern the relation.

Mr. McAlpin says that the tenancy was a *dhankarari* tenancy. This is more than I can say in the teeth of the finding of the High Court. The High Court says it was not a tenancy but a labouring contract. It would thus be unavailing to persist in calling that a tenancy which the High Court has called a labouring contract.

The third case, that reported in 19 C. W. N. 1,205, also supports the view I entertain, viz., the evidence in the case governs the relationship. The Judges say the question, which is raised, is whether the *adhiar* is a tenant or a labourer. If he is a tenant, then his possession would be protected under section 9; if a labourer, it would be otherwise. In the first place there is no affidavit before us that an *adhiar* in this part of the country means a "labourer" and not a "tenant." There is, on the contrary, a statement in the affidavit that the land was let out to the plaintiff as "*adhiar*," which term is appropriate to the existence of a tenancy. The various books upon the subject which were referred to show that very largely an *adhiar* is a "tenant." The expression "very largely" clearly implies that in some cases, at any rate, an *adhiar* is not a tenant. Thus the High Court upon the evidence in the case came to the conclusion that the *adhiar* in that particular case was a "tenant."

I come lastly to the last case referred to by Mr. McAlpin, viz., that reported in 21 C. W. N. 505. Mr. McAlpin quotes a portion of Teunon, J.'s judgment. The Senior Judge Fletcher, J., said:—" *Bhagchasis* are persons who cultivate land rendering a share of the produce to the landlord. They may or may not have any interest in the land, but are not hired servants, etc." This means, where one has an interest in land, he may be a raiyat; where one has not, he is not a raiyat. This case again supports my idea that local custom or agreement is the governing element in every case. Teunon J.'s statement quoted by Mr. McAlpin is also based upon the evidence given in the case. We generally find loose language used in describing legal relationship. This should be carefully avoided. Where the *burgadar* according to the local custom or agreement is a tenant, the other party would be the landlord; where, however, according to local custom or agreement he is not a tenant, the other party cannot be described as the landlord. The language used must strictly conform to the exact legal relation that subsists between the parties whether by local custom or agreement. Loose language, even in high judicial utterances, is at the bottom of much misconception in the appreciation of legal relationship.

Regarding *burga* system, Mr. McAlpin prefers three grounds for his proposition.

He says—

(1) That "*burga* is an uneconomical and wasteful method of cultivation. The tenant does not trouble to cultivate the land as well as his cash-rented lands." Now this may happen where he cultivates both sorts, but where all his lands are held by him under the *burga* system, this apprehension has no place. Mr. McAlpin means, as I understand him, that such lands are deteriorating in productive power. To examine this ground a little closely, if these lands are deteriorating in productive power, the owner is the loser, the *burgadar's* loss is confined to the particular year in which he does not properly cultivate the land and his loss is due to his own neglect, while the loss to the owner is more permanent than his and due to the *burgadar's* fault. If the owner notwithstanding the loss chooses to have his land cultivated by such a cultivator, there is no help for it. Suppose the owner chooses not to let out the lands at all and keep all fallow. Neither the law nor anybody can prevent his doing that. The cultivation by a *burgadar* is less uneconomical than leaving the lands altogether uncultivated. If the law gives to the *burgadar* the rights of a raiyat, the result in all probability will be that the owner will only cultivate by his own plough or by hired labour so much of his lands as will fetch the produce he would have got by having all his lands cultivated by *burgadars* together with the cost of cultivation, and will leave his remaining lands altogether uncultivated. It will thus be seen that the *burga* system is likely to prove less uneconomical than the other course. To consider the question from the *burgadar's* standpoint, if the owner takes the course supposed and leaves a portion of his land fallow, the result to the *burgadar* will be that he and his family will have to go without the means of livelihood which he would have derived by cultivating the lands on the *burga* system.

(2) That "it is extending." There is not only no harm in the extension of this system of cultivation, but it is conducive to the general prosperity of the country. People who cultivate on the *burga* system secure their means of livelihood, while otherwise the owner cultivating a sufficient portion of his lands and leaving the rest fallow for the year, the *burgadar* is deprived of livelihood for himself and family. The *burga* system thus helps more the *burgadar* than the owner and so conduces to the welfare of the landless class.

(3) That "there is a growing endeavour to try and get *burga* tenancies regarded as labouring contracts." There is no such endeavour; where the *burgadar* is a tenant, he gets his rights as such; where he is not, he cannot get a tenant's right. Where the *burgadar* by the terms of his contract is a tenant, the settlement may be styled a tenancy; where he is a labourer, there is no tenancy. To indiscriminately describe *burga* cultivation as *burga* tenancy is a misuse of language which should be carefully avoided in formulating legal conceptions.

Mr. McAlpin wants to enact a presumption in favour of the specific classes called *bhagchasis*, *bhagdars*, *bataidars*, *burgadars* and *adhiars* being considered tenants with the proviso that they are not dependent upon the lessor for the supply of the implements of cultivation of the land. In the first place, the presumption would be most unfair so far as the landlord is concerned, because in whatever capacity he may come before the Court, whether as plaintiff or defendant, applicant or opposite party, he will have to rebut the presumption that the *burgadar* is a tenant. The law of burden of proof is plainly laid down in the Indian Evidence Act and no exceptional rule of law need be made. The circumstances of each case and the pleadings of the parties will settle upon which party the burden of proof will lie in a particular case, and the general principles of the law of burden of proof will prove a sufficient safeguard in all cases. The common agreement between the parties is that the owner pays rent for the land and the other impositions on it, and the cultivator finds the implements of husbandry and the labour. The supply of manure forms a subsidiary contract; generally the landlord supplies the manure, the cultivator supplies the cartage. The terms slightly vary in different localities. Strictly speaking, the *bhagdar* does not give a share of the produce of the land to the owner, but really the position is the other way, viz., the *bhagdar* gathers the produce on a spot indicated by the owner and there it is threshed and the owner gives the agreed proportion of the produce to the *bhagdar* as the price of his labour; in other words, he is paid for his labour in kind, and not in money. The owner would have no objection to paying him in money, but that makes no difference; it is only a question of additional transaction, for, if the owner pays the *bhagdar* in money for his labour, he immediately wants to purchase the produce for the money and the owner sells the produce to the *bhagdar* for the money. I should therefore prefer to leave the law as it is, leaving to the Civil Court the task of deciding the particular point in each case upon local custom and contract.

"Of the suggestions which have been made to make the section workable," says Mr. McAlpin, "that involving the payment of *salami* or a commutation-fee to the landlord where there is a material difference between the amount given as rent and the rent finally settled is one which appears to give the best promise." With much deference I am inclined to think that this suggestion does not take into consideration certain contingencies to which I refer below. The payment of a *salami* may be a solatium to the landlord for the time being, but in the case of a sale of the landlord's interest, say, at a revenue-sale, the purchaser only gets the reduced rent and is a loser in consequence. To take an extreme case, suppose a whole village paying a Government revenue of Rs. 100 is



cultivated on the *burga* system and suppose by commutation the rent-roll is settled at Rs. 75 only, giving a substantial *salam* to the landlord or none. The landlord defaults in the payment of revenue and the estate is sold up. The auction-purchaser gets Rs. 75 a year, and he has to pay Rs. 100 to Government. This estate, therefore, is bound ultimately to become the *khas* property of Government as no bidder will be forthcoming to purchase it as soon as the real state of affairs comes to be known. Commutation therefore may in some cases at least lead to the detriment of the public revenue. It may be laid down as a general proposition that the security of the Government revenue depends upon the rent-paying capacity of the land, and the more you reduce the landlord's income by so much the security for Government revenue is jeopardised. It is not therefore to the interest of the land revenue due to Government that commutation should be largely allowed.

Experience in Bihar shows what hardships have in certain instances been the result on landlords by commutation. There have been instances in which a landlord's income has been reduced from, say, Rs. 50,000 to Rs. 25,000 mainly by commutation. *The principle of commutation should altogether be abolished, rather than it be given extended application by legislation.* The custom of paying labour in kind dates from time beyond memory. The East is more governed by custom and usage than hard-and-fast rules of law. Custom or usage is a natural growth depending upon surrounding circumstances, and it changes with the change of its environments. To attempt to do away with custom by strict legislation is bound to be a failure. The modern tendency to arrest or do away with the growth of custom and usage is doomed to die an almost instantaneous death. As the Hindu Law-givers have said "custom overrides the written text of the law." In the East before the advent of the British all labour used to be remunerated in kind. *Chakran* lands bear testimony to this custom. There were *chakrans* of watchmen, of *paiks*, of barbers, of washermen, of those who supply the materials for *pujas*, and these *Chakrans* still exist in their pristine vigour in the mufassil. Let therefore customs grow as they have ever grown, and let the hoary rule of the Hindu Law-givers quoted above be the guiding principle in all relations between landlord and tenant.

### Extract C.

SECTION 3, CLAUSE (10), SUB-CLAUSE (b).—*Village*.—In the last part insert "as is comprised in a village as is locally known and where there is no local name such area" between "such area" and "as the Collector, etc., etc." Omit definition as given in Eastern Bengal and Assam Act.

The village is the administrative and fiscal unit, and any changes made in that unit cannot but end in innumerable difficulties affecting the rights and liabilities all through, from the Government down to the cultivator. Hence it is absolutely necessary that the unit adopted in the revenue survey should continue undisturbed. Section 207, Chapter II of the Bengal Survey and Settlement Manual, lays down that "the village" according to the revenue survey is to be taken as the unit of survey as far as possible. The circumstances in which different units may be adopted, or villages formed, when there has been no revenue survey, are given in Appendix R and the procedure is given in rule 225.

### Extract D.

SECTION 4.—*Permanent tenure*.—Substitute "which is held for ever" in place of "which is not held for a limited time."

For stamp duty leases are classified as held—

- (1) for a limited time ;
- (2) for indefinite time ;
- (3) as permanent ;

The definition as it stands may include tenures held for indefinite time. Hence is the necessity for the change. The words "for ever" are borrowed from Regulation I of 1793.

### Extract E.

SECTION 13, CLAUSE (1).—*Transfer of permanent tenure by sale in execution of decrees*.—To delete "section 312" and substitute "rule 92, order 1, schedule I." Add a new section 17A—

"A tenure-holder other than a permanent-holder shall be subject to the same provisions with respect to the transfer of and succession to his tenure as the holder of a permanent tenure in the absence of an agreement or local or special law, or established usage to the contrary. The holder of such a tenure shall not by reason of such transfer cease to be subject to any of the liabilities attaching to the lease."

### Extract F.

SECTIONS 165, 166, 167 AND 168.—*Sale to avoid incumbrances*.—In clause (1) substitute "free of" in place of "with power to avoid" and make consequential changes. The same changes in sections 166, 167 and 168. Omit clause (2).



### Note of dissent by Babu Brojendra Kishore Ray Chaudhury.

I sign this report subject to the following note of dissent. It relates chiefly to (1) the transfer by sale of occupancy holdings and extension of occupancy rights to under-raiyats, (2) the practical abolition of the *barga* or *bhagi* system and provisions regarding commutation, (3) some points regarding the procedure for realisation of rent, and (4) the conversion of non-permanent tenures of Rangpur into permanent tenures.

#### TRANSFER OF OCCUPANCY HOLDINGS BY SALE AND EXTENSION OF OCCUPANCY RIGHTS TO UNDER-RAIYATS.

It is useful to recall that the question of attaching the right of occupancy to all raiyati lands, and that of allowing free transfers of occupancy holdings, are not matters of mere recent history. These proposals came up for the consideration of the Government of Bengal, the Government of India, and the Secretary of State upon the report of the Rent Commission in 1880. And the provisions embodied in the Bengal Tenancy Act of 1885 are a final result of the mature deliberation of these authorities upon the *pros* and *cons* of the questions. It will be remembered that Act X of 1859 for the first time conferred the right of occupancy on certain raiyats on the basis of the rule of 12 years' residence, and its effect according to Mr. Justice Field was that a large number of tenants who, before the Act were mere tenants-at-will and so liable to be rack-rented, at once acquired a protected tenure. When the Government of India, in their despatch of March 1882, proposed to the Secretary of State that occupancy right should be attached to all raiyati lands, the Secretary of State demurred to this proposal. And, in declining to sanction it, he stated that the proposal involved a great and uncalled-for departure from both the ancient custom and the existing law of the country. The Government of India defended their proposal in a subsequent despatch in October 1882, but the Secretary of State adhered to his former opinion. This finally disposed of the proposal for extending the right of occupancy to all raiyati lands, and it was not heard of till the present committee came to revive it. Similarly, the proposal for allowing free transfer of occupancy holdings was deliberately negatived by the legislature in 1885.

In briefly relating this chapter of the history of tenancy legislation in Bengal, it is my intention to emphasise the fact that when the Bengal Tenancy Act was placed on the Statute Book, as a corollary to the permanent settlement, after subjecting the prevailing condition of things, the rights and privileges attaching to tenancies and the long-established custom of the country to the closest scrutiny, the highest legislative authority in India finally prescribed the relations of landlord and tenant in a manner from which no departure would be justifiable, except on grounds of overwhelming necessity or impelling public policy.

A representative of the interests of the landlords would, in this view of the matter, be justified in opposing any change in the tenancy legislation in the two particulars mentioned above. But it is not my intention to be obstructive, if it is found that in the present legislative proposals there are advantages in detail which compensate the landlord to a reasonable extent for the large concession which he is asked to agree to in matters of principle.

The right of free transfer which the proposed legislation would confer on raiyats in respect of occupancy holdings is undoubtedly a change of a fundamental character. And, before a landlord can be a consenting party to such a change, he should be assured of the continuance of the most important privileges which he enjoys under the existing system. It is proposed, no doubt, that the *salami* or transfer fee will be compulsorily payable to the landlord at a uniform rate, which at first sight suggests that the new arrangements will cause very little financial loss to him. The landlord will also have the right of pre-emption, enabling him, when he so chooses, to refuse to recognise a transferee. Had these proposals stood alone, there would not perhaps have been much ground for complaint from the practical point of view. But these are unfortunately accompanied by new provisions about the status and privileges of sub-lessees which in effect neutralise the benefits of these proposals.

Sub-lease under the proposed conditions will become a much more preferable arrangement, from the point of view of the raiyat, than a transfer, and will be invariably availed of in preference to the latter. In case of a transfer there is the risk of pre-emption by the landlord, but there is no such risk in a sub-lease; a *salami* of 25 per cent. has to be paid to the landlord in a transfer, but in a sub-lease no such payment is required. In a transfer of a part of a holding the transferee remains jointly responsible with the transferor to the immediate landlord for the rent of the portion that remains with the transferor, but in a sub-lease the sub-lessee is responsible to the raiyat only for the rent of the land sub-let to him; the transferee does not attain occupancy status, unless the transferor has got it himself, but in the case of a sub-lease, whatever the status of the lessor, the lease always carries occupancy right along with it. In a sub-lease there is no doubt the risk of ejectment by the superior landlord when the holding of the immediate landlord is sold for arrears of rent; but the transferee is also similarly affected when the transferor defaults. But the sub-lessee and the transferee can both avoid this by paying the landlord's dues and recouping them with interest by contribution suit. In a sub-lease, in particular, it will be the natural inclination of the court to set aside rent-sales on the application of any one of the under-raiyats, whose interests are affected by the sale, in the chain of under-raiyati tenancies when any large number of persons would be found involved.

There is, however, one disadvantage in a sub-lease. There is the risk of ejectment by the superior landlord in certain cases of transfer by the immediate landlord. But this is a remote contingency which can hardly receive any serious consideration from the tenant.

About two-thirds of the costs that the landlord incurs in rent suits (these costs swallow up over 10 per cent. of his gross income) always remain unrealised. He has to maintain an expensive staff, the cost of which daily increases. He is to some extent compensated for all these by the *salami* he receives in transfers. But the proposed arrangement, by depriving him of this source of income, will cripple him seriously.

The extension of occupancy right to under-raiyats should also be opposed on other grounds. It will increase sub-infeudation to an unlimited degree and vastly enhance the complications in the land system of the province. It will increase the difficulties in the realisation of rent and multiply suits. Sections 66 and 49 will no longer assist the raiyat in his collections of rent from under-raiyats. He has not the resources of the landlord, and expensive rent suits will not in most cases be possible for him to undertake. The difficulties arising out of non-joinder of defendants have been to a great extent removed in the proposed legislation, but no remedy could be found for non-joinder of plaintiffs, which would in many instances be inevitable. In the case of Muhammadan raiyats, in a vast majority of cases, a rent suit will be hardly possible, and default in the payment of the superior landlord's dues will inevitably follow. In certain respects greater advantages have been attached to the status of an under-raiyat than the law has ever given to the raiyat. A raiyat can only acquire occupancy right by twelve years' residence in a village, but under the proposed legislation a new-comer would get occupancy right in a village the moment he secures a sub-lease. It is one of the objects of the present legislation to prevent rack-renting. But the omission of section 48(a) and (b) has removed the only restriction in the case of a sub-lease to excessive enhancement of rent.

#### BARGA.

*Clause 5 of the Bill.*—The practice of supplying implements of agriculture, ploughs, and cattle by landlords to *bargadars* is nowhere in existence now. The provision, therefore, of sub-clause (a) in clause 5 of the Bill will convert almost the whole of the lands which are cultivated under the *barga* system into raiyati lands. It will seriously disturb the existing state of things and the economic condition of the country. My friends in the Committee, who support the proposed change, do so on the assumption that the *barga* lands do not yield as much crop as the ordinary lands and the system involves uneconomical and wasteful methods of

production. I am afraid this assumption is based on insufficient materials, and they have failed to make out their case on this point.

In my opinion no exception can be taken to the *barga* system on economic grounds. On the contrary, this class of land is an important subsidiary means of livelihood of a large body of middle class *bhadralaks* all over the province, who may otherwise lose all interest in their village homes and gradually migrate to towns—a circumstance which will very materially affect the rural conditions of the country. It is these bits of *khamar* land which enable the middle class or intellectual portion of the village community to exist and to carry on their different avocations. The proposed exceptions in favour of contracts made before the 1st November 1922, and in cases where the rent in kind is mainly required for the subsistence of the landlord and his household, will not be of much practical value. The class of people who represent the bulk of *barga* landowners, and will be most adversely affected by the wholesale operation of the commutation rule, are generally those who had not the foresight to safeguard their interests with the help of regular contracts, nor can they be expected to successfully oppose an application for commutation by satisfying a Revenue officer that the circumstances justify the exclusion of the *barga* lands from commutation proceedings. If all these *barga* lands were at once converted into cash-paying holdings, the economic distress among a very important class of the community would be considerable and would lead to political discontent.

The landlord does not want this departure from a long-established custom. The middle class does not want it. It has not been supported by the spokesmen of the tenants. The system is working smoothly, and does not call for that interference on the part of the legislature which is considered necessary in the case of transfers of occupancy holdings.

Apart from the question of principle, the definition in sub-clause (a) of clause 5 is objectionable on other grounds as well. The word "occupant" in the definition would include an usufructuary mortgagee and a service tenure-holder, who are outside the scope of this Act. Any change in the existing law which might permit the creation of tenancies under service tenure-holders would seriously affect the position of the zamindars.

There is another phase of the matter which may incidentally be mentioned. *Barga* lands, when converted to raiyati lands under the provisions for commutation, would lead to a serious decrease in the Road Cess Fund. The present Road Cess assessment is made on an annual value of Rs. 18 per acre for *barga* lands. The annual value of raiyati lands does not ordinarily exceed Rs. 5 per acre. The *barga* lands form 10 per cent. of the total quantity of arable lands in the Dacca district. One hundred acres of arable land in this district would therefore include 90 acres of raiyati land and 10 acres of *barga* land. The annual value of the 100 acres would be  $90 \times 5$  plus  $10 \times 18$ , i.e., Rs. 630. By commutation, the *barga* lands being converted into raiyati lands, the annual value of 100 acres of land would be Rs. 500. This means a decrease of 20 per cent. in the Road Cess Fund for the Dacca district. In other districts there will be a proportionate diminution according to the quantity of *barga* lands.

For all these reasons I am definitely of opinion that sub-clause (a) of clause (5) should be omitted, or in its place the following should be substituted :—

"A person who cultivates any land under the *barga* or *bhag* system and receives a proportion of the crop in lieu of wages is not a tenant."

I am further of opinion that for similar reasons section 40 of the Bengal Tenancy Act should altogether be repealed.

#### **SOME POINTS RELATING TO THE PROCEDURE FOR REALISATION OF RENT.**

*Clause 93 (h).*—After clause (e) in section 148 the following should be added as (e) (1) :—

"When a written statement is accepted by the court, it shall award the costs of the suit on the contested scale."

It often happens that the defendant continues the case for a long time on one plea or another, and then does not appear at all at the final hearing. In such cases *ex parte* costs are allowed by the court. The landlord in such cases has unnecessarily to incur heavy costs in producing his evidence, oral and documentary, and in pleader's fees, for which he should be compensated.

*Clause 94.*—The following should be added as clause 94A :—

“For section 150 of the said Act the following shall be substituted, namely :—

“Where a defendant pleads that the whole or any portion of the amount claimed by the plaintiff on account of rent has been paid, the court shall refuse to take cognizance of the plea unless he specifically declares the amounts which he has paid towards satisfaction of such claim and files rent receipts as provided in the Act for the same and pays into court the balance, if any.”

In section 150 there is a provision for deposit. But the tenant avoids it by invariably pleading that nothing is due by him to the landlord, and prolongs the case, on the most flimsy grounds, often for years.

*Clause 107.*—After clause 107 the following should be added as clause 107A :—

“For section 174 the following shall be substituted namely :—

“Notwithstanding anything contained in Order 21, Rules 89 and 90 of the Code of Civil Procedure, where a tenure or holding is sold for arrears of rent due thereon, the judgment-debtor or any person owning the property or a share thereof or holding an interest therein or whose interests are affected by the sale, may, within 30 days from the date of sale or from the date of the knowledge of sale, apply to have the sale set aside on his depositing in court for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to five per centum of the purchase money.

“Provided that no sales shall be set aside if the deposit is made after 30 days from the date of sale unless the applicant proves :—

“(a) that there was material irregularity or fraud in publishing or conducting the sale by which the applicant has sustained substantial injury,

“(b) that the judgment debtor had no saleable interest in the property sold.”

There is provision for setting aside the sale by deposit within 30 days from the date of sale (section 174, Bengal Tenancy Act, and Order 21, Rule 89, Code of Civil Procedure). But there is no provision for deposit when the judgment-debtor or other persons come forward after 30 days to set aside the sale under Order 21, Rule 90. As the latter case requires no deposit the tenant invariably avails himself of this. Sometimes, years after a holding is sold the judgment-debtor or his mortgagee appears and without making any deposit succeeds in getting the sale set aside on the most trifling grounds, taking advantage of the over leniency of the court in this respect. It is with a view to avoid this and enforce deposit in all cases that the provisions of section 174, Bengal Tenancy Act, and Order 21, Rule 90 of the Code of Civil Procedure, have been combined.

The following further proviso should also be added :—

“Provided also that no sales should be set aside by application under this section if it is made beyond 6 months from the date of sale.”

The further remedy prescribed for this in the Civil Procedure Code is a regular suit, limitation of which is one year from the date of sale. For such suit *ad valorem* court-fee has to be paid. The tenant, therefore,

invariably avails himself of the cheap application procedure to set aside a sale instead of coming within 30 days to pay up his dues. I think that a time limit should be prescribed for applications which are often made and granted on the flimsiest of grounds.

#### RANGPORE JOTEDARS.

*Clause 113 of the Bill.*—In my opinion there is no ground for a drastic change like the one contemplated in clause 113. The incidents of tenures have hitherto been governed by the law of contract. Any legislation in supersession of this is, it seems to me, absolutely uncalled for. The grievances of a particular class of people in a particular locality should not be the subject of such drastic legislation, specially when similar circumstances are known to prevail in other localities as well. It is not reported that there has been any litigation on any noticeable scale between the jotedars of Rangpore and their landlord to justify any legislation of this description. This matter engaged the attention of the former legislators. They considered the existing law to which they are subject sufficient to deal with them, and did not think that any interference of the legislature was necessary.

**Note of dissent by Kumar Shib Shekhareswar Ray.**

I have signed the report, and, so far as the Bill goes, I accept the broad principles on which it has been drafted, though, as to details, there are several points on which I do not entirely agree with the draft. But I do not propose to enter into those details here, because it will be found in the main report that we have recommended for the circulation of the Bill, before its introduction in the Legislature, with a view to elucidate public opinion thereon. Every item in the Bill, therefore, will undergo a critical examination by those who are affected by it. Their considered opinion together with the proceedings of the committee will, I hope, be a sufficient guide to the Government in finally shaping the Bill. I have however added short notes on those clauses of the Bill which appeared to me to deserve any particular notice.

2. We have introduced several important innovations into the tenancy law of Bengal, and almost every one of them has been to the benefit of the tenants, namely,—

- (1) extension of the status of a tenant to a *bona fide* cultivator [Clause 5 (a)],
- (2) vesting an occupancy raiyat with the right of cutting down trees and utilising them (Clause 21),
- (3) declaration of occupancy holdings as transferable at the option of the tenant (Clause 22),
- (4) extension of the right of occupancy to an under-raiyati holding (Clause 28),
- (5) granting facilities to tenants to make payment of rent and prove its tender (Clauses 33, 36 and 39),
- (6) vesting the occupancy tenant with the right of excavating tanks (Clause 48),
- (7) granting facilities to tenants to apply for the appointment of common managers (Clause 60),
- (8) repeal of the chapter on distraint (Clause 88), and
- (9) granting permanent rights to Rangpore jotedars (Clause 113).

Besides the above, there are also several minor changes which would prove beneficial to the tenants. Of course every one of these innovations, more or less seriously, encroaches upon the vested rights and interests of the landlords. But, though a representative of the landlords on the committee, I am glad to observe that I found myself in a position to support the main principles on which they are based. This has been possible because I never made a fetish of the vested rights and interests of the landlords nor of their prestige and privileges. I never allowed them to come in the way of my support to any measure which I thought would ultimately tend to a better understanding between a landlord and a tenant, and place their relationship on a sounder and friendlier basis. In every case, however, I pressed for a compensation commensurate with the sacrifice which the landlords were called upon to make. I am happy to say that the committee as a body were sympathetic and eager to do justice, and I cannot but speak gratefully of our President, whose patience must have been taxed to its utmost by expostulations of the representatives of the different interests on the committee, but who was never tired of giving a hearing to every one of us. It was largely due to his honesty of purpose and soundness of judgment that the conflicting views were often reconciled and conclusions reached which, if they did not always satisfy every one of us, at least convinced most of us of their utility and fairness.

3. But when I come to examine what we have done for the landlords I am constrained to say that the committee have done very little to improve their lot. I was sorry to observe that the majority of the committee were all along dominated by the impression that the landlords as a class are a powerful body and, irrespective of any legislation, they would always have their way and the tenants would meekly submit to them, and as such they required very little protection. This might be true of a few big landlords; but, even if true, it is hardly desirable that they should be encouraged to

force their will by questionable means. On the other hand, the bulk of the landlord community consists of petty landlords with rent-rolls hardly exceeding four figures. In their case, any question of threat or coercion or recourse to unfair means is an impossibility. It is therefore highly desirable that their just grievances should be attended to and necessary protection provided for. There are at least a few points on which the landlords feel very strongly, but it is most unfortunate that I could not convince the committee of their seriousness, and I am very sorry that I have to submit a special note on them.

4. The main grievance of the landlords of Bengal is that its land laws do not afford them sufficient protection against non-payment of rents by the tenants. Instances of such non-payment, on the other hand, are steadily on the increase, chiefly owing to the passing of lands into the hands of non-resident tenants. Realisation of rents by suits, in such cases, is however a ruinously costly and cumbrously dilatory procedure. What the landlords, therefore, wanted was a summary procedure in the matter of realisation of rents. But any proposal for such summary procedure is beset with so many practical difficulties that the committee could not come to a definite conclusion on the point and have practically left the thing as it stands at present. It is true that some minor changes have been made in the procedure but they are almost useless for all practical purposes. All that the committee have been able to accomplish in this connection is that certain facilities have been afforded in the case of co-sharer landlords and tenants. But this does not at all touch the real issue *viz.*, protection against non-payment of rents. I admit that no direct satisfactory solution of the difficulty could be presented before the committee, but I beg to submit that there is at least an indirect way of meeting this difficulty, which would prove an effective deterrent against withholding the payment of rent, and that is to make the tenant liable to ejection for continuous non-payment of rent for an unreasonably long period. It is an admitted principle of the land laws of Bengal that a tenant must continue to pay rent to entitle him to hold or occupy the land, and the Tenancy Act before its amendment in 1885 made a tenant liable to ejection in the case of his failure to pay rent (sections 21 and 22, Act X of 1859, and sections 22 and 23, Act VIII B. C. of 1869). In recommending the repeal of these sections, the Rent Committee of 1880 said that "as an occupancy holding has been made transferable and saleable in execution of a decree for its own rent, the necessary consequence is that a raiyat ought no longer to be ejected from such a holding for non-payment of rent" (paragraph 34). But it is evident that the mere saleableness of a tenancy in execution of a rent decree has not been quite effective in securing a prompt realisation of the arrears. An eminent jurist has rightly observed that the real trouble of a landlord begins after a decree has been obtained. The procedure bristles with obstacles by which the realisation of the decretal amount can be indefinitely put off. It is therefore extremely necessary to provide for a coercive measure on the lines of the repealed sections of the old Act, which would operate as a preventive against the practice of withholding the payment of rents for an unduly long period. Undoubtedly there might be quite reasonable grounds for being unable to pay rent regularly, and a tenant might be incapable of making any payment even for a year or two for reasons over which he has no control, such as a flood, a drought or domestic troubles. But if a tenant persistently withholds payment for an unduly long period, in spite of the facilities which have been provided in the proposed legislation and which, by the way, no longer leave any room for a complaint on the ground of the landlord's refusal to accept payment, then I think it can be said without any fear of contradiction that it is rather the tenant who wants to harass the landlord by non-payment, knowing it only too well that a rent suit will, in nine cases out of ten, prove ruinous to the landlord. We should here also bear in mind that the committee have done away with the provisions contained in the chapter on distraint, which, though seldom resorted to by the landlords, had a great moral effect on the tenants in the matter of regular payment of rents. In view of these circumstances I strongly recommend the restoration of the repealed sections of the former Act which provided for ejection for non-payment of rent, with necessary modifications so as not to operate harshly on the tenants, who, from temporary causes, are unable to make regular payments. I have accordingly made necessary changes in sections 10, 18 (b), 25 (c), 65 and 66 (1) of the present Act. The proposed amendments would be found in my notes on clauses 10A (new), 14, 21A (new), 40 and 41 of the draft Bill.

The effect of these amendments would be to enable the landlord to institute a suit to eject the tenant if he has failed to pay rent for a continuous period of three years, and a decree for ejectment shall not be executed if the arrears are paid within thirty days from the date of the decree. I should also mention here that under the present Act, an under-raiyat is liable to ejectment for non-payment of arrears even for a single *kist* and it would be hardly fair to deprive, altogether, the landlord of an under-raiyat of this right by merely extending the right of occupancy to the under-raiyat. In conclusion I should also point out that this provision for ejectment for non-payment of rent is quite harmless, inasmuch as it is only meant to act as a check against persistent non-payment, and would not be put into operation unless the tenant has failed to pay rent for a continuous period of three years.

5. Another serious grievance of the landlords is the latitude allowed to a tenant, in a suit for arrears of rent, for taking any number of pleas, most of which have no direct bearing on the issues in such a suit. They are mostly frivolous and taken only with a view to cause delay and unnecessary trouble to the landlord, such as a plea of dispossession or diluvion. These are pleas which give rise to issues which could be decided in a suit other than a rent suit between a landlord and a tenant. This can be remedied by making a provision to the effect that the court shall not ordinarily take cognizance of any plea which would give rise to an issue which could be decided in a suit other than a rent suit.

Then again it is a matter of common knowledge that in a rent suit the defendant invariably takes the plea of payment, which, in almost every case, ultimately turns out to be false. But as a result of this plea the defendant can harass the landlord by putting off the payment of his dues till the decree is executed. It is, therefore, necessary to put a stop to this fraudulent practice. The landlord is liable to a heavy penalty, to be imposed summarily, if he refuses to grant rent receipts or statements of accounts to the tenant; and the tenant on the other hand has been given ample protection against a landlord who refuses to accept payment of rent. In the circumstances there is no reason to suppose that a tenant would, in any case and much less in the case of a dishonest landlord, make any payment without rent receipts, and so he should not be ordinarily allowed to take the plea of payment, without filing rent receipts in support of this plea. If he wants to press this plea he should at least be asked to deposit the amount or any reasonable portion thereof as the court directs after hearing his story.

I have accordingly made definite proposals in my notes on clause 93A of the draft Bill which give effect to my suggestions.

6. Another important matter with which the landlords are vitally concerned refers to the amount of annual rent to which they are lawfully entitled. In the definition of the term "rent" as adopted in 1885 (see section 3), the introduction of the word "lawfully" has led to its interpretation in the widest sense possible, as a consequence of which so long as a definite issue regarding the amount of rent is not decided by a competent court there always sticks to it an element of uncertainty. That this state of uncertainty has not so far caused any widespread and serious practical difficulty is only due to the good and harmonious relationship that generally exists between the landlords and tenants in Bengal. None the less this has been a fruitful source of trouble and friction between them. Specially as a result of the manner in which the proceedings under sections 102 and 103A are being carried on at present in the districts, it often happens that the whole tenantry is set aflame, and rents which had been regularly paid for periods exceeding 15 or 20 years are disputed on the ground that at some time or other the rents were settled illegally. The summary manner in which these disputes are decided by the Settlement authorities makes it almost impossible for the landlords to show why the rents were altered so long back as 15 or 20 years. The result is simply ruinous to them. It is therefore of utmost importance that some sort of finality should be given to the amount of annual rent which has been realised for a sufficiently long period proving thereby that no undue influence was exercised to settle the rent. For, had there been any use of undue influence or threat or coercion, the tenant surely would have moved in the matter during the long interval, and in such cases the law, too, deals very severely



with the landlord. I accordingly suggest that a rent which has been paid continuously for a period of three years immediately preceding the period for which the rent is claimed, should be deemed to be the rent lawfully payable for the time being. The proviso to section 51 proposed by me gives effect to my suggestion and will be found in my note on clause 31A (new) of the draft Bill. If anybody wants to alter the rent after having paid it regularly for a period of three years, he should proceed in the manner provided for in the Act for this purpose.

7. In the preceding paragraphs I have made an attempt to place before the public as well as the Government some of the principal grievances of the landlords and indicate the manner in which they should be redressed. I have done so in the hope that in the light of public opinions received, it might be possible for the Government to consider my suggestions in a sympathetic manner and make necessary provisions in the Bill before it is introduced in the Bengal Legislative Council.

### Notes on particular clauses.

*Clause 5.*—In clause 5(d) of the draft Bill, the following changes should be made namely,

(1) “After the words and figures in clause (9), the following shall be inserted :—

After the word “land” the words “or a portion or share thereof and”, and

(2) At the end of the clause the following words shall be added :—  
“and the word ‘separate’ shall be omitted”.

Addition of the words “or a portion or share thereof” is necessary to facilitate the collection of rent in cases where the rent of a parent holding is separately collected from co-sharer tenants and their shares form the subject of separate tenancies without any division of the lands of the parent holding. There are also instances where the same holding is held under the proprietors of different estates and forms the subject of separate tenancies. Proviso to the new section 26E also introduces the question of a portion or share of a plot of land in the same tenancy. In none of these cases can a rent decree be obtained unless the definition of a holding is changed as suggested. Further notes on the subject are to be found in my notes on clause 90 of the draft Bill.

*Clause 10A.*—A new clause to the following effect should be added after clause 10 of the draft Bill :—

“10A. In section 10 of the said Act, after the word ‘ground’, the words ‘that he has not paid rent for a continuous period of three years or’ shall be inserted.”

Reasons for the change are stated in my note of dissent on general principles (para. 4).

*Clause 14.*—In clause 14(1) of the draft Bill, after sub-clause (i) the following new sub-clause should be added :—

“(i) (a) After the word ‘ground’ in clause (b) the words ‘that he has not paid rent for a continuous period of three years or’ shall be inserted.”

Reasons for the change are stated in my note of dissent on general principles (para. 4).

*Clause 21A.*—A new clause to the following effect should be added after clause 21 of the draft Bill :—

“21A. In section 25 of the said Act, the word ‘or’ at the end of clause (a), shall be transferred to the end of clause (b), and after clause (b) the following shall be added :—

‘(c) that he has failed to pay rent for a continuous period of three years.’”

Reasons for the change are stated in my note of dissent on general principles (para. 4).

*Clause 22.*—The proviso to section 26D of the draft Bill should be replaced by the following:—

“ provided that in the case of a transfer, other than a sale in execution of a decree, of a holding or portion or share thereof, the landlord may, within two months of the receipt of the notice of transfer, apply to the lowest Civil Court having jurisdiction to entertain a suit for rent of the holding, to fix the market value of the holding or of the transferred portion or share, or to decide the exact amount of the consideration money, and the transferee shall be liable to pay to the landlord a fee calculated at the rate of 25 per cent. of such market value, or consideration money, as the case may be, to the extent the amount of such fee is in excess of any fee which he has already paid, and an order of the court directing the payment of such additional fee shall have the force of a decree for arrears of rent.”

The committee have provided for calculation of the fee on the market value in all cases of transfer except in the case of a voluntary sale of an *entire* holding. To me there seems to be no justification for this exception. It is obvious that the right to repurchase would be exercised only in the case of an undesirable transferee; ordinarily the zamindar would be satisfied with a fee calculated on the basis of a proper valuation of the holding; it is, therefore, necessary to provide for the calculation of the fee on the market value in all cases of transfer. I should mention here that even the occasion for such calculation of the fee by the court would be rare and arise only in cases of gross undervaluation. The effect, therefore, of this provision would be rather to check undervaluation.

*Clause 31A.*—A new clause to the following effect should be added after clause 31 of the draft Bill:—

“31A. At the end of section 51 of the said Act the following shall be added, namely,

‘ provided that notwithstanding anything contained in this Act, any rent which has been paid for a continuous period of three agricultural years immediately preceding the period for which the rent is claimed, shall be deemed to be the rent lawfully payable for the time being.’ ”

Reasons for the change are stated in my note of dissent on general principles (para. 5).

*Clause 40.*—The proposed clause 40 of the draft Bill should be replaced by the following:—

“40. For section 65 of the said Act the following shall be substituted:—

‘ 65. The tenure or holding, as the case may be, of a tenant shall be liable to sale in execution of a decree for arrears of rent and the rent shall be a first charge thereon.’ ”

Reasons for the change are stated in my note of dissent on general principles (para. 4).

*Clause 41.*—In clause 41 of the draft Bill, for sub-clause (a) the following shall be substituted, namely:—

“(a) in sub-section (1) for the words ‘ permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the Jeyt where the Fasli or Amlī year prevails’, the following shall be substituted, namely, ‘ non-occupancy raiyat or under-raiyat, for a continuous period of three years, or from a non-occupancy raiyat or under-raiyat for any quarter, at the end of the agricultural year.’ ”

Reasons for the change are stated in my note of dissent on general principles (para. 4) and also in the note on this clause in the draft Bill.

*Clause 90.*—In clause 90 of the draft Bill, the proposed sub-section (3) of section 146 B should be amended as follows :—

“(1) In sub-section (3) of section 146B, the words ‘shall have the effect of a decree in a suit for money and of a sale in execution of a decree in such a suit, and’ shall be omitted, and before the word ‘holding’ where it occurs for the third time, the word ‘entire’ shall be inserted, and

“(2) In the proviso to the said sub-section, the words ‘unless the decree has been found under this sub-section to have the effect of a decree in a suit for money’, shall be omitted.”

There is no reason whatever as to why the decree for arrears of rent against a co-sharer tenant shall not have the force of a decree for rent. Rent is the first charge on a holding (section 65), and as such the holding is deemed to be mortgaged for the dues on account of the rent, and the landlord as the mortgagee has every right to realise his dues by selling the mortgaged property to the extent of the interest of the judgment-debtor. Suppose a co-sharer tenant has mortgaged his share in the holding to a *mahajan*, in that case would he not be entitled to realise his dues by selling the share? Surely he would. Then why should the landlord-creditor be deprived of this right? In the case of the *mahajan's* dues, the auction-purchaser of the mortgaged share becomes a co-tenant in the tenancy; similarly in the case of the landlord's dues, the auction-purchaser of a share which is virtually mortgaged for the rent, could surely become a co-tenant and enjoy all the advantages of the auction-purchaser at a sale in execution of a rent decree. There appears to be absolutely no bar to this proposal except perhaps the fact that a holding has been interpreted to mean an *entire* parcel or parcels of land in the holding (section 3). But this evidently is a defect in the definition of the term “holding” and should be remedied. A tenure includes an undivided share in the tenure, and so, why should not a holding include an undivided share in the holding? There is very little difference between a tenure and a holding in the manner in which their respective lands are held by their owners. The owner of a tenure might have some plots under direct cultivation and some let out to under-tenants, similarly the owner of a holding might have some plots let out to under-tenants and some under direct cultivation. If there has been no difficulty in respect of an undivided share in a tenure, why should there be any difficulty in respect of an undivided share in a holding? Perhaps those who are responsible for the definition of the term “holding” were carried away by the idea that a holding only consisted of lands entirely under the direct cultivation of its owner. But this is not so; whatever might have been the state of affairs in 1885, at the present day the conditions are entirely changed and this is proved by the necessity of declaring all under-raiyats as occupancy raiyats. I have therefore proposed an amendment of the definition of the term “holding” in its proper place [clause 5 (d)] and so there can be even no technical objection to the proposed changes in this sub-section.

*Clause 93.*—In clause 93 of the draft Bill, after sub-clause (h), a new sub-clause to the following effect should be inserted :—

“(hh) After clause (e) the following shall be inserted, namely—

‘(ee) except for reasons to be stated in writing, the Court shall refuse to take cognizance of any plea which may give rise to an issue which can be decided in a suit other than a suit for arrears of rent, between a landlord and a tenant;’”

Reasons for this change are stated in my note of dissent on general principles (para. 5).

*Clause 94A.*—A new clause to the following effect should be added after clause 94 of the draft Bill :—

“94A. After section 152 of the said Act the following shall be inserted :—

‘152A. The court shall refuse to take cognizance of any plea of payment unless it is accompanied by rent receipts or a statement of account showing that the payment has been made :

“provided that it may take cognizance of the defendant's plea on his depositing in the court the amount which he claims to have paid or such reasonable portion of it as the court directs.”

Reasons for this change are stated in my note of dissent on general principles (para. 5):

#### **Supplementary Note.**

With reference to the note of dissent of Maharaja Kshunish Chandra Ray Bahadur on the clauses (Part II) I am in agreement with his views on the following clauses :—

1. Bill clause 5 (a), section 3.
2. Bill clause 14 (2), section 18.
3. Bill clause 25, section 40 (1).
4. Bill clause 28, section 48.
5. Bill clause 48, section 76 (2) (a).
6. Bill clause 71, section 105 (c).
7. Bill clause 93, section 148.

With reference to Babu Brajendra Kishore Ray Chaudhury's Note of dissent on the clauses I agree with his amendments to clauses 93 [section 148 (e) (1)] and 107 A (section 174).

**Note of dissent by Maharaja Kshaunish Chandra Ray  
Bahadur.**

**Part I.**

I regret I cannot but oppose the principle of the Bill when I find that the last stroke which will settle the impoverished, yet much abused, landlords of Bengal is going to be dealt and especially when petty landlords including mostly poor *bhadraloks*, women and children, are going to be deprived of their means of subsistence. The Permanent Settlement is looked upon as having conferred the greatest boon on the zamindars and little or nothing on the tenants. A cursory glance at the statistics will show that of the unearned increment in land by far the lion's share has gone over to the tenants, and a very small fraction to the present zamindars, who are mostly such as have not derived their title by birth alone but have themselves or through their ancestors paid for what they enjoy now. It would be interesting in this connection to compare the unearned increment accruing to tenants in temporarily-settled estates or Government estates.

Occupancy right was never and is not even now transferable but it is now sought to be made so, and an offer of 25 per cent. of the consideration money or its like has been offered as a bait to the zamindars. But "bequest to a natural heir," "partition" and "lease" have been excluded from the category of transfer, thus deliberately nullifying what the legislation outwardly proposes to give to the zamindars. What occupancy right will after this be sold at all? The raiyats will grant leases keeping a nominal profit and taking the price by way of *salami*. Portions of holdings have already been transferred in numerous cases on the basis of the ruling that the zamindar cannot oust the transferees now but as soon as this new provision will come into force the co-sharer tenants will partition the holdings amongst themselves and the zamindar will be bound to accept them not even in lump but separately!! I am not sure whether all these far-reaching effects of these provisions have been carefully considered. At the time of the Permanent Settlement it was the *khudkast* or resident raiyats who had a permanent interest in their holdings and the first Rent Act (Act X of 1859) of Bengal extended this much coveted right to several others who had absolutely no claim to it, and the present Act threw open this right to a far more extensive class of tenants, granted more privileges than could be dreamt of by the tenants. Indeed it was laid down that the "settled raiyat" would acquire a right of occupancy in all and every land that he held no matter whether a certain plot was temporarily settled with him for a year even by a registered lease. One should pause and consider with an even mind the infringement on the rights and privileges of the zamindars since the time of the Permanent Settlement. Now it is sought to make the occupancy right transferable and the zamindar has been offered some compensation. There should not be any objection to the curtailment of one's rights if some compensation be forthcoming. In addition to the above three provisos inserted with a view to rob the zamindars of this compensation—inadequate though it be—the last and not the least is the provision which purports to give occupancy right to the under-raiyats. This makes the actual zamindar get his *salami* once and for all. The Rent Acts that have been passed were passed on the ground that at the time of the Permanent Settlement tenants were left at the sweet will and pleasure of the landlords and it was necessary that their interests should be protected. Let us then stick to this principle and go no further. Was there an under-raiyat at that time? Or is he not a creation of the present circumstances? If he had no existence at the time of the Permanent Settlement, why should the present state of affairs which has been in existence for 37 years and on which the economic conditions of the people have been arranged, be given such a rude shock, and persons with no right be given a boon which they could never think of, while others who know and believe themselves to be practically in *khas* possession of their lands be suddenly robbed of their land?

I would now examine the position of a rent receiver. He really cannot live. With all these curtailments the zamindar cannot live. Rents are enhancible only by bits and not within 15 years—a period during which the price of necessities of life sometimes goes up a hundred per cent. The provision of the law laying down increase of rent for increase in the price of food grains is plausible enough on paper. But facts give the lie to this. Paddy

sells now at a price which is over three times that at which it sold 30 years ago. What zamindar has ever got more than 6 annas in the rupee even if *he could prove* that he had not increased the rent for 30 years? Even with this state of the administration of the law it is now proposed to extend the right of commutation to raiyats at fixed rents in kind even, not to speak of *bhagchasis*!! As I find, however, that the determination to curb further the privileges of the zamindar is quite strong and it is useless to fight for their wholesale retention, I beg to append below my note of dissent in a modified form.

*Bill clause 5 (a) [Sec. 3.]*—The word “occupant” should be clearly defined to mean occupant of *agricultural* holdings.

*Bill clause 14 (2) [Sec. 18.]*—I object to commutation in respect of *mukrari* rents in kind, *e.g.*, where a raiyat holds under a lease according to which he has got to pay a fixed quantity of paddy every year. The principle enumerated in para. 11 of the main report, viz., that produce-rents “encourage indifferent cultivation and are against the best interests of agriculture” does not apply in such cases. Moreover, there is no object in commutation in such cases as the money rent gets automatically adjusted every year according to the rise or fall in the price of the staple food crop.

*Clause 22 [Sec. 26 D, 26 K.]*—I accept the principle that occupancy holdings should be made transferable subject to the condition of *salami* as prescribed in the Bill; but I object to the exclusion of bequests in favour of a natural heir (s. 26 D). I fail to see how such cases can be differentiated from a case of ordinary transfer, *e.g.*, by one co-sharer to another, or to a third person. I may point out that no such distinction is made in the matter of court fees in probate cases.

For the same reason I object to the exclusion of (i) partition and (ii) leases. “Partition” means the splitting up of the area and rent of the holding, and any such division requires the previous sanction in writing of the landlord (*vide* sec. 88). As regards “leases”, if these are excluded, a raiyat intending to avoid the landlord’s fee may easily give a sub-lease with a nominal rent, and the whole object of the law will be frustrated. As an under-raiyat, under the proposed law, will also acquire occupancy rights as a matter of course, it is but fair that such leases are treated as transfers for the purpose of landlord’s fees. Incidentally this will serve to stop unnecessary subinfeudation. Transfers by a raiyat to a co-sharer landlord, where the transferee becomes a tenure holder, under the proposed section 22, seem not to have been considered in connection with the question of *salami*. The co-sharer landlord who purchases the raiyati holding should in all fairness pay the proportionate *salami* to his other co-sharers before he is allowed to have exclusive possession of the 16 annas share of the tenancy. In subsequent transfers, the tenancy should, for the purpose of landlord’s fee be treated similarly as a raiyati holding, and necessary amendments should be made in the proposed section 22 as well as section 26 K. If this proposal about subsequent transfer is not accepted, I would move for a clearer enunciation of what “beneficial rent” means in section 7 (4) of the Act on similar lines as done in clause 3 (3) (b) of this Bill, *i.e.*, whether a low rent was assessed on the under-tenant in consideration of any premium realised or like reason.

*Clause 25 [Sec. 40 (1).]*—*Vide* my note above on clause 14 (2). This section should not apply to raiyati holdings at fixed rates or under-raiyati holdings at fixed rates.

*Clause 25 [Sec. 40(10).]*—The provision of spreading the premium over a term of many years should be omitted. If at all kept it should not be for more than 3 years.

*Clause 28 [Sec. 48.]*—It is not understood why an under-raiyat should be considered as possessing occupancy rights even when he is neither a settled raiyat of the village nor has held the same land for 12 years. This proposed privilege is even greater than what has been conceded to a raiyat. There should, therefore, be a *first* proviso of section 48 that an under-raiyat before he can acquire occupancy right should either be a settled raiyat of the village or have held the same land for twelve continuous years.

Three years' time after passing of the Bill should be given to the existing raiyats to oust their under-raiyats and in case of existing valid leases, the raiyats should be granted such time up to one year after the expiry of the lease.

*Clause 31 [Sec. 50(2).]*—I object to the repeal of section 50(2). The repeal will make indefinite a matter which is now definite, and leave both landlord and tenant to the mercy of the courts.

*Clause 48 [Sec. 76(2)(a).]*—The addition regarding "providing drinking water for the tenant and his family" may be clearly explained to mean *wells* and not small *dobas*, which the tenant would like to excavate near his house. The sanitary condition of a village with so many insanitary *dobas* in it may be better imagined than described. The Public Health Department should be consulted in this matter.

*Clause 71 [Sec. 105C.]*—In all cases, as the landlord is entitled to enhanced rent or at least to apply for it, his costs in claiming it should always be paid by the defendants.

*Clause 90 [Sec. 146B(2).]*—It should be made clear that this will not debar the landlord from realising *salami* from unrecognised transferees [*cf.* proposed section 54(2), proviso].

*Clause 93 [Sec. 148.]*—Costs on the contested scale should be provided for cases in which a raiyat after harassing the landlord with adjournments eventually does not file any written statement at all or does not appear on the final day of disposal.

*Clause 111 [Sec. 182.]*—I object to the proposed amendment. A man for example, having a house in a town governed by the Transfer of Property Act, takes a few cottas of agricultural land as a raiyat. The effect of the proposed law will be that the landlord will be debarred from treating his homestead land any longer under the Transfer of Property Act. This is one of many possible examples of hardships to the landlord. I prefer section 182 as it is now in the Act.

*Clause 113 [Sec. 183A(2) of Chapter XV-A.]*—This sub-section should be omitted. Any new cases like this should be placed before the Legislature and carefully considered when occasion arises. Government should not be given such *carte blanche*.

*Clause 117 [Sec. 195(e).]*—*Khudkast* raiyats should not include all raiyats having occupancy right, because occupancy raiyats may cultivate land in one village although they may not be residents of that village. The law should not be changed.

#### SUPPLEMENTARY NOTE.

I agree with the note of dissent of Kumar Shib Shekhareswar Ray on the following clauses of the draft bill, viz., (1) Cl. 10A, (2) Cl. 14, (3) Cl. 21A, (4) Cl. 122, (5) Cl. 31A, (6) Cl. 40, (7) Cl. 41, (8) Cl. 90, (9) Cl. 93, (10) Cl. 94A.

I agree with the note of dissent of Raja Ban Bihari Kapur Bahadur on the following clauses: viz.—(1) Cl. 5 (b) (d) (e) (f), (2) Cl. 6, (3) Cl. 22—Sec. 26G only, (4) Cl. 25, (5) Cl. 28, (6) Cls. 34, 35, (7) Cl. 48, (8) Cl. 54, (9) Cl. 57, (10) Cl. 95, (11) Cl. 102, (12) Cl. 109, (13) Cl. 113—only the last portion, i.e., the power of extension in section 183 A(2), (14) Cl. 117.

I agree with the note of dissent of Babu Brojendra Kissore Roy Chaudhury on the following clauses:—93 and 94.

### Note of dissent by Babu Surendra Chandra Sen.

I have signed the report of the Committee subject to dissent on certain points which are stated below :—

*Clause 3(a).—Definition of tenant:* I think the contrary presumption should be provided for, for the benefit of the landlord, viz., "if the landlord provides the plough, cattle or any part of the implements of agriculture that person shall be deemed to be a labourer." This would make the law easier of application.

*Clause 5(d).—Definition of holding:* In the definition of "holding", after the word "raiyat" the words "or under-raiyat" have been proposed to be added in the preliminary draft Bill in view of the general principle adopted by the committee regarding the occupancy right of under-raiyat. I am however of opinion that an under-raiyat ought not to be given a right of occupancy and therefore the words "or under-raiyat" ought not to be added. See my remarks under clause 6.

The definition of "holding" should be altered, and it should be as follows :

*"Holding means the interest of a raiyat in the land which he holds and which forms the subject of a separate tenancy."*

The practical difficulty which is now felt and the reasons for my suggestion stated above will appear from the foot-note below.\*

#### \*Occupancy right in undivided share of land.

S. 3 cl. (9). According to the definition of the term "holding" as interpreted by the case-law, an undivided share of a parcel of land is not a holding.

#### Illustration.

A and B are joint proprietors of an estate. A lets out his one-half share as a *tenure* of a parcel of land by one lease; B lets out his one-half share of that parcel separately by another lease; there become two *distinct tenures*; A or B may sue alone for ejection or enhancement and the decree obtained for rent is a rent-decree. But if A lets out his one-half share of land as a *raiyati tenancy* and there are stipulations that A alone will be entitled to sue for rent or enhancement or ejection, and B lets out by a separate lease his undivided share with all rights of enhancement, ejection, etc., still according to the case-law A or B cannot alone sue for enhancement or ejection; it has been held that the tenancy under A or B is not a holding. The case-law is to the effect that a *parcel* or *parcels* of land means "an *entire parcel*" or "*entire parcels*" of land.

The practical difficulty is that the landlord cannot, although there is a separate lease, bring a suit for enhancement of rent under s. 30, for it is the landlord of a "holding" who can bring such a suit; it is not possible to bring a suit jointly with his co-sharer landlord, for the leases are separate, the rent is separate and the stipulations are different. Likewise the decree for rent is not a *rent decree* but a money decree.

It is suggested therefore that the definition of "holding" should be altered and in this respect the definition of "tenure" should be looked into, and the definition may be altered thus :

cf. definition of 'holding' in the "Landlord and Tenant Bill" in the Report of the Best Law Commission, Vol. I.

31 O. L. J. 822.

he can make an application for settlement of rent under s. 105, as the word used in s. 105 is "land" and not "holding."

*"Holding" means the interest of a raiyat in the land which he holds and which forms the subject of a separate tenancy.*

The word used in s. 30 is "holding" and the word in s. 105 is "land"; it has therefore been held that although the landlord of an undivided share of a parcel of land which has been let out by a separate lease cannot bring a suit for enhancement under s. 30, but



*Clause 5(g).—Definition of agricultural year:* The alteration proposed is not necessary inasmuch as the Bengali year is not prevalent throughout the whole of Bengal.

*Clause 6 [s. 4].—Classes of tenants:* The important alterations which have been proposed in the draft Bill are as follows: (1) Raiyats at fixed rent or rate of rent may acquire a right of occupancy, (2) Under-raiyats may also acquire such a right.

According to section 4 as it now stands a raiyat at fixed rent or rate of rent, cannot acquire a right of occupancy inasmuch as the classification of tenant shews that *one class excludes another*. It is desirable that the rights and privileges of a raiyat at fixed rent should be governed by contract subject to the provisions of the Act.

An under-raiyat ought not to be given the right of occupancy. At present an under-raiyati lease may extend only to nine years, and an under-raiyati tenancy is not heritable except for the remainder of the term of the lease; and when an under-raiyati tenancy determines by efflux of time or otherwise, it reverts to the raiyat. This wholesome rule discourages sub-leases by a raiyat and he gets his land back; consequently he is not converted into the position of a tenure-holder. This subject is dealt with at length in clause 54.

In this connection I may usefully quote in the foot-note below\* a passage to be found at page 3 of my printed notes *in re* amendment of the Bengal Tenancy Act which I prepared for the Bengal Tenancy Act Amendment Committee.

**\*Classification of Tenants and Right of Occupancy in an under-raiyat.**

S. 4. According to the classification of tenants it is only a raiyat who may acquire a right of occupancy; an under-raiyat is a person who holds immediately or mediately under raiyats (occupancy or at fixed rent). From this it is clear that an under-raiyat *with a right of occupancy* has not been recognised in this section; if however an under-raiyat's right of occupancy is now thought fit to be recognised, it is necessary that the classification should include a class of under-raiyat with a right of occupancy.

Then a further question arises as to whether an under-raiyat holding under another under-raiyat should also be given a right of occupancy.

Mr. Finucane says:—

“There can be no manner of doubt that under the local custom as recognised in Jessore, *korfa* raiyats or sub-tenants are supposed to have occupancy rights. Therefore there are two occupancy rights in the same land.....”

Extract from a letter of M. Finucane, Esq., on special duty, to the Secretary to the Board of Revenue, dated 21st March, 1893.

But the Legislature in enacting s. 4 treated the superior occupancy raiyat as a tenure holder, and the *korfa* occupancy raiyat retained his position as such.

So, it is not desirable to give under-raiyats an occupancy right.

From s. 113 and s. 183, illustration (2) it appears that this Act recognises right of occupancy in an under-raiyat, but the Act is silent as to the provisions which will apply to an under-raiyat (having a right of occupancy) in regard to enhancement, ejection, transfer or succession and also as regards other matters. S. 183 provides that nothing in the Bengal Tenancy 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. Now, according to the classification of tenants in s. 4, one class excludes the other, and therefore occupancy raiyats *who are a distinct class* of tenants exclude the under-raiyats *who are another class of tenants*; so it seems that s. 183 excludes the idea of an *under-raiyat with right of occupancy*; it is no doubt true that illustration (2) of s. 183 recognises right of occupancy in an under-raiyat, and that illustration assumes (*but, it is submitted, wrongly assumes*) that a right of occupancy may be acquired by custom or usage, and that such a right is not inconsistent with the provisions of the Act. So the illustration is against the provision of s. 183, and against the spirit of the other provisions of the Act. It is true that s. 113 speaks of an under-raiyat with a right of occupancy; but that part of the section was an addition made by the Bengal Council long after the passing of the Bengal Tenancy Act, which is an Act of the India Council. The Bengal Council might have introduced the matter on account of the erroneous illustration to s. 183 [s. 113 occurs in Chap. X of the Act, and in regard to the drafting of this Chapter X which was enacted by Bengal Act III of 1898]

Under-raiyat's right of occupancy. Jenkins C. J. observes in the case of *Umedulla v. Ramchandra*, 14 C. W. N. 812 “of the *careless drafting* which mars this very important Act.”

No rule has been laid down anywhere as to what elements are necessary for an under-raiyat to acquire a right of occupancy by custom or usage.

Moreover, a right of occupancy is a creature of the statute and can only be acquired under ss. 20 and 21 of the Bengal Tenancy Act and the corresponding sections of Act X of 1859 (s. 6) and Act VII B. C. of 1869.

It is therefore suggested that an under-raiyat should not be given the right of occupancy.

*Clause 7.—Definitions of raiyat and under-raiyat:* The proposed additions and alterations are not necessary.

*Clause 8.—Section 7, sub-section (3):* In the proposed clause (d) I propose that for the words and figures "10 per cent.," the words and figures "50 per cent." should be substituted. According to the present law a landlord is entitled to get up to 90 per cent. of the profits, which is most inequitable; even an officer employed to collect rent who is paid by Commissioner gets more.

*Clause 21.—Trees:* In the proposed explanation "valuable trees" should also include *babul* trees (बबल) as they are useful for making carts.

*Clause 22.—Transferability of occupancy holdings:* I differ from the principle stated in the main report and I am of opinion that occupancy holdings ought not to be made transferable. I propose to discuss the question under the following heads:

I.—Law relating to transferability of occupancy raiyati holdings—

- (1) Before the Permanent Settlement.
- (2) After the Permanent Settlement and before the passing of Act X of 1859.
- (3) After Act X of 1859 up to the passing of the Bengal Tenancy Act, 1885.
- (4) After the passing of the Bengal Tenancy Act, 1885, up till the present time.

II.—Whether the grant of transferability would in any way infringe, the rights and privileges given to landholders under the Permanent Settlement.

III.—Whether occupancy holdings ought to be made transferable.

IV.—Present case-law and conflict, and whether there should be any legislation.

I.—*Law relating to transferability.*

(1) *Before the Permanent Settlement.*

The following is an extract from Mr. Shore's Minute of June 1789 respecting the Permanent Settlement of lands in Bengal:—

"389. It is, however, generally understood that the raiyats by long occupancy acquire a right of possession in the soil, and are not subject to be removed; but this right does not authorise them to sell or mortgage it, and it is so far distinct from a right of property."

In Mr. Justice Field's Digest at page 164 is found the following passages:—

"Before the period of British Government alienability was not an ordinary incident of immoveable property in India."

"Alienability was not an ordinary incident of immoveable property in land."

"Raiyati holdings were not transferable at the time of the Permanent Settlement."

Even *khudkist* raiyats could not sell or mortgage, although their holdings were hereditary. See *Sir John Shore's Minute, dated June 1789.*

Sir Richard Garth says in his Minute, dated the 13th Settlement 1884: "It is admitted that occupancy holdings were not transferable at the time of the Permanent Settlement."

"The law and custom affecting ryots was not altered by the Permanent Settlement"—*Mr. Justice Campbell's Minute dated 12th October 1863.*

In the preamble to Regulation II of 1793 we find this:—

"The property in the soil was never before formally declared to be vested in the landholders nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government."

From this it is clear that Regulation II of 1793 recognised the fact that even landholders had no right to transfer their land by sale or mortgage before the Permanent Settlement.

Extract from Harrington's Analysis, pages 269, 281 and 301 :

“ On the whole, therefore I do not think that these ryots can claim of alienating the lands.....by sale or other mode of transfer, nor any right of holding them at a fixed rent, except in the particular instances of *khudkast* ryots, who from prescription, have a privilege of keeping possession as long as they pay the rent stipulated for by them.”

There was no right of property nor right of transfer in occupancy holdings: see clause 7, section 15, Regulation VII of 1799.

There were two classes of raiyats :

(a) those who cultivated the lands of the village to which they belonged and who either, from length of occupancy or other cause, had a stronger right than others and were in some measure (according to Mr. Shore) considered as hereditary tenants and they generally paid the highest rent; they were called *khudkast* raiyats; whereas the other class cultivated lands belonging to a village where they did not reside, they were called *paikast* raiyats; according to Mr. Shore *they were tenants-at-will*.

Both these classes of *rai'yats* had no right of transfer by either sale or mortgage of their holdings, as pointed out above.

(2) *After the Permanent Settlement and before the passing of Act X of 1859.*

“ The law and custom affecting ryots was not altered by the Permanent Settlement.” *Mr. Justice Campbell's Minute*, dated 12th October 1863.

“ Act X of 1859 was intended for the most part as a consolidation of the existing law and custom.....so the law relating to non-transferability remained the same as before.” *Mr. Justice Campbell's Minute*, dated 1st June 1864.

3. *After the year 1859 up till the year 1885—the year in which the Bengal Tenancy Act was passed.*

It does not require any authority to be cited to show that the same law about transferability continued. Sir Richard Garth says in his minute, dated the 8th January 1880, in reference to Mr. Justice Fields's minute as follows:—“ He admits very fairly at the outset that before the period of British supremacy in India, tenures, as a rule, were not alienable; and also that *at and after the time of the Permanent Settlement it was always considered*, both by the legislature and the courts, that raiyats' tenures, whether they were permanent or temporary, were not transferable.” It should however be mentioned here that the legislature recognised in the Bengal Tenancy Act that occupancy holdings are transferable by local usage (see section 183, illustration). It is submitted that there was never any such custom, nor has any local usage ever grown. Sir Richard Garth no doubt says in his memorable minute that “such tenures (*i.e.*, occupancy holdings) have never been yet transferable except by special custom.” At the same time he says “such a custom is very rarely proved. I have known it repeatedly attempted in mufasil courts but very seldom proved.”

I have looked into the law reports very carefully but I have not been able to find out a single case where it has been held that the custom or local usage of transferability of occupancy holdings has been proved to the satisfaction of the court. The High Court has laid down that in order to prove a custom or usage of transferability of occupancy holdings, what is necessary to prove is that such transfers have been made (1) to the knowledge (2) and without the consent of the landlord, (3) and that they have been recognised by him either without payment of a *nazar* or upon payment of a *nazar* also fixed by custom.

No such custom or usage has ever been proved, and if there had been an existence of such a custom or usage we would have found it proved in the law courts.

Before the present Bengal Tenancy Act was passed a statement was prepared from returns which were called from the munsifs' courts showing the number of purchases and classes of purchasers of raiyats' holdings which as a matter of fact are bought and sold in almost all districts of Bengal, and upon this argument an attempt was made to legislate that occupancy holdings ought to be made transferable; Mr. Justice O'Kinealy in his minute said in reference to these returns that "occupancy rights, so far from being rarely the subject of assignment, are freely transferable in every district of Bengal except Saran and Champaran."

But these returns are practically valueless to show whether a custom or usage of transferability existed, for they only showed *instances of transfer*, but it does not appear whether there was any enquiry about the existence of the several elements necessary for proof of custom or usage.

Before the passing of the Bengal Tenancy Act, the question as to whether occupancy holdings should be made transferable was thoroughly discussed; the majority of the members of the Rent Law Commission were of opinion that occupancy holdings ought to be made transferable by private sale or gift and devisable by will *but not transferable by mortgage*; there was a large mass of opinions taken\* and there was a conflict of opinion; but on a careful consideration of the subject *there was an excision of the transferability clauses from the final Bill*; and when the Bill passed through the Indian Legislative Council the Hon'ble Mr. Amir Ali moved an amendment that "an occupancy raiyat shall be entitled in Bengal proper to transfer his holding in the same manner and to the same extent as other immoveable property", provided that "the landlord shall be entitled to a fee of 10 per cent. on the purchase money." The Hon'ble member after the discussion in the Council withdrew his amendment. His Excellency the President of the Council (Lord Ripon) in his speech said as follows:—

"In the first place we have to consider the matter from the point of view of *right and equity*. Sir John Shore, a contemporary authority upon the subject, *has stated* in the most positive manner *that the occupancy right does not include the right of sale or transfer* and the Courts of Bengal, as I understand, have hitherto maintained this view. It is, therefore, a question as to how far we should be justified in giving the occupancy tenant a right carrying a money value *to which he has not hitherto been entitled by law*. That he should have it by custom is a totally different question."

4. *After the passing of the Bengal Tenancy Act, 1885, up till the present time.*

According to the present law occupancy holdings are not transferable, but the usage wherever it existed was declared by illustration (1) to section 183 be not inconsistent with and not necessarily modified or abolished by the Act. A large number of cases have since been decided by the High Court and it is very difficult to reconcile them; the principles enunciated and laid down are in conflict with each other, and the case-law is not in a satisfactory condition, and no one can reasonably question the propriety of legislation to lay down distinctly the law on the subject. In the Full Bench case of *Dayamoyi versus Ananda Mohan*, 42 Calcutta 172, certain rules were laid down, and it was thought that the law was finally laid down with certainty, but in effect it will be found in the law reports that in a very large number of cases the rules laid down in the Full Bench were interpreted *so very differently from each other* that the Full Bench case is not of any practical assistance; and within a short time the Full Bench case was reconsidered by a Special Bench of seven Judges who partially modified the Full Bench case. The unsatisfactory condition of the present case-law will be further explained if the rules laid down in the several cases are examined: *Vide* below, heading No. 1V.

\* *Vide* the following amongst other papers:—

1. Sir Richard Garth's Minute dated 6th September 1882 (Report of the Government of Bengal on the Bengal Tenancy Bill 1884, Vol. III, p. 1, at pp. 10 and 11).
2. Minute by the Hon'ble Mr. Justice O'Kinealy (*vide* the same report, p. 13).
3. Memorandum dated the 22nd December 1882, with reference to Sir Richard Garth's Minute, dated the 6th September 1882 (*vide* the same report as above, p. 21, at p. 26, paras 17 and 18).
4. Field's Digest: Note on transferability of occupancy holdings.

II. *Whether the grant of transferability would in any way infringe the rights and privileges given to landholders under the Permanent Settlement:*

The raiyats had no proprietary rights in the land; proprietary rights include *right of transfer*, and this right was never possessed of by a raiyat. The Permanent Settlement undoubtedly *conferred proprietary rights on the landholders* with whom the settlement was concluded; Government conveyed the proprietary right in lands to the settlement holders by the Permanent Settlement (*see s. s. 6 and 7 of Regulation I of 1793*) The *property* in the soil was never before formally declared to be vested in the landholders but it was so done by the Permanent Settlement Regulation, (*see the preamble to the Regulation II of 1793*); the cultivators had no proprietary interest; the preamble speaks of proprietors *as distinct* from cultivators.

The *property in the soil* being vested in the landholders with whom the settlement was perpetually made, they are the only persons who can grant the right of transfer to other persons. If the zamindar is alone the actual proprietor how can his right be interfered with by legislation? One of the reservations which Government made on behalf of itself by the Permanent Settlement Regulation is as follows :

“S. 8. Art. VII.—*First*.—It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talukdars, raiyats and other cultivators of the soil,.....”

This is the only clause which enables the Government to legislate for the protection and welfare of the tenants; now the question is whether legislation granting the right of transferability to the tenants is authorised by the above clause. I venture to think that such legislation is not so authorised for, amongst others, the following reason, viz., that the full proprietary right conveyed to the landholder by the Permanent Settlement will be interfered with, *inasmuch as the right to transfer is an element by the proprietary right*. Article VII, s. 8, cl. 1, of the Permanent Settlement Regulation never intended that the Government reserved to itself the right to take away the proprietary right conveyed to the zamindar; it authorised legislation only for protection of the tenants in such matters as undue exaction of rents, procedure for realisation of rents and generally about all matters *short of interference of proprietary rights*.

If Government legislates in violation of the privileges given to the landholder, he can legitimately object to the discharge of the fixed assessment which he agreed to pay. Even the most clearly proved necessity for the general good can justify the Government to take away the proprietary right from the landholder conveyed to him absolutely and for ever by the Permanent Settlement Regulation.

III. *Whether occupancy holdings ought to be made transferable by legislation:*

I have already pointed out that (1) from before the Permanent Settlement up till the present time occupancy holdings have never been transferable, (2) that proprietary right in the soil was conveyed to the landholders by the Permanent Settlement Regulation, (3) that the right of transfer is an incident of proprietary right and that a person who has no such right has no right of transfer, (4) that the right of transfer by custom or local usage is recognised by case-law and by the statute, but such custom or local usage has never been proved in even a single case in the law courts, (5) that s. 8 of Art. VII of the Permanent Settlement Regulation reserves to Government the right to legislate for the protection of the tenants, but this does not mean that the *proprietary right* conveyed to the landholders may be interfered with.

For these, amongst other reasons, it is most inequitable to take away from the landholders some of the rights and to transfer them to the cultivators.

Apart from the above considerations it is not desirable to give the right of transfer of their holdings to the raiyats; mainly for the following reasons:

- (i) it would be unjust to the landholders,
- (ii) it would be ruinous and injurious to the raiyats,
- (iii) It would be mischievous to the country.

So such legislation which is not beneficial either to the landholder or to the raiyat, or to the country, is neither called for, not at all desirable I propose to discuss these three matters together.

As to the landlord's interest, it has never been questioned that it is unjust if the right of transfer is given to the raiyat; not only his proprietary right will be interfered with as pointed out above, but also the following consequences will arise:

- (a) an undesirable tenant will be thrust upon him,
- (b) the land will be liable to pass to rival and inimical landlords,
- (c) capitalists, planters, *mahajans*, pleaders and other powerful people will come into the place of the raiyat,
- (d) even the right of pre-emption, if given to the landlord, would not be of any avail, for he may not have sufficient funds available to buy up the holdings transferred; moreover it is unjust to expect that a landlord who under the present law has the right of *khas* possession should be required to pay the sale price of the holding (when large fields, say one thousand acres of raiyat lands, will be purchased by capitalists, even the richest zamindars would find it difficult to buy up).

X As to whether legislation granting transferability of occupancy raiyat holdings is beneficial to the raiyat, it is ordinarily thought that such legislation is desirable mainly for the following reasons:

- (1) that the tenant would have proprietary right in the land and thus his status would be improved,
- (2) he would be able to raise money by mortgage or sale and would be able to improve his condition by investing money in other pursuits, trade, etc.,
- (3) he would be able to abandon his village and holding, and migrate to a village of his own choice and settle there by taking settlement of new holdings,
- (4) the raiyat in years of bad harvest and failure of crops, as also in time of distress, marriage and other ceremonies of the family, would be able to raise money by mortgage or sale of a portion of their family property, and thus save himself from starvation and would be able to meet the necessary expenses of the ceremonies of the family.

It is unnecessary to add many other reasons which are advanced on behalf of the tenant.

Notwithstanding all these advantages I am of opinion that *it will be ruinous to the raiyat* for the reasons stated below. The rule that occupancy holdings are not transferable is a *protective measure* so far as regards the raiyat himself; it is a benefit which cannot be deprived of even by the landlord; the land will always remain in the family which will have a

permanent interest therein; he will not run recklessly into debt; he will not be able to abandon his village and to venture on an uncertain trade and migrate elsewhere for gain; he will not be able to mortgage his holding by borrowing a small sum which will swell up to a large debt. It is true that at the time of his distress he requires money; this he can secure at present by grant of *sub-leases of a portion* or the entire holding, and as he cannot according to the present law sub-let for more than nine years, the land comes into his hands again.

Chief Justice Sir Richard Garth observed as follows in his minute :—

X “to give a poor population like the Bengal raiyats the means of selling or mortgaging their tenure at pleasure is a very certain means of making them improvident. I should have thought that the most effectual way of protecting such people, and preventing them from wasting their substance, would be to secure them a permanent interest in their property, by prohibiting the alienation of it in any shape.”

The position of a raiyat *who takes up a sub-lease after transfer of his holding* will be most precarious; he will be rendered into the status of an under-raiyat; Mr. D. Fitzpatrick, in his letter No. 784, dated Simla, the 15th May 1884, to the Secretary to the Government of Bengal, said as follows :—

“There is however, a large mass of evidence to show that the *mahajan* who buys up occupancy rights, is one of the most exacting of landlords.”

There is another matter to be considered, neither from the landlord's point of view, nor from the tenant's, but from the view of *the good and benefit of the country at large*. If we direct our attention to this point, we will find that it is extremely desirable that that the right of transferability should not be given; it is ruinous to the country as well as to the people. If the right of transfer is given, we will find in course of time that the cultivable area of the country will pass into the hands of capitalists, European and Indian, and the cultivation will be carried on by them by the employment of coolies. The whole peasantry will therefore be converted into coolies or day-labourers; the necessary consequences of which will be that the landless *actual cultivators* of the soil will be driven to seek employment for gain by migrating into other provinces. No one would like that a large cultivating field, say, five hundred acres of land, hitherto the main support of five hundred families, should pass into the hands of a limited company, which would employ the cheapest labour available for the produce of the crops. Consequently instead of a smiling village you find a commercial concern established in the village, with a population of day-labourers. I think it should be the principal aim of the legislator to legislate in such a way as to increase the happiness of the people; but if the effect of the legislation is that the peasantry will cease to exist, that the cultivators will be reduced to the status of coolies, that they will have to migrate to other provinces for gain—such legislation is the least thing to be desired. It is not for commercial purposes alone that the encouragement of agriculture is essential to the welfare of the provinces of this country. No doubt it is true that large fields in the hands of European and Indian capitalists or big limited companies will yield more crops with the help of up-to-date scientific implements and methods, but the whole thing will be a commercial concern.

If the land goes into the hands of capitalists, which some day in the near future it is bound to go, it will necessarily follow that there will be competition for cheap labour amongst landless cultivators of the soil and the labourers of other provinces, and if cheaper labour is found elsewhere, the Bengal cultivating class will gradually cease to exist; how would you like a Bengal district without Bengalees? —

In this connection the following lines from Goldsmith's *Deserted Village* may be quoted :—

“ Ill fares the land, to hast'ning ills a prey,  
Where wealth accumulates, and men decay ;  
Princes and lords may flourish, or may fade ;  
A breath can make them, as a breath has made ;  
But a bold peasantry, their country's pride,  
When once destroyed, can never be supplied.

“ A time there was, ere England's griefs began,  
When every rood of ground maintained its man ;  
For him light labour spread her wholesome store,  
Just gave what life required, but gave no more :  
His best companions, innocence and health,  
And his best riches, ignorance of wealth.

“ But times are altered ; trades unfeeling train  
Usurp the land, and dispossess the swain ;”

I may usefully quote here the following passage from the preamble to the Regulation II of 1793 :—

“ The Hindus, who form the body of the people, are compelled, by the dictates of religion, to depend solely upon the produce of the lands for subsistence, and the generality of such of the lower orders of the natives as are not of that persuasion, are from habit or necessity in a similar predicament. The extensive failure or destruction of the crops, that occasionally arises from drought or inundation, is in consequence invariably followed by famine, the ravages of which are chiefly felt by the cultivators of the soil and the manufacturers, from whose labours the country derives both its subsistence and wealth.”

This proposition, which was enunciated in the Regulation of 1793, still holds good. The above extract will show that the people *depend upon the produce of the lands for subsistence* ; but what would be the consequence if a capitalist sends all the yield of the field to a market outside the district ? The local landless labourers will lose all means of subsistence.

It should also be observed here that one of the chief grounds why there should not be any legislation now, granting transferability to occupancy holdings, is this that the whole matter was very fully enquired into and investigated when the Bengal Tenancy Act was passed in the year 1885 *and it was finally abandoned*. The Lieutenant-Governor in his speech in the Council agreed that there should not be any legislation granting transferability and said as follows :—

“ The fact is that the practice obtains all over the country ; it extends to a considerable extent in Behar ; it is in increasing operation in all parts of Bengal. The fact that such transfers are taking place daily in almost every district of Bengal is one which no one can dispute ; it comes before us on the unquestionable authority of the Registration Department, and it is admitted by the landholders themselves. Therefore, I think, it is quite our wisest course to let the practice develop itself, and in a few years it will be very much easier to recognise the practice *from the fact of the custom having become established*.”

In view of all the circumstances disclosed in the Lieutenant-Governor's speech he strongly pressed upon the Hon'ble Mr Amir Ali to withdraw the amendment proposed by him for granting a restricted right of transfer, as pointed out above. The amendment was accordingly withdrawn. Now, the hope entertained by the Lieutenant-Governor that the practice of transfer would develop into a custom has not been fulfilled yet. The landholder has been more zealous of his right and no custom has grown up, nor has the condition of the tenantry or the country altered since 1885, so as to necessitate the change of law on the subject.



IV. *Present case law and conflict and whether there should be any legislation:—*

It is not necessary to take the trouble to cite all the rulings and references on the subject. But if the case law is summarised we find that there is a conflict on the case law and it is not in a satisfactory condition in regard to the following matters:—

- (i) Under what circumstances transfer amounts to abandonment and landlord's right of *khas* possession.
- (ii) Transfer of part of a holding.
- (iii) Usufructuary mortgage and right to *khas* possession.
- (iv) Transfer of entire holding and sub-lease by the transferee.
- (v) Tenant's estoppel when he transfers.
- (vi) Involuntary sales at the instance of landlord or third person in execution of money decrees.

I am of opinion that all kinds of transfers should be discouraged and prohibited and for this there should be legislation:—

- (1) Allowing a landlord to get *khas* possession when there is a partial transfer as well as an entire transfer by sale, gift, bequest or usufructuary mortgage.
- (2) Allowing a landlord to get *khas* possession even when a tenant after transfer takes a sub-lease.
- (3) Allowing a landlord to get *khas* possession when he grants a permanent lease.
- (4) Allowing a tenant not to be estopped by his own act when he mortgages a holding and allowing him to object to the sale in execution of the mortgage decree.
- (5) Allowing a tenant to object to involuntary sales at the instance of either the landlord or third persons in execution of money decrees.
- (6) Disentitling a transferee to claim any kind of right whatsoever against the landlord or third persons.

X *Clause 25, Commutation.*—An under-raiyat should not be given this right, inasmuch as a raiyat who sublets generally does so for his subsistence and not for the purposes of trade or profit.

I also think that in cases (a) and (b) of the proposed section 40 (5) the court should be obliged to refuse the application of the tenant for commutation.

For the maintenance of widows and poor families of the *bhadrolok* class and who cannot cultivate lands themselves, they generally get the same cultivated by other people, generally by the members of the cultivating class, on the stipulation that the owners will get a certain portion of the produce. Their maintenance is thus secured. The law in this respect is, that if the contract for cultivation

Rulings on references from the maffassil Small Causes Courts, p. 113; I. C. W. N. 55, 1 All. 217; 11 W. R. 151; s. c., 2 B. L. R. 27; 21 W. R. 124; 14 C. W. N. 629; 21 C. W. N. 505, at p. 511, 19 C. W. N. 1205. (Adhial of Rungpur).

creates a relationship of landlord and tenant, then the tenant is entitled to have the rent commuted under s. 40 of the Bengal Tenancy Act; but if the relationship is that of partnership or master and servant then there cannot be any commutation. The persons who by virtue of the contract of cultivation become tenants or servants or partners are all known by the name of *burgadars*. The poor widows or the poor families, who thus employ others for cultivation, scarcely know the legal technicalities as to the distinction as to what constitutes the relationship of landlord and tenant or as to what constitutes the relationship of master and servant or partners. Consequently these poor families are deprived of their maintenance when commutation proceedings are obtained. It is therefore desirable that in

the case of such *burgadars* s. 40 (commutation proceedings) should not apply. The *burgadars* are not at all prejudiced, inasmuch as they, at the time of the letting out of

the land, knew that they would have to deliver produce instead of cash-rent, and if they afterwards find it inconvenient to continue cultivation they can make a surrender under s. 86.

If commutation proceedings should at all be made applicable they should be made liable to convert the produce-rent into cash-rent upon the basis of the market value of the produce.

*Clauses 28, 29 and 30. Occupancy under-raiyats.*—I have already stated my view that under-raiyats ought not to be given occupancy right. So the proposed sections are not necessary.

*Clause 31. Presumption as to fixity of rent arising out of twenty years' payment of rent: section 50, sub-section (2).*—This sub-section (2) should not be repealed. It has been held by the High Court that even in cases not governed by the Bengal Tenancy Act, the court may act on a presumption similar to the one arising under sub-section (2) of section 50, if the facts justify the necessary consequence. This is a wholesome rule; specially in cases of the tenants of this country who have generally no title deeds (and consequently the origin of the tenancy cannot be proved), it is just and equitable that the rule which has been prevailing since 1859 should not be altered. This rule was first enacted by Act X of 1859, *i.e.*, only 67 years after the Permanent Settlement, therefore the period of 20 years may, at this distant date after the Permanent Settlement, be altered into 30 years.

*Clause 40. Section 65.*—In view of my remarks made under clause 4 that no occupancy right should be given to an under-raiyat, the alterations proposed are not necessary.

*Clause 54. Section 85.—Restriction on sub-letting by a raiyat.*—The alterations proposed require serious consideration. I think that for the benefit of the raiyat there should be such restrictions to sub-letting as are provided for by the present law. A raiyat should not be allowed to transfer by sub-lease absolutely or for an indefinite period his holding; the consequence will be that he will be allowed to convert himself practically into *the status of a tenure holder*, which is not at all desirable. The raiyats in this country are *almost all* actual cultivators and their means of subsistence is mainly cultivation. To allow a raiyat to grant leases for an indefinite period will have the result that the land will go out of the raiyat's hands and he will ultimately abandon the same, inasmuch as he will cease to have any permanent interest. The reasons I have given to show why occupancy holdings should not be made transferable equally apply to show that the right to transfer by lease in an unrestricted way should not be given.

According to the provisions of section 85, as it at present stands, a sub-lease by a raiyat shall not be valid against his landlord unless made with the landlord's consent, and a sub-lease shall not be admitted to registration if it purports to create a term exceeding nine years. According to section 49, as it at present stands, an under-raiyat is liable to be ejected (1) on the expiration of the term of a written lease (which according to the Registration Act is compulsorily registrable if it is for more than a year), (2) and when holding otherwise than under *a written lease for a term* by a notice.

So at present the position of an under-raiyat is very precarious, and it is a very wise policy that it should be so, for, a raiyat, even if he grants a sub-lease (which he is required sometimes to grant for unavoidable necessities) always expects to get his land back.

As soon as a raiyati holding is made freely transferable by lease without any restrictions, the result will be that the cultivable area of the country will come into the hands of *mahajans*, etc., and the position of the *raiyat* as landlord to such an under-tenant will be a very precarious one.

There is another *very serious objection* to the alterations proposed in section 85. It has been proposed in the draft Bill that occupancy holdings should be made transferable and that the landlord would get a transfer fee. The provision for payment of the transfer fee to the landlord *will be entirely defeated* in case free transferability by lease is given. No raiyat will sell his holding but will grant permanent leases on nominal rents and will thus avoid the payment of the transfer fee to the landlord.

I am therefore of opinion that the present sections 49 and 85 should not be altered in the way as proposed.

But I think that the following alterations should be made in section 85:—

- (1) In granting sub-leases an under-raiyat should be placed under the same restrictions as a raiyat. (According to a certain ruling of the High Court an under-raiyat does not labour under the same liabilities. But it is desirable that an under-raiyat should not have greater privileges than his own landlord.)
- (2) It should be expressly mentioned in section 85 that it applies to *raiya*s at fixed rent as well. (At present the majority of the rulings of the High Court are to the effect that section 18 controls section 85 and a raiyat at fixed rent does not labour under the disabilities provided for under section 85.)

*Clause 60. Section 93.*—The proposed clauses (a), (c) and (d) should be omitted, and the following words in the proposed clause (e) should be omitted:

“and in case (ii) on the application of more than half the tenants”;  
and the following words of the proposed clause (f) should be omitted:  
“or for the estate or tenure in which the tenants are put to inconvenience or harassment as aforesaid.”

At present it is necessary, having regard to the interpretation put upon section 93 in certain rulings of the High Court, to appoint a common manager of an *entire* estate although the dispute relates to *only a part of the estate*, and although the co-owners of that part are different from those of the other part of the estate. It is therefore desirable that the amendment proposed in this clause to remove this inconvenience should be made.

But the other amendment proposed (to enable tenants to apply for appointment of a common manager on the ground that there is inconvenience for payment of rent when there is a large number of co-sharer landlords) is not necessary, for section 61, which provides that rent may be deposited in the Civil Court in such cases, sufficiently protects the tenant.

*Clauses 61, 62, 64 and 101. Common manager.*—The amendment proposed in these clauses is open to serious objection. It has been proposed that the Collector (and not the District Judge) should nominate and control the common manager. The present law that the District Judge should nominate and control the common manager should not be altered, for, amongst others, the following grounds, viz. (1) no inconvenience has been felt on account of the present practice, (2) the High Court will lose its powers of revision if the District Judge does not properly control the common manager.

*Clause 63. Common agent.*—The section proposed is new. I think that where the co-sharer landlords do not amicably agree to appoint a common agent, the Collector should not be authorised to appoint one. I therefore think the proposal to authorise the Collector to appoint a common agent is open to objection. Section 61 may be made applicable for payment of transfer fees, etc.

*Clause 84. Presumption as to fixity of rent.*—In view of my remarks made under clause 31, section 115 should not be repealed.

*Clause 90. Proposed section 146B.*—In my opinion a decree obtained in a suit in which all the tenants have not been made parties should not be considered to be a rent decree.

*Clause 94. Rent-suit by a co-sharer landlord.*—I am of opinion that the proposed sub-section (8) of section 148A should be thus altered that a co-sharer landlord who does not join in a suit brought by another co-sharer landlord will be entitled to sue separately and to obtain a decree for rent which he will be entitled to execute by proceeding against the defaulting tenure or holding if the earlier decree has been satisfied.

*Clause 100. Accrual of title on sale.*—According to the present Civil Procedure Code the title vests in the purchaser from the date of sale and

not from the date of confirmation of sale. The proposed change that the title should accrue from the date of confirmation of sale should not be made. Consequential changes should also be made in sub-section (7) of section 148A. See— clause 94.

*Clause 111. Homestead of raiyat.*—I think that the provisions of section 182 should not be made applicable to the homestead of an under-raiyat.

I also think that where a raiyat holds his homestead otherwise than as a part of his tenancy, the provisions of the section should be made applicable only when the homestead is held *under the same landlord under whom the agricultural lands are held and in the same village.*

*Clause 112. Usage.*—It has been proposed that the illustrations to section 183 should be omitted. I think that they ought not to be repealed. There are two illustrations: (1) as to usage of sale of occupancy holding, (2) custom or usage as to the acquisition of occupancy right by an under-raiyat.

Both these illustrations seem to be necessary.

*Clause 113. New Chapter XV-A.*—I think the proposed legislation works a great hardship on the landlord and it interferes with the existing rights and privileges enjoyed by him.

*Clause 125, sub-clause (2). Execution of decree when a sale is set aside.*—The proposed change is not necessary for two reasons: (1) the protection sought for is provided for by law; when a sale is set aside, the decree-holder is entitled to proceed on with the previous application for execution and he is afforded an opportunity to put fresh process fee; (2) the alteration proposed will work a great hardship on the tenant, for, if a fresh application for execution is allowed to be made, the result will be that the landlord will be entitled to draw interest for the intervening period, for no fault of the tenant.

#### MATTERS NOT COVERED BY THE CLAUSES.

*Whether landlords should first proceed to sell the defaulting tenure or holding.*—In the committee I raised the following point, viz., that as rent was a first charge on the holding a rent decree ought to be executed in the first instance against the defaulting tenure or holding, *and not in the first instance against the person or other property of the tenant.* It was agreed that a note of dissent should be written on this subject (*vide* the proceedings of the 38th meeting of the committee, dated the 12th August, 1922).

The reasons for my proposal may mainly be summarised as follows:—

- (i) Tenures and holdings sometimes prove to be losing concerns *for no fault of the tenant*, and it is desirable that he should have an opportunity of getting it sold. It is true that a raiyat can surrender his holding but it is difficult for him to prove it, and if there is a litigation with the landlord who questions the fact of surrender, it means the ruin of the raiyat. As to a tenure it cannot be surrendered unless the landlord agrees.
- (ii) The landlord will not be prejudiced inasmuch as in a rent sale he gets the tenure or holding in the same condition as it was before the date of the creation of the lease, for he can annul all encumbrances created by the tenant.
- (iii) Many landlords at present first proceed to execute the decree by attachment of the moveables of the tenant; this causes a great oppression upon him; there is sometimes an attempt for attachment of such moveables which cannot be lawfully attached.

In this connection I should state that according to section 65 of the Bengal Tenancy Act rent is a *first charge*, and probably the intention of the legislature was that it was such a charge which should be first enforced, although no doubt the case-law is otherwise.

I think that it ought now to be made clear that "charge" mentioned in section 65 is such a charge which ought to be first enforced.

In the Bill prepared by Mr. H. J. Reynolds (on special duty) in the year 1881, we find the following:—

56. (a) Every tenure, under-tenure and occupancy holding shall be deemed to be hypothecated for the rent thereof and such rent shall be a first charge thereon. *When such rent is in arrear, the landlord shall not be entitled to resort to any other process for the recovery thereof, until he has first brought such tenure, under-tenure or holding to sale either in a summary manner or in execution of a decree for such rent, as he is by this Act empowered in that behalf.*

Every tenure, under-tenure and holding to be deemed hypothecated for its own rent, which shall be a first charge thereupon.

The second sentence in the above section has been italicised by me. From a reading of the marginal note it will appear that the second sentence of the above section (italicised by me) is only an explanation of the terms "hypothecation" and "charge" to be found in the earlier part of the section. The word "hypothecation" is redundant in view of the present Chapter XIV (procedure for sale); and the omission of an explanation of the word "charge" in the present section 65 does not affect the present question, for it is not always necessary for the legislature to add explanatory words to a term or expression. Now that the High Court has put an interpretation on the word "charge" different from what the legislature had meant, I think that section 65 should be made clear on the lines of Mr. Reynolds' Bill.

In this connection I may usefully quote below section 56, clause (a), of the Bill to consolidate and amend the law of landlord and tenant within the territories under the administration of the Lieutenant-Governor of Bengal (as settled by the Government of Bengal in the year 1881):

"56 (a). Every tenure, under-tenure, and occupancy holding shall be deemed to be hypothecated for the rent thereof, and such rent shall be a first charge thereupon. *When such rent is in arrear, the landlord shall not be entitled to resort to any other process for the recovery thereof, save as provided in Chapter XIV, until he has first brought such tenure, under-tenure, or holding to sale either in a summary manner or in execution of a decree for such rent, as he is by this Act empowered in that behalf.*"

Every tenure, under-tenure, and holding to be deemed hypothecated for its own rent, which shall be a first charge thereupon.

I therefore propose, as already stated, that the present section 65 should be altered on the above lines.

*Present section 192. Power to alter rent in case of new assessment of revenue.*—I think that the provisions of the section seem to be inequitable inasmuch as a contract referred to in the section should not be interfered with.

#### ACT XXXI OF 1858.

Section 2 of Act XXXI of 1858 (Bengal Alluvial Land Settlement Act) provides that it shall be the duty of the settlement officers "to determine whether any and what additional rent shall be payable in respect of the alluvial land by the person or persons *entitled to any under-tenure in the original estate.*"

I think that the determination of rent according to the above section of the alluvial land of under-tenants of the original estate is not binding upon the tenant.

The Act is silent as to the procedure for settlement of rent.

In order that the settlement of rent should be binding on the parties I think the law on the subject should be made clear and it should be provided that the rent of under-tenants should be settled under Part II of Chapter X of the Bengal Tenancy Act.

According to Regulation XI of 1825, section 4, clause (1), proviso, a tenant does not acquire in the increment any interest beyond that possessed

by him in the parent tenure and, is not exempted from payment of rent; the following words of clause (1), section 4, were repealed by the Bengal Tenancy Act, Schedule I:

*Words repealed.*—“Nor, if annexed to a subordinate tenure held under a superior landholder, shall the under-tenant, whether a *khudkast* raiyat, holding a *maurasi istimrari* tenure at a fixed rate of rent per bigha, or any other description of under-tenant liable by his engagements or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable.”

The above repeal was made in view of section 52 of the Bengal Tenancy Act, which provides the rules for assessment of rent of alluvial lands which are accretions to an under-tenure. The assessment may also be made under Part II of Chapter X of the Bengal Tenancy Act.

My suggestion therefore is that the same rules should be followed in regard to the determination of rent under Act XXXI of 1858.

*[It should be understood that the remarks made by me under the different clauses are also intended for consequential changes in the cognate clauses.]*

**Note of Dissent by Sir John Kerr and Messrs. Duval, McAlpin, Birley, Sachse, Thompson and Khan Bahadur Muhammad Abdul Mumin.**

*Clause 94.*—We are of opinion that the words "except by means of a suit for money brought under the Code of Civil Procedure, 1908," should be deleted from the proposed sub-section (8). These words enable individual co-sharer landlords to bring separate suits for the recovery of rent as money-suits. The object of the whole clause is, however, to provide co-sharer landlords with special facilities for realizing their own rents in one suit by making the remaining co-sharers parties to the suit. The latter are afforded an opportunity of appearing as plaintiffs in the case, and if they do not avail themselves of it, we consider that they should be debarred from harassing the tenant and bringing another suit against the tenant for the rent, whether as a rent or money-suit. One of the accepted principles of tenancy legislation in Bengal is the prevention of a multiplicity of suits against a tenant in respect of the same cause of action. We undertook the amendment of the law on this point, in order to afford relief both to landlords and to tenants. The insertion of the words mentioned above entirely frustrates the object of the new section and, unless they are removed, we would oppose this clause.

**Note of dissent by Mr. W. H. Thompson.**

*Clause 22.*—While strongly supporting the provisions suggested regarding transferability, I would express my opinion that the average landlord in Bengal does not at present get nearly as much as 25 per cent. of the consideration money for recognizing the transfer of an occupancy holding. I believe that in the five districts in which I have been Settlement Officer, Tippera, Noakhali, Faridpur, Rajshahi and Dacca, the average actually realized is not greater than 12½ per cent.

*Clause 48 (b).*—“A tank for the purpose of providing drinking water for the tenant or his family” is very often the very opposite of an improvement to the holding. Well over 4 per cent. of the area which would have been available for cultivation on the mainland of Noakhali district is occupied by tanks and ditches. It very often happens that what was once a single holding has a large tank in it, but the co-sharer tenants have multiplied and divided the land leaving the tank their joint property. They cannot agree to meet the necessary expenditure between them to keep the tank clean, or re-excavate it when re-excavation is necessary, and each digs a small hole to supply himself with water, leaving the tank neglected. Not only has its area been taken from the total stock of agricultural land available to the community, but its condition renders it a menace to the health of the locality. Moreover the small holes dug beside the homestead are easily contaminated and do not supply good drinking water. That can only be obtained from fairly large tanks. To give every man the right to dig his own little hole will stand in the way of obtaining the necessary co-operation between villagers for the provision of a satisfactory supply from tanks large enough to give it.

I am therefore of opinion that it is against public policy in such districts as Tippera and Noakhali to take away from the landlord his veto on the cutting of unnecessary and unsuitable tanks, and the time will come when the same will be true in the case of other districts, if it is not true of some of them already.

*Clause 59.*—It is my opinion that the proposed section 88B is bad law. It proposes to give to a party, who only anticipates that he will be put to loss, the right to sue for a specific relief before any damage has been done to him. His proper remedy should be by means of an injunction upon the under-tenant not “to use the land in a manner whereby the co-sharer tenants would be liable to ejection or other penalty”.



**Note of dissent by Babu Bishmadeb Das.**

I regret that I have to submit a note of dissent as I cannot agree with my colleagues on some very important points. The committee has been appointed by Government, on the recommendation of the Bengal Legislative Council, embodied in a resolution moved by me for amendment of the Bengal Tenancy Act for the benefit of the raiyats specially. But the majority of the members seem to care more for the interests of the landlords than that of the tenants. I wish to make it clear that there is no real representative of the tenants on the committee. Rai Sahib Panchanan Barman, M.L.C., Mr. Syed Erfan Ali, M.L.C., Maulvi Yakinuddin Ahmed, M.L.C., and myself have been taken to be representatives of the tenants. But it is for the tenants and the public to judge how far we have been able to represent their interests.

The Permanent Settlement of Bengal was effected in a spirit of disinterested justice, "yet this truly benevolent purpose, fashioned with great care and deliberation" wrote Lord Hastings in his minute of 31st December, 1819, "has to our painful knowledge subjected almost the whole of the lower classes throughout the province to most grievous oppression—an oppression, too, so guaranteed by our pledge that we are unable to relieve the sufferers." Mr. Field in his introduction to the Regulations of the Bengal Code observed that "one of the effects of making the zamindars, proprietors, and fixing the Government demand of revenue was that all other rights in land were so completely effaced that at present it is difficult to find a single vestige of them or to ascertain what they were. The mistake of the measure lay in this that sufficient active provision was not made for the protection of the rights of other persons and that we erroneously persisted for years in regarding the relation between zemindars and raiyats as analogous to the mutual position of landlords and tenants in England." When the Bengal Tenancy Bill was introduced Lord Ripon said, "We have endeavoured to make a settlement which, while it will not deprive the landlords of any of their accumulated advantages, will restore to the raiyats something of the position which they occupied at the time of the Permanent Settlement and which we believe to be urgently needed, in the words of the settlement, for the protection and welfare of the taluqdars and other cultivators of the soil whose interest we then undertook to guard and have to our shame too long neglected." In section 8 of the Permanent Settlement Regulation (I of 1793) it was declared as follows: "It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor-General in Council will whenever he may deem it proper enact such Regulations as he may think necessary for the protection and welfare of the dependent taluqdars and raiyats and other cultivators of the soil." And by section 67 of Regulation VIII of 1793 it was enacted that "implicit obedience be shown to all regulations which have been or may be prescribed by Government concerning the rents of raiyats and the collection from under-tenants and agents of every description as well as from other persons whatsoever."

These should be borne in mind in undertaking any legislation or amendment affecting the interest of tenure-holders, raiyats and other cultivators. The Hon'ble Mr. Macpherson in introducing the Bihar Tenancy Bill said: "I trust that the subject will be approached in a spirit of conciliation and good will. I am aware that the representatives of landlords are in a majority in this Council and that if they choose to exercise their power arbitrarily they can reject the proposals of the Bill, but I consider that it would be most disastrous to their own interests if they choose to adopt this course. If they reject this modest demand they will merely raise a storm of discontent and indignation which will recoil on their own heads. There are many persons who are waiting and willing to take advantage of this spirit of discontent and to foster amongst the cultivators Bolshevik ideas which, if they obtain the upper hand, will produce widespread misery throughout the province. I therefore earnestly entreat the landlords of this Council to meet the tenants half way or more than half way in their demands and claims." I also repeat the same.

The raiyats should be declared to be the owners of land with power of transfer and dealing with it in any way they like. According to Manu the soil belongs to the tiller and the landlord is entitled to one-sixth, one-eighth or one-twelfth part of the produce of land for protection from thieves, drought, want or excess of rain, etc.

The landlords should not be legally entitled to unearned increment. As the Government revenue is fixed, it is but fair that the rent due from the raiyats should also be fixed on the basis of the table of rates prepared by competent officers. The zamindars should be made liable to pay the expenses of proper education and sanitation of the tenants of their respective estates.

*Clause 5(e).*—The words “and required by him by reason of his connection with his holding” should be deleted from the definition of homestead.

*Clause 19.*—I object to section 22 being a bar to acquisition of the right of landlord by a raiyat causing extinction of his raiyati right for ever, but in converse cases it is to be treated as a permanent tenure. I propose that so long as the landlord's right subsists the raiyat may be precluded from exercising his raiyati right.

*Clause 21.*—Landlords should give up their claim to a share of the value of valuable trees, as it is likely to lead to dispute in almost every case. Jam and mango trees should be omitted from the explanation.

*Clause 22.*—This clause should be made applicable only to voluntary sales.

The right of pre-emption is proposed to be given to landlords to avoid an undesirable transferee. But this gives them more than what they deserve, and will enable them to acquire lands or realise exorbitant fees in every case, even in cases in which the transferees are cultivating raiyats of the same village or locality or near relations of the transferor.

As to transfer fee, I think that 25 per cent. of the purchase money is excessive and six times the rent exceeding 25 per cent. is exorbitant.

The first proviso to section 26G seems to me unfair to smaller co-sharers.

*Clause 25.*—I do not think that produce rents are generally against the public interest and strongly object to the proposed provision of amended section 40 being applicable to under-raiyats. The probable effect will be that most of the *burgadars* and *adhiars* will be deprived of their lands unless they agree to contracts barring their acquisition of occupancy rights, and people will take to cultivation by servants or hired labourers who will be more indifferent than the *burgadars* and *adhiars*.

*Clause 28.*—I cannot agree to confer occupancy right on all the under-raiyats irrespective of the duration of their possession and term of their lease. Under-raiyats who are holding under a written lease for a term of not more than 9 years and who may hereafter be settled for a term should not acquire occupancy right. The power of granting under-raiyati leases for a term should not be taken away from raiyats in general.

*Clause 29.*—I do not see any reason why under-raiyats should have occupancy rights as against their immediate landlords only and not against the superior landlords. At present the under-raiyats in most cases are liable to ejection arbitrarily after service of notice under section 49. This was intended for preventing the transfer of lands by way of lease permanently so that raiyats may not lose any of their lands for good. But why should the raiyats now lose all their rights for nothing, and the superior landlords would not lose but rather gain, as it is proposed to provide that occupancy rights of under-raiyats will no longer be protected interests? On this point my definite proposal is that after 12 years' possession an under-raiyat will acquire occupancy right on payment of 3 years' rent as fee to his landlord, and those who have acquired the right by custom should not be deprived of that right and it should remain a protected interest. It seems quite unreasonable that the transfer fee in case of under-raiyats should be less than Rs. 25 per cent. The percentage should be equal.

*Clause 31.*—I strongly object to the repeal of section 50(2). It will be quite unfair to the tenants of districts in which the record-of-rights has not been prepared.

*Clause 43.*—I object to proviso (ii) providing interest at 12½ per cent. after decree.

*Clause 58.*—Section 88 should be amended providing facilities for subdivision of tenancies and division of rent at the discretion of court and

on payment of some fee where the land is partitioned. It causes difficulty in many cases, such as is mentioned in the petition of the tenants of Sandwip.

*Clause 55.*—I object to clause 55. Abatement of rent should not be evidence of surrender without a registered deed, because illiterate tenants will be easily deceived by landlords.

*Clause 59.*—I suggest that after the word landlord in 2nd line the words "or enhances the rent" should be inserted.

*Clause 71.*—I object to the provision of defendants being liable to pay court-fee for raising an issue under section 105A, because they can raise such issue in a rent suit without paying any court-fee.

*Clause 90.*—I cannot agree to the proposed section 146B. In my opinion there cannot be a rent decree unless all the tenants are made parties. The proposed section is unsound and likely to lead to fraud and collusion.

*Clause 93.*—Section 148(e) seems to me unnecessary. By the proposed addition court's time will be wasted.

*Clause 94.*—The tenant should not be liable for the cost of several suits and where there are numerous co-sharer defendants who refused to join with the plaintiff the cost of service of summons and notices on them should be borne by them or by the plaintiff, if he failed to consult them.

*Clause 115.*—The object of section 188 was to prevent more than one suit in respect of the same tenancy. It did not contemplate co-sharer landlords acting separately. If they are allowed to sue separately it should be carefully considered whether the tenants are prejudiced in any way.

*Clause 125.*—This clause is unnecessary as an execution case is restored to file when a sale is set aside.

**Note of Dissent by Rai Sahib Panchanan Barman, Mr. Erfan Ali, Maulvi Yakuluddin Ahmed and Babu Bishmadev Das.\***

The Bengal Tenancy Act needs amendment in many respects. In making the amendments we should not lose sight of the spirit which guided the tenancy legislation since the Permanent Settlement.

When the Permanent Settlement was made the zamindar was declared to be the proprietor of the soil; whether rightly or wrongly, we need not discuss that now. The agreement thus was between the Government on the one hand and the zamindar on the other and the characteristically delusive possession of property in the zamindar was made firm and the Government demand from the zamindar on land was permanently fixed. But the rights or the customary rights of the people attached to the soil were not then taken into the agreement, as at that time there were not sufficient materials for the determination of the rights or the customary rights of the raiyats. So for the protection of the rights of the people, the authorities had to be satisfied with the reservation of right to legislate for the protection of the dependent talukdars, raiyats and other people of the soil; and with the injunction on the zamindars to use moderation towards the people. By the Permanent Settlement Regulation I of 1793, where the Governor-General in Council declared by section 8 as follows: "It being the duty of the Ruling power to protect all classes of people, more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talukdars and raiyats and other cultivators of the soil."

The Subsequent Tenancy legislation had been designed to provide some means for that protection but all attempts were more or less failures. The consciousness of that failure led Lord Ripon, the then Viceroy and Governor-General, when first introducing the Bengal Tenancy Bill in the Council in 1883, to say:—

"We have endeavoured to make a settlement which, while it will not deprive the landlords of any of their accumulated advantages, will restore to the raiyats something of the position which they occupied at the time of the Permanent Settlement and which we believe to be urgently needed, in the words of that settlement, 'for the protection and welfare of the talukdars, raiyats and other cultivators of the soil' whose interest we then undertook to guard and to our shame too long neglected."

The above is the summing up of the aims and objects of the Bengal Tenancy Act, 1885. The Bengal Tenancy Act was designed while safeguarding the accumulated advantages of the zamindar, or the landlord, to restore to the raiyat, the helpless agricultural people of the soil, something, only something—and from the tone it seems and as it appears in fact—a small portion of the position or rights which the raiyat occupied or had at the time of the Permanent Settlement.

The Bengal Tenancy Act thus aims at the full restoration to the raiyat of his position at the time of the Permanent Settlement but gives only something.

So then it is only proper that any legislation or tenancy—

(1) should not curtail,

- (a) any right or advantage that has been conferred on the raiyat or other tenants by that Act, or
- (b) any right or advantage that has grown or is growing in favour of the raiyat or other tenants in consequence of the provisions of that Act, or
- (c) any right or advantage in favour of the raiyat or other tenants that may be found existing or growing; but

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\*This member signed this note in addition to his separate note of dissent.

- (2) ought to, (a) rectify any defect that may be found to exist in the provisions of the Act, (b) regulate the customs and usages that are found to exist and help their healthy growth and development for the welfare of the people of the soil; and (c) confer new rights required for their protection and welfare, and suited for the growing needs and conditions of the time and locality.

The present amendment should follow these lines.

2. Since the Permanent Settlement, the Tenancy legislation in Bengal has adopted the *khudkast* raiyat as the principal figure and his rights or customary rights as the principal feature, both forming the basis for consideration. The counterpart of the *khudkhasta* is the *paikhasta*. These two terms correspond to the Bengali terms used in Raagpur and its neighbouring districts, বসত প্রজা and উঠক প্রজা that is, tenants settled on the very land and cultivating, and tenants coming up from another village and cultivating. The former had superior status and permanent settled rights while the latter had inferior status and rights of unsettled character. So far as can be gathered at this distance of time and through the various screens of legislation, the main element composing the status of a *khudkasta* raiyat or বসত প্রজা and that of a *paikhasta* raiyat or উঠক প্রজা when analysed are given below:—

#### THE *khudkhasta* RAIYAT OR বসত প্রজা

- (1) Residence in the village.
- (2) Membership in the community of the village with the rights and privileges attached.
- (3) Undisturbed use and occupation of the lands.
- (4) Permanency and heritability of the rights in land.
- (5) Liability to pay proper rent.

#### THE *paikhasta* RAIYAT OR উঠক প্রজা

- (1) Use and occupation of the land.
- (2) Liability to pay the agreed rent.

The *paikhasta* raiyat or উঠক being a member of a different village could not be fully a member of the community of the village. Even a person could not become a *khudkhasta* raiyat or বসত প্রজা immediately on taking his residence in the village but he had to be in the village for a sufficient number of years to give satisfactory proof of his intention permanently to stay in the village and his suitability to be a member before he would become a *khudkhasta* raiyat or বসত প্রজা and be taken into the membership of the community of the village.

In the legislation undertaken subsequently to the Permanent Settlement, gradually the residential qualification was eliminated; the membership of the community of the village consequently slackened.

The two elements of the membership of the community of the village—

- (a) The requisite condition of acquisition of the status—holding land for twelve years in the village, and
- (b) the consequence of the acquisition of that status—that is, the acquisition of occupancy right in all the land held for the time being by him in the village as a raiyat,

now constitute the status of a settled raiyat of the village.

The first two qualifications in the raiyat were immediately followed by and had as their invariable concomitant the other three elements mentioned in the analysis. The residue of the first two qualifications now constitutes

what is now called the status of a settled raiyat, which is immediately followed by, and has as its invariable concomitant the right of occupancy. So we may take it broadly that the occupancy right consists of—

- (1) Undisturbed use and occupation of the lands.
- (2) Permanency and heritability of their rights in the lands.
- (3) Liability to pay proper rent.

The occupancy right described above as distinguished from the status of a settled raiyat, can be spoken of as "simple occupancy right" confined to a particular tenancy and there is no bar to such right being acquired by a tenant. Add to it the status of a settled raiyat and you get the fully grown occupancy raiyat, capable of acquiring the simple occupancy right on all lands that he comes to hold in the village. This may be termed an "occupancy status".

The "occupancy status" can now be acquired on fulfilment of the conditions under sections 20 and 21 by any raiyat holding land in the village. So also raiyats holding at fixed rent or rent-free by virtue of their being raiyats may, in addition to their inherent simple occupancy right owing to the perpetual character of their tenancy, acquire the occupancy status.

In the previous legislation, a "right of occupancy" or an "occupancy right" is sometimes spoken of, but the right is nowhere defined or described and is sometimes confounded with the "occupancy status" of an occupancy raiyat. So we find it being thought, by lawyers, and held by the High Court that a raiyat at fixed rent has no right of occupancy. A raiyat holding rent-free escaped the same fate simply for not being subjected to such consideration owing to his non-liability to payment.

3. This is a defect in the Bengal Tenancy Act and should be rectified. It can be done only by making the confused idea of the "occupancy right" and the "occupancy status" clear and distinct by defining or describing the "occupancy right" and the "occupancy status", apart from their subjects, and placing them in the proper place in Chapter II, which deals with the tenants generally. Other reasons for such dealing with these occupancy rights and status will appear in our notes on clause 6.

There is another defect. Sections 20 and 21 provide how an occupancy status can be acquired by a raiyat. But there is no mode prescribed in the whole Act by which an occupancy right or simple occupancy right can be acquired. This led some people to think occupancy right can be acquired only under the conditions stated in sections 20 and 21, and not under a lease, and a newcomer holding land at a rent whether fixed in perpetuity or enhanceable is thought to have no occupancy right. But the Act contains some implied provision as to occupancy right being capable of being created by lease. Section 25 gives as one of the grounds of ejection "the breach of a condition consistent with this Act, on breach of which by the terms of the contract between himself and his landlord he is liable to be ejected". The dependence of the destruction or subsistence of the right of occupancy on the terms of a contract between the raiyat and the landlord imply that the right of occupancy was created by a contract between the tenant and the landlord. So there is no bar to simple occupancy right being granted to a raiyat; it should be clearly provided that an occupancy right on a holding can be granted by a lease.

That the grant of such occupancy right is not impracticable or inconsistent with other right is quite clear from the fact that in the present Bill the under-raiyat has been recognised as acquiring an occupancy right by touching the land as an under-raiyat, whether there is any understanding to that effect between the parties or not. But this is an anomaly and should be rectified by prescribing for acquisition of occupancy right some conditions similar in the cases of both the raiyats and under-raiyats.

What is acquired by or rather conferred on the under-raiyat by the Sections 48 and 48A is what I have termed a simple occupancy right as distinguished from an occupancy status, which can be acquired only by a raiyat under the present sections 20 and 21, as these two sections do not apply to under-raiyats. This occupancy right of the under-raiyat is acquired by operation of law, or it may be said the landlord gives him the occupancy

right by necessity. This is the condition of the acquisition of occupancy right by an under-raiyat and there is no reason why a raiyat should not acquire simple occupancy right similarly or by an express grant from the landlord.

The occupancy right of the under-raiyat should be not only against the immediate landlord but against all. So long as it does not "impair the value of the holding" or render it unfit for the tenancy." Certainly the landlord should not suffer any loss, but at the same time the under-raiyats should be given protection.

The landlord has let out the land on a certain rent. This is what he expects to get and the law wants him to restrict his demand to that amount, subject of course to lawful enhancements. If the original raiyat goes on holding the lands the landlord is to get nothing more. On transfer he gets the fees. This can be said to be a chance gain. If his principal interest, i.e., the rent, is secured, he should not grudge.

If by sub-tenancy a profit, say, not less than 20 per cent. over the rent payable by the immediate landlord, is secured, there is no insecurity of the rent, nor will that reduce the price on sale to an unreasonable extent. So the landlord's fee is not reduced to any unreasonable extent.

A person sells his land when there is no other course left to him, i.e., when he can no longer indulge in sub-letting. Nor will a man pay much to get a subordinate position. So the zamindars' apprehension of the raiyat letting out land instead of selling if the under-raiyats get occupancy right, is not founded on reason and fact. So if some provision as to some profit being left to the raiyat in cases of sub-tenancy is made the rent is secure, the landlord's fee on sale is reasonable.

4. Formerly the relation between the proprietor and the tenant was simple—the proprietor on the one hand and the raiyat on the other—but then there is now much complicated system of tenancy. For the proper understanding of their respective nature and for dealing with them in some adequate and effective manner, the classification of the tenants is most important and should be very carefully made. The classification must comprehend within its fold all the possible kinds of tenant and must be made on some clear principle of division and show each class with their sub-classes clearly and distinctly from each other. In pursuance of this principle we have to differ from the classification set forth in clause 6, and give a classification in our notes on that clause. The reasons for making the classification will appear in notes on clause 6.

5. As a consequence of the classification of the tenants according to the principles indicated above and to show their applicability by their position, the present sections 19, 20 and 21 should be transferred to Chapter II, which deals with tenants generally, and the new arrangement of the present section between sections 5 and 22 has been indicated.

To remove the inadequate character of sub-section (4) of section 5 for the determination whether a tenant is a tenure-holder or a raiyat two sub-clauses—

(c) the circumstances existing at the time of the creation of the tenancy, and

(d) the course of dealings therewith,  
have been added.

These two will help in getting a clear insight into the original intention of the parties and the real nature of the tenancy. They will to a certain extent render the use of the presumption under sub-section (5) of section 5 unnecessary; and owing to the arbitrary and in many cases prejudicial character of this presumption we also propose to repeal this sub-section (5). The reason will appear in notes on the particular classes.

6. If I am right in my view of the nature of the *khudkhasta* or *pai-khasta* raiyats or বসত প্রজা and উঠক প্রজা and of the mode of acquisition of the status of the *khudkhasta* raiyat or বসত প্রজা, it seems clear, that the proprietary right of the lands belouged in a manner to the village community, which paid the revenue or made arrangement for the payment of the revenue of the village to the Government. As none could acquire the status of a *khudkhasta* raiyat or বসত প্রজা unless he resided in the village for some

years and secured the approval of the community the holding of a *khu d-khasla* raiyat or বনভ অক্ষা could be transferred only under certain limitations. It seems the approval of the village community was necessary.

With the decay of the village community the arrangement for the payment of the revenue was changed, every raiyat being held more or less severally liable for the revenue. In the Permanent Settlement the zamindar was declared to be the actual proprietor of the soil. He then assumed the rights and functions of the village community and turned them to his own advantage. So the approval of the village community which has been required to bring in a new-comer within the community and give the proof of his suitability to be a member was now turned to his personal gain. The zamindar's approval was now required by a person to come into the possession of certain lands, whether the villagers would like him to come or not, and given on payment of a *nazar* or on proof of security of the rent. So the suitability of a person to be a member of the village community was turned by the zamindar into suitability of a person to be a raiyat on or by payment to the zamindar of a desired sum of money.

It is to be noted here that the villagers had thus been divested of a substantial right much needed for their convenience and welfare in consequence of the Permanent Settlement, and the Government ought, in the words of Lord Ripon, "to restore to the raiyats" at least "something of the position which they occupied at the time of the Permanent Settlement" in this respect.

So the right of pre-emption, if allowed, should be allowed to the villagers. The villagers purchasing lands in the village should be exempted from the payment of the landlord's fees, i.e., they should not be required to purchase from the zamindar that very approval which they used to give about the time of the Permanent Settlement. And if the approval of the villagers is made to be required for an outsider to take land in the village, the *mahajan* who appears to be an object of so much fear in the discussions, may get a check. But the last is a matter of serious consideration.

For some time after the Permanent Settlement, the lands were abundant while the cultivators were few, and the zamindar had to remain satisfied with little when a person took lands on settlement or on transfer from another person. Sometimes a nominal *nazar* in token of submission to his authority was accepted as sufficient. But as time went on and with the growing increase of the population, demands for lands went on increasing, the zamindar's demand for *nazar* on settlement or transfer also went on increasing. And now the demand has grown almost unbearable in many localities. It is now the duty of the Government to check the increase and fix a limit and regulate the payment of the *nazar* and restore to the villagers something of their former position indicated above. And this is what should be done by the amendment. But the draft bill, while paying attention to the advantages of the zamindars, ignores completely the former position and convenience of the villagers.

I think there should be only one mode of assessment of *nazar* on transfer, the maximum rate of *nazar* and not an inflexible one should be fixed and no pre-emption should be allowed to the landlord. I have dealt with all questions in connection with transfer of occupancy holdings in my notes on Clause 22.

The right of pre-emption as it is called should not be allowed to the landlord. It is a false hope that the zamindars by the exercise of the prerogative will keep off the money-lender and have the land for the cultivators only. For to the landlord (the zamindar) the money-lender with his very long and weighty purse is the most desirable person and the best friend on earth. He can pay or lend as much as the landlord (the zamindar) requires.

The landlord (the zamindar) should not get the right to avoid the under-raiyat on pre-emption. It will be hard on the under-raiyat and lead to many underhand and unjust dealings to avoid the under-raiyats.

7. In all trees the raiyat should have full right. If the zamindar should get a share of the price of some trees, the trees should be mentioned by name. Any description such as "valuable for its timber" will only lead to friction and oppression. Permission to fell trees and appropriate the



timber is required for different kinds of trees in different localities. This should be carefully enquired into. The existing right of the raiyats in trees must be maintained.

8. It is desirable in some cases to commute the produce rent of occupancy raiyats into money rent with the reservation mentioned. But it should be clearly directed that in those cases no commutation should be allowed. Simply "having regard" will do great harm and will lead to hard contested litigation, resulting in great loss and heightened antipathy between the parties.

Cases of *bona fide* produce rent should be distinguished from those which are not so. *Adhiars* or *bhagchasis* do not pay a produce rent but they take a portion of the produce as "labouring partners." These should not be treated in the same manner as the payers of *bona fide* produce rent.

The *adhiars* or *bhagchasis* have no interest in the land they are permitted to cultivate. But they should have some lien on the soil, if they cultivate for some years. They should cultivate the lands and be not ejected except on the grounds—

- (1) That he has broken a condition on breach of which he is, under the terms of the contract between himself and the permitter, liable to be ejected.
- (2) That he neglects to cultivate the land in the proper season in the proper manner thereby causing loss to the crops.
- (3) That he refuses to grow profitable crops suitable to the soil and generally grown in the locality.
- (4) That he refuses to accept in exchange for any plot of lands he cultivates lands of similar description with similar advantages.

In the very nature of the thing commutation should not be allowed.

9. It is only just that the landlord should have facilities for the recovery of rent by suit. It is only just at the same time, that each tenant's right should be properly safeguarded. No tenant should be deprived of the interest in the tenure behind his back. Tenants have been made jointly and severally liable for the rent. We should not go further and have the interest in the tenancy of those who are not parties sold in execution of a decree for rent.

It will be rather justice if it is provided that not any and every co-sharer landlord but only those who are entitled at least to half of the rent of a tenant would be entitled to sue under section 148A.

Co-sharer and joint landlords should not be treated alike. A definition of each should be given. Joint landlords should not be allowed to bring separate suits or make separate applications against the tenant. It should also be provided as to when a co-sharer landlord is entitled to bring separate suit or application against his tenant.

Co-sharer and joint tenant should also not be treated alike: each should be defined. Co-sharer tenants with several liabilities should not be made jointly liable and sued jointly.

*Clause 5—Section 3, Sub-clause (a).*—Joint and co-sharer landlords cannot and should not be treated alike.

(1) In suits as plaintiff joint landlords should come together. Five landlords having joint management and joint collection should not be allowed to bring five suits or make five applications to bring an unbearable burden of troubles and expenses on the tenants and give rise to difficulties as to shares and other matters.

(2) In cases of payment by the tenants and in cases of getting settlement of land one of the joint landlords may be taken as representative of all and any payment made to him and any contract made with him may be held as payment made to all or contract made with all. But that is not the case with co-sharer landlords whose management of property and collection of rent are separate.

(3) So with co-sharer tenants. The holding may be joint but the liability as to rent has been apportioned, different portions being assigned

to different co-sharer tenants. In such a case tenants are severally liable for their respective shares of rent by agreement with the landlord and in justice cannot and should not be made jointly liable. Separate suits or applications should be brought or made against them for their respective shares of liability. Besides, difficulties will arise as to adjustment of their payments and liabilities of ejection and in other matters.

*Sub-clause (b).*—Simple permission to cultivate land on condition that the produce is to be shared between the permitter and the cultivator with his own plough and cattle does not and should not constitute a tenancy.

(1) If a person unable, for the time being for illness or for want of time or for some other reasons, to cultivate a certain plot of land himself asks his neighbour having plough and cattle as also time to come to his help and cultivate the land on that condition for a season only he immediately loses the use and occupation of the land for ever. This is unjust and acts very harshly on the permitter and harshly also against persons having plough and cattle and time but no land to cultivate; for persons having lands will not permit him to cultivate for fear that the latter's very touch will deprive them of the land.

(2) So it will be throwing persons in peril into greater peril.

(3) A person may ask his neighbour to cultivate his land, the price of the personal labour of the cultivator or hire of the cattle and plough and other implements which the cultivator himself provides being paid by certain share of the produce. Here he cultivates on behalf of the land-owner, which is simply a case of hire or labouring partner, but acquires the right of tenancy.

(4) To permit another to cultivate, it may be with his own plough and cattle, on any condition is quite a different matter, and falls far short of giving the land to his use and occupation which constitutes only one of the elements of tenancy and should not be allowed to constitute all the elements. He does not acquire, nor does the other give him, the right to hold the land but only that he would cultivate the land to get a share of the produce. It cannot be said that while cultivating, the cultivator occupies or uses or possesses the land while the other ceases to do so. In fact the possession or occupation remains with the person who permits cultivation of the land for his own purpose.

*Clause 6, section 4, sub-section (i).*—Section 5 shows that tenancy means the right to hold land from another person for a certain purpose. The purpose is—

(a) in the case of a tenure-holder—"of collecting rent or bringing it under cultivation by establishing a tenant on it", and

(b) in the case of a subject "of cultivating it by himself or by the members of his family or by hired servants or with the aid of partners".

The purpose for which the right to hold land is acquired determines the status of the tenant. If a man acquires the tenancy for a distinct one of the two purposes his status is clear. But some tenants acquire the right to hold land for alternative or for both the purposes, the *patta* or *kabuliyat* containing the terms—নিজ আবাদে রাখিয়া বা প্রজা পত্তন করিয়া or নিজ আবাদে রাখিয়া ও প্রজা পত্তন করিয়া ভোগ দখল করিতে থাকিবে।

that "you may enjoy the land by keeping it under direct cultivation or by establishing tenant on it"; or "you may enjoy the land by keeping it under direct cultivation and by establishing tenant on it". Classification of such tenants under either head is difficult and illogical and impracticable. Such tenants must be classed under a separate heading. So also with the tenants the purpose of whose tenancy is not mentioned clearly or cannot be inferred from the terms of the *patta* or *kabuliyat*. Such tenants partake of the character of both a tenure-holder and a raiyat and their incidents should be partly those of a raiyat and partly those of a tenure-holder. I think it will be just that such tenant should have in point of enhancement the characteristics of a raiyat, in point of transfer also those of a raiyat except pre-emption, and in all other respects those of a tenure-holder.

Owing to the bilateral or dubious character such tenants should be called bilateral or dubious tenure-holders. Such tenants should not be classed as raiyats because the interest of their under-tenants and also their own may be affected.

So the tenure-holder should be classified as—

- (i) Tenure-holder including—
  - (a) permanent tenure-holder,
  - (b) non-permanent tenure-holder,
  - (c) bilateral or dubious tenure-holder.

It is to be noticed here that incidents of temporary tenure-holder have not been determined. And the only sections that have any application to temporary tenure are section 66 and section 167. The application of sections 6, 7 and 8 to temporary tenure is doubtful.

The character of temporary tenure-holders is similar to those of the non-occupancy raiyats and some provisions similar to those of Chapter VI, and conformable to the nature of non-permanent or temporary tenure, should be made in a separate chapter.

*Sub-clause (ii).*—All the words towards the end of the clauses (a) (b) and (c) beginning with the word “whether” should be omitted.

These words are misleading and make the classification confusing and over-lapping each other and very clumsy.

- (a) A raiyat at fixed rate cannot be a non-occupancy raiyat.

The right of a raiyat at fixed rate is “to hold land at the fixed rent or at the fixed rate of rent in perpetuity”. It is, therefore, heritable and permanent, so the occupancy right is there and only the rent is fixed, which is more.

If the interest of the raiyat at fixed rate is held voidable by a purchaser in execution of a decree for its own arrears of rent this does not take away the permanency and heritability which are the essential characteristics of occupancy right. It was under a wrong impression as to the nature of the right of a raiyat at fixed rate or without consideration of the nature, that he has been held to have no occupancy right and to be not an occupancy raiyat. The wrong impression should be removed.

Nor can the annulment under section 167 of a raiyat's or an under-raiyat's interest on sale in execution of a decree for rent of the superior tenancy be any longer said to destroy the conception of occupancy right or the occupancy right itself. The committee have been able to conceive and confer the occupancy right on some under-raiyats only against the immediate landlord. This means that on sale of the superior tenancy in execution of a decree for rent thereof the under-raiyat's interest though with occupancy right will be annulled under section 167.

- (b) An occupancy raiyat cannot hold at fixed rate. The moment he is given the right to hold at fixed rate he goes up to the class (a), *i.e.*, becomes raiyat at fixed rate.

- (c) The non-occupancy raiyat cannot hold at fixed rate.

The non-occupancy raiyat cannot hold for more than twelve years, his rent then can be fixed only for a period less than twelve years, *i.e.*, not in perpetuity.

At the end of the term of his lease, he may be ejected under section 44 or section 46. If he holds beyond twelve years, he becomes an occupancy raiyat and is then liable to pay a fair and equitable rent under section 24.

From what is shown above it appears that the idea of the right of occupancy is a confused one, confused with the status of the occupancy raiyat which means a bundle of rights and privileges almost inseparately connected and conceived with the subject of it. Define and conceive the right of occupancy as an abstract quality apart from its subject, the conception becomes clear and by application of that conception one can easily find out which of the several kinds of tenants has that right of occupancy and which has not.

The word "occupancy" before the class of raiyat now termed as "occupancy raiyat" contributes in not a small degree to the confusion. The word "occupancy" fixes and confines the mind in its search for the occupancy right to that class of tenant which is called by the name "occupancy raiyat" to the exclusion of all other classes of tenants or under-tenants; and it appears to be a very forcible attempt to try to find out the right of occupancy in or to attribute that right to any classes of tenants or under-tenants other than that particular class. So for the clear understanding of the several classes of tenants or under-tenants in their true nature, the use of the word "occupancy" as a prefix to any particular class of tenants should be avoided.

It is now proposed clearly to recognise the right of occupancy in the rent-free raiyats and fixed rent raiyats; besides that class which has hitherto been called occupancy raiyat as also in a certain class of under-aiyats. The right of occupancy is then now clearly recognised, as an attribute common to several classes of tenants or under-tenants. And to avoid confusion and to ensure accurate understanding the right of occupancy should be clearly defined as an abstract quality and the use of the word "occupancy" as a prefix to any particular class of raiyat should be avoided.

Permanent stay or stability of the raiyat in the holding or village was the (customary or otherwise) necessary outcome or inseparable accompaniment of the status of an occupancy raiyat or the right of occupancy in him, and that has now been recognised in law. So if the word "stable" is used as a prefix to that class of tenants or under-tenants that have the right of occupancy and the word "unstable" as a prefix to that class of tenants or under-tenants that have not that right, they will clearly indicate the true character of the raiyat without fail or without confusion. If the word occupancy is to be retained, the words "simple occupancy" instead of the word "occupancy" may serve the purpose.

In the cases of rent-free raiyats and fixed rent raiyats the word "stable" need not be used. They have the right of occupancy but their right to hold rent-free or at fixed rent includes and prevails over the right of occupancy. Besides the use of the word "unstable" in connection with that class of raiyats that have not the right of occupancy clearly indicates their stable character and the right of occupancy.

Rent-free holdings have been recognised as raiyati holdings and the payment of landlord's fee on transfer has been enjoined upon the purchaser of a rent-free holding in section 26 of the present draft bill. So the rent-free holding must find a place in the classification of the tenants and raiyats and its incidents whatever they may be, defined negatively or positively.

So then—

- (1) the right of occupancy should be clearly defined; also the status of occupancy raiyat clearly defined and distinguished from the simple occupancy right,
- (2) the classification of raiyats should be made.

And that as follows—

Raiyats including—

- (a) Raiyats holding rent-free.
- (b) Raiyats holding at fixed rate, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity.
- (c) Stable raiyats or simple occupancy raiyats, i.e., raiyats having a right of occupancy in the land held by them.
- (d) Unstable raiyats or non-occupancy raiyats, i.e., raiyats not having such a right of occupancy.

The raiyats holding rent-free may be dealt with in the same chapter as raiyats holding at fixed rate, i.e., Chapter IV. The reason for this will appear in notes in that chapter.

*Sub-Clause (iii)*—Sub-clause (ii) of section 4, deals with under-raiyats. Following the principle indicated above the under-raiyats should be classified as—

- (a) Stable or simple occupancy under-raiyats.
- (b) Unstable or non-occupancy under-raiyats.

But as an under-raiyat could hitherto acquire by custom the right of occupancy and as there is no bar to a raiyat holding rent-free or to a raiyat holding at a fixed rate granting his under-raiyat the right to hold rent-free or at a fixed rate or to the under-raiyat, having by custom the right of occupancy, acquiring also by custom or grant from his landlord, the raiyat, holding rent free or at a fixed rate, the right to hold rent free or at a fixed rate, two more clauses should be added.

- (a) Under-raiyat holding rent free.
- (b) Under-raiyat holding at a fixed rate.

The instances may be rare but must be provided for and not neglected.

*Clause 7, section 5.*—To sub-section (4) of section 5 should be added the following clauses :—

- (c) the circumstances existing at the time of the creation of the tenancy; or
- (d) the course of dealings therewith.

The local custom is of help in determining whether a tenant is a tenure-holder or a raiyat in a very limited number of cases.

The purpose for which the right of tenancy was originally acquired can be proved only in those cases in which the document creating the tenancy is available and sets forth the purpose in clear terms or contains terms from which the purpose can be clearly gathered. But even in some cases the purpose or the intention of the parties cannot be gathered from the terms of the document alone but it requires the help of the light that is thrown by the consideration of the circumstances existing at the time of the creation of the tenancy (*vide Watson & Co. vs. Mahesh Narain Roy, 24 W.R. 176*). Here even the course of dealing with the tenancy is of great help.

In cases where the documents contain no terms indicating the purpose of the tenancy, or in cases in which the document creating the tenancy is not available the purpose can only be gathered from—

- (a) the circumstances existing at the time of the creation of the tenancy; or
- (b) the course of dealings therewith.

*For instance of (a).*—If a person a cultivator by caste and profession and residing at home takes settlement of cultivable lands near his home, it may safely be taken that he takes settlement of the land for cultivation; while if a person, being a writer or service-holder by caste and profession takes settlement of lands far from the place of his service and residence, it may safely be taken that he takes it not for the purpose of cultivation but for the purpose of making profit by collecting rent from established tenants. Justice Field in *Durga Prosanna Ghose vs. Kalidas Dutt (9 C. L. R. 449)* makes the circumstances existing at the time of creation of the tenancy the only test. He begins with the remark “the only test of a raiyat’s interest which can be applied in the present state of the law is to see in what condition the land was when the tenancy was created.”

The state of law is almost the same since then. The circumstances have not changed much since then, or if changed in some cases or to a certain extent there are many cases in which the circumstances remain the same.

*For instance of (b).*—The course of dealings with a tenancy is settled according to its nature at the time of its creation and continues thereafter to be the same though the document creating the tenancy might be lost, the parties conscious of each other’s rights and liabilities implicitly following that course of dealings that were settled at the time of the origin conformably with their status. And if there is any deviation the parties would certainly disagree and friction would arise.

A tenancy of two hundred bighas or somewhat more wholly under cultivation of the tenant for a good many years past can safely be said to be held for cultivating purposes.

So from the course of dealing with a tenancy one can safely infer the original intention of the parties and the nature of the tenancy.

The course of dealing as a means of ascertaining the original nature and intention of a grant has got juristic recognition. "It may be shown by evidence as to the nature of the enjoyment what a grant in its origin was. This is in fact only an application of the general maxim *optimus interpret rerum usus*." It was followed in *Nidhi Krishna Basu v. Nistarini Dasi* (21 W. R. 386) also in *Haridas v. Upendra Narayan Shaha* (10 C. W. N. cxxviii).

So it is clear the existing circumstances at the time of the creation of a tenancy as also the course of dealing therewith give good light enabling one to have a clear sight of the original purpose and the nature of tenancy. One refusing to use such a light shuts one's eyes against the light which shows the thing. If a person uses a presumption however lawful to the neglect of such a light he places an opaque disc between the light and the thing perceivable with that light and only pretends to see by refusing to see.

Much of the rights and liabilities of tenants depend on the determination of their status and if we refuse to use the means available for such determination we refuse to do justice to them and that to the loss of their tenderly cherished rights. So the two sub-clauses proposed ought to be added to sub-section (4).

*Section 5, sub-section 5.*—Sub-section (5) of section 5 should be repealed.

The presumption raised by the sub-section is an arbitrary one and in effect takes away much of the rights from and causes great hardship upon the tenants.

The original tenant when he first took settlement of a tenancy much exceeding a hundred standard bighas might have been in a position to employ a score of labourers or might have had a score of partners or *बगिरा* or *बागिरा* each using three or four ploughs and would require (at the rate of five acres per plough or *hal* as is the measure in Jalpaiguri) lands in area far exceeding one hundred standard bighas—say three hundred bighas. Besides a cultivator might take lands a large portion of which he would choose to keep fallow, he might require some lands also as pasture for grazing cattle. In times fifty or sixty years before, the number of cultivators was few and lands were abundant and every man kept land much more than what he could cultivate by himself or members of his family, or by hired labourers or with the aid of partners. Actually there are persons who cultivate in the manner described above lands in area far exceeding one hundred standard bighas. And to give effect to the presumption raised by sub-section (5) to the neglect or to the ignorance of those facts is a serious injustice and a great prejudice to the rights of the tenants.

A man took settlement of three hundred bighas of lands for direct cultivation. He cultivated some of the lands, some lands he kept to allow as pasture ground for his cattle. He cultivated the remainder by himself and three or four members of his family and with the aid of seven or eight partners, employing say fifteen *hals*, so calculating at the rate of 5 acres or fifteen bighas for each *hal* (that is the rate in the district of Jalpaiguri) twenty ploughs take the whole of the three hundred bighas of lands. There are actually a good many of such holdings and cases of cultivation.

Now many years after the question of status is raised. The court is bound to make use of the presumption of sub-section (5) of section 5, whether the whole land is still under similar cultivation or partly under cultivation and partly under tenants or wholly under tenants. The tenant cannot show the original deed and is determined to be a tenure-holder. Then the question arises whether he is a permanent tenure-holder. As he cannot show the original deed he is determined to be a temporary tenure-holder, thereby losing his occupancy right in the lands and becoming liable to be ejected under section 66 or some other provision of the Act, and his interest is liable or to be annulled under section 167. Even if he is determined to be a permanent tenure-holder his rent becomes liable to enhancement under section 7,

and only a small portion of the large profit he might have earned by his labour and capital is left to him, the larger portion going over to his idle landlord. This is a great hardship and injustice too.

*Place of the definition of occupancy right and transfer of sections 20 and 21.*—Section 4 classifies the tenants, section 5 gives the definition or description of the different classes of tenants. It has been shown that the occupancy right should be defined or described as an abstract quality apart from its subject. The occupancy right is an attribute common to some classes of tenants and the proper place for that definition or description is Chapter II, which deals with all the classes of tenants generally and their general rights, and that below section 5.

It is proposed clearly to recognise that a raiyat at fixed rate can acquire status of a settled raiyat of the village. If holders of rent-free lands are to be recognised as raiyats it should also be clearly recognised that they also can acquire that status of a settled raiyat. On looking to the wording of sections 20 and 21, it is clear that a raiyat of any class whatsoever can become a settled raiyat of the village, when a right of occupancy is acquired in all lands for the time being held by him as a raiyat in that village. The intention of the general application of this principle of settled raiyat to all classes of raiyats seems to have been limited to a particular class of raiyats only by the provision of sections 20 and 21 being placed in Chapter V, which deals with what is technically known as occupancy raiyat. Now, as the scope of these two sections is clearly widened they should be taken out from their place of confinement and be placed in Chapter II which deals with tenants generally, that will, clearly indicate the general applicability of those two sections. As a consequence, the sections between sections 5 and 22 should have to be re-arranged in their proper sequence, the section defining or describing "occupancy right" coming next after section 5, then section 20, and then section 21, all these within Chapter II.

For similar reasons section 19 should be transferred to Chapter II.

The above arrangement of the sections showing their applicability to raiyats generally will do away with the necessity of the amending clause 14 of the draft bill.

*Clause 8, section 7.*—In sub-section (g) clause (d) the words "10 per cent." should be "20 per cent."

The expenses of collecting the gross rents are to be deducted but these are ordinary expenses. Sometimes complicated litigations arise causing great deal of expense and troubles. These expenses are not foreseen and taken into the amount of ordinary expenses, and though only occasional eat up the income of 10 per cent. of, say, 10 years. There are other expenses also—the expenses in connection with the payment of his rent to the landlord, both legal and illegal, whether there is any litigation or not. The illegal expenses are determined to stay, however strict may be the course the legislature may take to suppress them; they have continued to stay from the time of the Permanent Settlement, defying all enactments. These expenses are not quite inconsiderable. All considered there should not be left to the tenure-holder a profit less than 20 per cent.

*Clause 10, section 9.*—"From the date of such decree" should be "from the date on which by the decree or order the enhancement commences to take effect."

Section 154 fixes the date on which the decree for enhancement takes effect. A rest of full 15 years should be allowed. The date of decree may mean the date on which the decree was passed by the Court.

*Clause 11, section 13A.*—The new section 13A is a penal one and must be clear. It may be held to be clear as regards intestate succession but not so as regards testamentary succession. I think the penalty should not be imposed upon a testamentary successor until after six months from the date when probate or letters of administration are taken or the testamentary successor comes into possession of the permanent tenure.

So also in section 14(2).

The principle has been adopted and given effect to in section 26C.

*Section 14.*—Sometimes a natural heir or testamentary one pays the *nazar* on an impression that the payment of the *nazar* will secure to the payer some superior advantages. Then after probate proceedings the table is turned. In such a case the landlord ought not to get the landlord's fees over again, and so a proviso should be added to section 14 to the effect that "for a succession depending on one occurrence the landlord shall not get more than one fee, though the successor may be changed."

*Section 15.*—In the new section 15 between the words "the Court shall" and "before confirmation" should be inserted the words "except in cases where the decree-holder or the purchaser himself is the landlord".

The reason is obvious, the landlord is to be served with a notice of the transfer and to be paid the *nazar*. But if he himself is the decree-holder or the purchaser he is more cognisant of the fact of the transfer than anybody else. If he is the purchaser only, he should not be required to pay himself through the Court. If he is the decree-holder only he invites people to come and bid for the permanent tenancy put to the auction, and should not charge any fee. This has been adopted as a general principle and was applied in section 26F in the case of occupancy holdings and should be applied here also.

*Clause 14, section 18.*—The raiyat at a fixed rate has occupancy right in his holdings and should become a settled raiyat after he has held that for a period of twelve years. Having a right of occupancy and being a settled raiyat in the village are two different things. The occupancy right relates to the self-same holding but the status of being a settled raiyat of the village enables the subject of it to acquire occupancy right in this and in all the other lands for the time being held by him in the village as a raiyat.

The raiyat at a fixed rate acquires the right to hold the land at that amount in perpetuity, *i.e.*, in addition to other rights he acquires, he acquires an indefeasible permanent heritable right, with protection from ejection except on the ground that he has broken a condition consistent with this Act, on breach of which he is, under the term of the contract between himself and his landlord, liable to be ejected—which is the occupancy right. The occupancy right being already with him in respect of the holding it is ridiculous to require the raiyat at a fixed rate to acquire that very right in that very holding by becoming a settled raiyat of the village, after waiting for it twelve years. He is allowed to acquire the status of a settled raiyat, which enables him to acquire occupancy rights in all other lands.

According to some rulings a purchaser of a tenure in execution of a decree for rent thereof can annul the interest in a holding at a fixed rate within the tenure so held.

This is, I think, because a raiyat holding at a fixed rate is treated similarly with tenures as regards some incidents and differently from the occupancy raiyat, and no regard was paid when the decision was made to the nature of the right of a raiyat at fixed rate.

The committee agree clearly to recognise the right of occupancy in the raiyat at fixed rate. The whole clause 14, with sub-sections (c) and (d), as in the white draft bill should be restored, if the present arrangement of sections is to be maintained.

*Clause 14, sub-clause 2, section 18.*—The new sub-section (2) of section 18 is redundant and confusing and should be taken off.

1. (1) The Chapter IV is devoted to raiyats at fixed rate and the Chapter V to those who are technically known as occupancy raiyats. The two chapters are exclusive of each other and should remain so.

(2) The raiyat at fixed rate is clearly recognised as being capable under section 20, to become a settled raiyat of the village and as a consequence section 21 becomes applicable. These two sections are made applicable by express provision of law or by necessary implication.

(3) The clear recognition of a raiyat of occupancy in him does not make him an occupancy raiyat as technically known and renders him liable to pay a fair and equitable rent under section 24; the fact of the fixity of his rent barring for ever the possibility of the question of the rent being fair and equitable or being enhanceable.



- (4) So the sub-section (2) is redundant and if sections 20 and 21 be transferred to Chapter II the necessity of reference for a raiyat at fixed rate to Chapter V is altogether avoided.

2. (1) The rent-free holdings stand on similar grounds with the fixed rate holdings. In the former case the rent is fixed to an amount which is nil; in the latter, the rent is fixed to an amount which is certain. In both the cases the rent is fixed to an unalterable amount in perpetuity.

In the case of rent-free holdings the right of occupancy is explicitly recognised, in the case of fixed rent holdings the right is there and should be explicitly recognised.

- (2) The modes of transfer in both the cases are similar also.

For the above reasons the section 26J dealing with transfer of rent-free holding should be transferred here as section 18I. This will avoid much confusion and the clumsy mention of the rent-free holding in sections 26 and 26G.

*Clause 18, section 19.*—A verbal change is necessary. In sub-section (F) of section 19 the words "this Act ..... 1917" should be "this Act as amended by the Amending Act of 1922."

The present Amending Act should be referred to.

*Clause 21, section 23A.*—(a) The raiyat should have full right in all the trees in his holding, or (b) if that is not acceptable and the zamindar should get a share of the price of the timber only of certain trees, viz., sal, sisu and sagoon, the trees should be mentioned by name and not by description.

2. It seems that the intention of not allowing the raiyat to cut down trees seems to be to prevent him from mercilessly cutting down trees in his holding and then abandoning it and thus impairing the value of it.

The land had then no value, the raiyat's interest was doubtful, lands were plenty and the raiyats might leave one holding for another. The fruit trees, specially the mango and kantil trees, were much valued for their fruit and tempting. And so to retain the value and the tempting character of the holding those trees were not allowed to be cut down. But the circumstances have changed now. The lands are not much available, the raiyat's interest is certain and he has an interest to keep the trees standing, as that will add to the price. There is no necessity of protection of trees, and the raiyat should have full right in trees.

3. Already raiyats have full right in trees in many localities, and this right should in no way be disturbed.

4. Where zamindar's permission for cutting trees is necessary permission is asked for different kinds of trees in different localities. In Rangpur permission is necessary hardly for any other kind of trees than sal, sisu, sagoon, mango and kantil. No permission is necessary for cutting jam trees, tal trees in Rangpur and Dinajpur. Nowhere the right of the raiyat should be disturbed. As to the share to be paid to the zamindar the maximum should be fixed, as the rate of *nazar* for trees varies in different localities.

5. The pecuniary gain for trees to the zamindar is very trifling but for matters concerning trees the friction and animosity between the raiyat and the landlord's *amlas* particularly is very great. The landlord's *amlas* often tax for cutting even a small branch of a tree. If the full right in trees is recognised to be in the raiyat, or in case of that not being acceptable, if the zamindar is given a share the maximum of which is not more than four annas in the rupee of the price of the timber of a certain trees mentioned by name, then a good deal of trouble is avoided.

*Clause 22, section 26B.*—The words "and bequeathed" should be added after the words "capable of being transferred", to make the meaning clear and bring the wording of this section in line with the wording of section 11.

*Section 26D.*—The relinquishment or surrender by a Hindu widow only accelerates the succession to the reversioner and should be included in the term succession as in the explanation to section 13, and be exempted

from the operation of the sections 26D and 26G. The exemption should be clearly mentioned. The words "or in cases of relinquishment or surrender by a Hindu widow accelerating succession to the reversioner" should be inserted in a proper place in both the sections 26D and 26G, or an explaining clause should be added to the interpretation section 26K.

The principle involved here has been adopted by the committee as a general one.

A gift by a person to his immediate natural heir is, in a manner, a succession made to take effect by the predecessor in his lifetime, and should be treated in the same manner as succession. An ancestor, say a father, with the view to avoid friction among his sons after his death, may himself divide the property and give to each his allotted share by a deed of gift. Thus it is in a manner accelerated succession.

2. This section fixes the landlord's fee on transfer of occupancy holding "at 25 per cent." of the consideration money or six times the annual rent of the holding whichever is more.

I think—

- (1) (a) Only one mode of assessment of the landlord's fee should be adopted either a certain percentage of the consideration money or a certain times of the annual rent, preferably the former.
- (b) If the landlord's fee is to be fixed in the alternative form as it is, in place of the words "whichever is more" there should be the words "whichever is less."
- (2) The maximum rate but not a fixed one should be adopted.
- (3) That the maximum rate should not exceed 12½ per cent. of the consideration money or three times the annual rent.
- (4) In all cases of transfer whether in or out of Court the payment of landlord's fee should be a matter to be transacted between the parties.
- (5) The existing right of transfer by raiyats of occupancy holding in any locality without landlord's consent should be maintained. The right is shown in the Settlement Records.

My reasons are as follows:—

- (a) A and B are two holdings exactly similar in quantity and quality and locality but differing in point of annual rent, Rs. 15 having to be paid for A, while Rs. 30 for B. Both are sold. A with the rental Rs. 15 a year must fetch at least double (say Rs. 400) as much (say Rs. 200) as B with the rental Rs. 30 would. The price is in the inverse ratio of the amount of the rent. The higher the rent the lesser the price, the lesser the rent the higher the price. In some cases the full selling capacity will bring the price which amounts to nearly six times the annual rent. And if the landlord takes on transfer of B, six times the rent, that is, Rs. 180, which is greater, almost the whole of the sale price goes to the landlord. The landlord exacts once by way of higher rent that lowers or exhausts the selling capacity of the land and if the tenant's labour and capital raises that capacity to a certain extent the landlord exacts six times the annual rent, which is almost the whole of the price, or much greater than say 25 per cent. of the consideration money. So there is double exaction by the landlord while there is the double suffering of loss on the part of the tenants. The injustice of the case is clear.

If the landlord is to take whichever is less, he may suffer while the tenant may gain. There are difficulties in both ways. These difficulties can be overcome if a certain percentage of the consideration money is fixed as the landlord's fee. In this way the selling capacity of the land is not much taxed and both the landlord and the tenant get their allotted shares fairly.

If the landlords' fee is fixed at a certain time of the annual rent, there is the great advantage of clearness and indisputability. But then the selling capacity of the land has to be seen. And if a certain number of times the annual rent is to be taken as the rate of the landlord's fee, the number should be so low as not to go in any case beyond the 25 per centage of the selling capacity. So three times the annual rent should be fixed at the most.

2. The maximum and not a certain rate should be fixed.

The selling capacity of lands is not the same everywhere as also the rate of *nazar* on transfer is not the same everywhere. A rate of *nazar* bearable in one locality is unbearable in another. In different localities different rates have developed into customary rate. In some localities the landlords and the tenants have come to agreement as to the rate of *nazar* on transfer, as the tenants of the Goyabari pargana agreed by registered *kabuliyat* to pay to the landlord, the Hon'ble Maharaja of Cossimbazar 10 per cent. of the price as *nazar*, while very recently the Zaminder of Tusbhander in the Rangpur district has issued *parwanas* declaring that only three times the annual rent shall be charged on transfer of a holding in his estate Bamania in the Nilphamari Sub-Division of Rangpur. The landlords and the tenants of the Butasan pargana have come to an agreement as to the rate of *nazar* on transfer.

The rate of *nazar* varies greatly in different localities and to fix an inflexible rate for all the places will be inflicting great hardship on many localities owing to the whole price going to pay up the *nazar*, and render the right to exist in name only, and will certainly infringe the present right whether concessional, contractual, or customary of the tenant; the fixing of the maximum rate will on the one hand put a check to the unpropitiable avarice of some landlords, and on the other hand, avoid the difficulties mentioned above.

No inconvenience arises; as now the payment of landlord's fee is a matter between the parties. They will settle the amount according to the customary rate of the village or locality. The rate for each locality can be determined by the Collector.

3. The maximum rate of *nazar* on transfer should not be more than 12½ per cent. of the price, or three times the annual rent.

4. It is desirable that the payment of *nazar* should be left to the parties. That will provide accommodation of each other.

5. In some localities, the occupancy raiyats have acquired by custom the right of transfer of their holding without landlord's consent. This is an existing right and should not be taken away. The record-of-rights contains such a particular.

*Clause 22, section 26 D—The proviso.*—I think the proviso to section 26 D should be omitted. In case of (a) a certain percentum of the consideration money and in case of (c) certain times of the annual rent have been fixed as *nazar*; and that only should be maintained only the rate should be much lower. If litigation for determination of the market value is allowed a good deal of trouble will arise and there is no reason why this sort of litigation should not be extended to other cases of transfer.

The committee, recognising the necessity of avoiding litigation, have by majority conferred the right of pre-emption or rather of post-emption to the landlord to avoid undesirable persons. The necessity to avoid litigation is greater here; besides, if the right of pre-emption or rather of post-emption is granted to the landlord as a safeguard against under-valuation there is no necessity of bringing a case for determination of the market value of the holding transferred. The double security given to the landlord causes double uncertainty to the tenant selling, and his purchasers; and consequent double suffering in the matter of depreciation of the value of the land and in the matter of trouble and pecuniary loss.

*Clause 22, section 26 F.*—The proviso to sub-section (1) section 26 F, should be omitted.

The price fetched by the auction sale should be accepted as the fair price. If the landlord is given the right to apply for determining the

market value of the holding, the purchaser should also be given that right, as the market value is taken as the standard on which the *nazar* is to be assessed, and as in auction sale the price fetched is sometimes lower and sometimes higher than the market value.

The proviso might affect the decree-holder or the judgment-debtor in the execution case in which the holding is sold. Suppose a holding is sold in execution of a decree at Rs. 20, and the landlord within one month of getting notice applies, under this proviso, to fix the market value of the holding. The market value is found to be and fixed at Rs. 200. The judgment-debtor comes six months or a year after and applies to set aside the sale on the ground of fraud, collusion or material irregularity in the publication of the sale proclamation, and points to the value settled in the proceedings under the proviso. The sale is set aside which affects the decree-holder, the purchaser and to certain extent the landlord also. The landlord, if dissatisfied with the low price may demand and realise *nazar* according to the other mode.

It is most desirable that the payment of landlord's fee on transfer should as far as possible be settled by the party themselves without reference to courts. Here the payment of the landlords' fees may be left as a matter to be settled by the parties themselves, the Court conducting the sale being required to serve notice of the transfer upon the landlord and to decide any dispute in other respects that may arise.

*Clause 22, section 26G.*—The relinquishment or surrender by a Hindu widow in favour of the reversioner, as also gift by one to his immediate heir, should be exempted from the operation of this section. (See my note on section 26D.)

1. The right of pre-emption or of post-emption should not be given to the landlord.

(1) The landlords want it as a safeguard against—

- (a) undesirable persons coming in.
- (b) under-valuation.

(a) As to avoiding undesirable persons I may ask, who are the undesirable and who are the desirable persons? A tenant who is already in the estate and passes to be a good one is certainly not an undesirable person. The zamindar if required will himself give him a very good character certificate but yet the prerogative is to be exercised against him. The truth has been said by a landlord himself that the chief value of pre-emption was to guard against under-valuation. The zamindar did not in fact lay great weight upon it as a safeguard for keeping out undesirable persons coming in as long as any persons paid the *salami*.

(b) So the value of the prerogative of pre-emption or post-emption is admitted to be not as against the undesirable person, as in fact there are no such persons in the eye of the zamindar if he can pay the money, but against under-valuation. A highly cultured gentleman's remark to this was: "If it was the main object of the pre-emption clauses it would be an advantage to cut them out altogether, and to give the zamindar a right of appealing to the court on the ground of under-valuation in every case of transfer".

We think this is the proper course and this should be adopted. There will then be one procedure to be followed.

2. There are some other reasons against this prerogative of pre-emption.

(a) By the exercise of this prerogative the landlord will be able to avoid any person. So the intending purchaser does not know and cannot be sure whether he will finally have the lands. By purchase he takes an uncertain right and he is unstable till the period of two months passes and the landlord does not exercise that right. This uncertainty and the consideration of the troubles and worries will deter the intending purchase. So the demand of land will be much spoiled and the value of land will be much reduced.

(b) The zamindar and the *amlas* now finding themselves free from the burden of getting the purchaser ejected by suit will laugh and threaten exercising the right of the so-called pre-emption, and will try to exact as

much more money over the prescribed *nazar* as possible. *So the fixity of landlord's fee will go out and the position will be as uncertain as now, or even worse, as now the bar to ejectment is removed.*

(c) The rich zamindars will exercise that right and will take the land in khas possession and then on exacting money to the amount of their hearts' desire will settle the land with that very person or any other who can satisfy them.

(d) Conscious of the very easy way of getting the lands into khas possession by the exercise of the prerogative, the zamindar's cunning *amlas* will demand satisfaction and make exacting settlement with the still unstable purchaser for persuading the zamindar not to exercise that prerogative.

(e) Persons in the neighbourhood of the land sold or elsewhere disappointed or baffled, or jealous of the unstable purchaser or eager themselves to have the land anyhow, will offer higher and higher bid of *nazar* to the zamindar and of bribe to the *amla*. The zamindar or his *amlas* cunning and laughing will, with the object to get as much as possible out of it, take advantage of the position, instigate the persons against each other and set them to quarrel and bite each other for getting the land. And in all these matters, the poor unstable purchaser will in no inconsiderable degree be ulcerated in body, mind and money. The considerations of the unstable character of the purchaser and the worries and anxieties as also of the expenses attending thereto will make the intending purchaser halt and think seven times and make cautious settlement, if possible, before he takes the leap of getting the *kabala* executed and registered. This takes much off the value of the land and the tenant's rights of transferability recognised become useless.

3. Some of the members of the Committee agree to give the right of pre-emption to the zamindar under the impression that the zamindars have now by extravagance rendered themselves insolvent and have no money that may be deposited in court for getting the holding transferred to themselves. But I do not entertain that uncharitable impression. If some of the zamindars have not sufficient money others are sufficiently rich and they are the persons most to be feared. And if the zamindars have no money, and other persons have got it, they have sufficient cunningness, and if the zamindars have not got that virtue their *amlas* have it in a very intensely brilliant degree, and by the exercise of that virtue they will continue to bring other people into the arena of rivalry for the land, satisfy their greed to the great worry and ulceration in money and other things of the unstable purchaser, ultimately rendering the transferability almost useless to the raiyat, the original owner of the land,

Some objections may be raised against having really undesirable persons in the neighbourhood of the zamindar's house. The objections appear reasonable and the prerogative of pre-emption or post-emption might be conceded to the zamindar in such cases with reasonable safeguards.

*Sub-section 2* — Any sum due at the date of sale on account of mortgage of the land transferred is deemed to be included in the term consideration money under sub-section (3) 26 K. The mortgage debt might not be known at the time of sale or might not be stated in the notice of transfer. But if such mortgage debt comes to be known during the proceedings under section 26G, sub-section (1) or (2) after the proceedings are over some provision ought to be made for due payment of the mortgage debt.

The sub-section should be so formed as to make this clear.

Towards the end of the sub-section (1) should be added something to the effect "or direct the refund to the landlord of the balance, if any, after payment to the purchaser of the amount of the consideration money *plus* the compensation 10 *per centum*."

The reason is this: The amount if stated incorrectly in the notice may be either more or less than the right amount of consideration money. The landlord has to deposit the full amount of money stated in the notice. In case of a less amount being stated and consequently deposited, the landlord shall be required to pay the balance; in case of a larger amount being stated and consequently deposited, he shall be entitled to get back the balance.

In case of the transferee being divested of his right, all the four clauses (a), (b), (c) and (d) of section 156 should be applicable.

Clause (b) has reference to the stage of cultivation before actual sowing or planting. It will be detrimental to the interest of both the purchaser and the landlord if the application of that clause is refused. Suppose the holding is sold when intense preparation of the land for sowing or planting is necessary. If the purchaser does not prepare the land as required in that season, he is the loser if the landlord does not exercise the right of purchase, the landlord will be the loser if he exercises that right. For if the season of preparation for cultivation passes away without the necessary preparation being made, the land remains unsuited for sowing or planting which then becomes impracticable.

*Proviso of sub-section (4) of 26 G.*—If pre-emption is allowed at all and if a co-sharer landlord is allowed to apply for it, this provision should be just to all the co-sharer landlords. If the co-sharer landlord whose share is more than half is antagonistic to the other co-sharer whose interest is less than half, the larger sharer may with a view to defraud the minor sharer apply under section 26G on the last day of the two months allowed for such application. The minor sharer becomes a victim to the larger sharer's antagonistic caprice. The minor sharer may be eager and seeking to make the application, but he is not entitled to do so, or to join the larger sharer, but he is avoided somehow or other by the larger sharer. The minor sharer then should have some remedy when a co-sharer landlord applies under section 26G. The larger sharer should do it within one month of the receipt of the notice of transfer and give notice of the application in the same manner as under section 148A.

*Section 26H.*—This section should be omitted altogether.

1. The landlord gets the interest of the raiyats transferred to himself so he steps into the shoe of the raiyat selling, and should take subject to what any other person would take under the law.

2. The landlord should take for what he pays the consideration money and he should take what the original purchaser takes, that is, subject to incumbrances, that includes sub-tenancy as also "any sum due at the date of sale on account of mortgage of the land transferred which the purchaser has paid or agreed to pay on account of rent due before the date of the the transfer". The latter is included within the term "consideration money" under sub-section (3) of section 26K, and must be paid by the landlord under sub-sections (1) and (2) of section 26G. If that is protected against the land-lord, the sub-tenancy should also be protected against the land-lord, for which the landlord does not pay any consideration.

3. If the under-raiyat is avoided because of the landlord being the pre-emptor the mortgage debt ought to be avoided, as in the case of a sale in execution of a decree for its own arrears of rent, for both the sub-tenancy and the mortgage are incumbrances created on the holding by the raiyat.

4. The fact of the acquirer here being the landlord and his paying 10 per cent. of the consideration money should not affect the position in any way. The right of pre-emption is intended as a safe-guard against undervaluation and not as a substantial right to secure extra gain to the landlord.

5. If the raiyat sub-lets and thereby does not render the land unfit for tenancy, that is, unfit for settling it at a rent equal to what the raiyat used to pay, the landlord does not suffer any loss.

6. Section 26H will supply much scope of underhand dealing for the ejection or ruin of the poor under-raiyat. The real purchaser (or sometimes the raiyat himself settling the land to under-raiyats on receipt of a *nazar*, and then falling out) would get the land purchased in the name of a third person and then get the landlord to purchase the land under section 26G and then after getting all the under-raiyats ejected under section 26H get settlement of the land to himself.

*Section 26I.*—The limitation of usufructuary mortgage to 9 years will act very harshly on the raiyat and will sometimes compel him to sell a portion of his land where he can retain it if only he is allowed to enter into complete usufructuary mortgage for a few years more.

*Section 26J.*—The section 26J should be transferred to Chapter IV, below section 18, for reasons stated there.

*Section 26K, Sub-section 2.*—A clause should be added to the effect that in sections 26J and 26G the term transfer does not include (a) relinquishment or surrender by a Hindu widow to the reversioner which is included by the term succession, or (b) gift by one to his immediate natural heir.

(For reasons see my note on section 26D.)

*Section 26K, Sub-section 3.*—The consideration money should not be deemed to include all the sums due at the date of sale on account of mortgage of the land transferred but only such sum due on account of mortgage which has been paid or agreed to be paid by the purchaser. The reasons are: (a) Some mortgages which might not have been known at the time of sale and were not taken into consideration might be known thereafter which, if included into the consideration, the amount may rise to an amount which is far in excess of the market value of the holding sold. (b) Sometimes the dues on simple mortgage are very large, the creditor out of pity to the debtor remits the large portion of the dues and takes in satisfaction of the remaining sum by purchase a holding worth only a very small portion of the whole dues, say one fourth. In all such cases if the consideration money is to include the whole amount of debt on mortgage it will be great hardship on the raiyat and the purchaser. The pity which is so soothing and so favourably inclined to come forward to the rescue of the helpless debtor, and which a liberal creditor is naturally inclined to show to him, will feel very shy to rise and act or will not arise and act at all in the mind of the creditor, however liberal he might be.

In the proceedings of the 18th August the principle accepted about payment of the mortgage debt or arrears of rent was the same but it was applied in case of arrears of rents and not in case of mortgage dues.

*Clause 23, section 36.*—The words “from the date for the decree” should be “from the date on which, by the decree, the enhancement commences to take effect.” Section 154 provides for the date on which the enhancement is to take effect. There should be a rest of full fifteen years.

*Clause 25, section 40.*—The proceeding under this section should be in the hands of the Civil Courts except where settlement of rent is being made under Chapter X in which case it should be in the hands of the Revenue Officers.

*Clause 25, Sub-section (5).*—In case of (a) and (b) the Court should not allow consideration. The produce is required as necessaries of life and if the produce rent is commuted into money rent, great hardship will be caused to the landlord. If the landlords are widows or other helpless persons, the hardship will know no bounds.

*Clause 25, Sub-section (6).*—If the application is unopposed the Court or Officer entertaining the application must be fully satisfied that the notice under sub-section (4) was duly served.

*Clause 25, Sub-section (8).*—In determining the amount of premium the principle—that the amount of premium should not be more than fifteen times the annual rent settled under sub-section (6)—should be discarded; the words towards the end of the sub-section (8) beginning with the words “but the amount” should be omitted.

(1) The principle objected to involves the unreasonable principle that the higher the rent settled the higher the premium, or that the lower the rent the lower the premium, that the court is allowed to pay. On the other hand the court settling the rent under section (6) and determining the premium under sub-section (8) would be disposed to see, and justice requires it, that if the rent is high the premium should be low and if the rent is low the premium should be high. This places the matter in easy balance.

But the balance is much disturbed if the principle objected to is adopted. Take for instance the case as follows—Commutation of rent for 2 bighas of land is applied for. The market value of the land is Rs. 100. Having regard to all the circumstances if the Court settles the rent at Rs. 10 then the premium the Court may allow is not more than Rs. 150, but if it settles the rent at Rs. 4 the premium the Court may allow is Rs. 60.

Now, the Court is at liberty to grant as premium (a) Rs. 150 if the rent settled is Rs. 10 and (b) Rs. 60 if the rent settled is Rs. 4.

(2) In case (a) the Court can reduce the amount by Rs. 50 to make it Rs. 100 while in case (b) the Court cannot add to Rs. 60 to make it Rs. 100 which is required by the justice of the case.

(3) But the whole principle accepted here for the determination of premium is wrong. The landlord is to be compensated for the difference between the rent settled and the average of actual receipt. The landlord then ought to be allowed as premium the amount which invested in Banks will bring about as interest the amount of difference.

(4) In cases where by the custom the tenant has no interest in the land, he should pay as premium the amount which a person would pay as premium if he takes settlement of the lands.

*Clause 25, Sub-section 13.*—Sub-section (13) in the white draft bill has been wrongly omitted in this draft and should be restored.

*Clause 27, section 46.*—In sub-section (i) of section 46, the words "under the conditions mentioned in the foregoing section" should be omitted as the last foregoing section, i.e., the "section 45" has been repealed by Bengal Act I of 1907 and Eastern Bengal Act I of 1908.

*Clause 28, section 48.*—(1) This is a new section. It gives the right of occupancy to under-raiyats. The under-raiyat gets the right not by any agreement from the landlord but he gets it by operation of this section, whether he wishes it or not. It does away with the right of contract.

(2) Here the principle of settled raiyat is done away with. This is an anomaly very harsh upon the raiyat.

(3) Like the raiyat the under-raiyat should acquire the occupancy right under certain conditions: say by holding the land for some years.

(4) If the principle of settled raiyat is done away, with respect to under-raiyats it should in justice and propriety be done away with, with respect to raiyats also. If it is true with respect to under-raiyats that "actually no raiyat sub-lets the lands with the idea of taking them back at the end of the lease," it is more so with respect to the raiyat, as the zamindar or permanent tenure-holder would not cultivate the land himself but settle the lands with tenants this or that. If the raiyat cannot cultivate the land, it is more to his advantage and he would like it, to have an under-raiyat for the term of his disability.

(5) An under-raiyat under a non-occupancy raiyat gets occupancy right in the land immediately he is admitted into occupation of it, that is the under-raiyat gets a right which a landlord has not. And while the rent of the non-occupancy raiyat may be enhanced under section 43 or 46, the under-raiyat remains unaffected. So the non-occupancy raiyat may have to pay a rent higher than what he can realise from his under-raiyat.

*Clause 28, section 48, proviso.*—So long as the disabilities of the lessor continue and for a reasonable period thereafter the under-raiyat should not become an occupancy under-raiyat. It is with a view to help the disabled and helpless persons that this provision is made.

(2) Clause (iii) of the proviso is no security as the under-raiyat knowing that if he can pass only one year after the nine years he can become an occupancy under-raiyat will not be agreeable to execute a lease as contemplated in clause (iii) and the disabled helpless persons such as widow, old and the like for whose benefit the provision is required are quite unable to enforce the execution of the lease or to bring a suit for ejectment within the time. So there will be a great hardship on these persons.

*Clause 29, section 48A.*—The occupancy right of an under-raiyat should be as good as that of the raiyat in its protection not only as against its immediate landlord but also as against its superior landlord. Otherwise his immediate landlord in collusion with his superior landlord may get his right defeated. The immediate landlord may get a rent-suit brought by and decreed in favour of his landlord, may have his holding sold in execution of the decree, purchase it by interested person and then get the interest of the under-raiyat annulled under section 167. If this unstable occupancy right



of an under-raiyat is made transferable the purchaser will in many cases be defrauded. The occupancy right of an under-raiyat should be made a protected interest under section 160 (d) and this proviso should be omitted.

The rate of *nazar* on transfer of occupancy under-raiyat's holding should be the same as in the case of transferable occupancy raiyat's holding. If in the case of bequest of an occupancy holding of an under-raiyat the *nazar* is twice of the annual rent there is no reason why it should be more in the case of bequest of occupancy holding. The words "and that the provisos to section 26 D shall not apply thereto" in the proviso, should be omitted.

In the case of transfer of a portion or share of an under-raiyati holding the acceptance of the fee by the landlord should not operate as an admission of the amount or fixity of rent or of the distribution of the rent or the arrear or of an incident attached to the holding sold, nor should it be taken as a consent for the division of the holding.

The principles of the sections 18A, 18B and 18C should be applied to the cases of occupancy under-raiyati holdings as they have been applied to the case of transfer of occupancy holdings.

*Clause 31, section 50.*—Sub-section (2) should be retained. True, 130 years have passed since the Permanent Settlement but the condition of the raiyat has not altered much. He is still the helpless fellow not able to look after his own rights. If he keeps the rent receipts for 20 or 25 years continuously no more can he be expected of him. He may have a holding at fixed rate but the landlord will not mention it in the receipt and if the presumption section goes, he is rendered helpless.

(2) The zamindars on the other hand are a better and cleverer class of people, and they knowing fully well about the legal presumption existing for about a century must be presumed to keep the records in order by themselves or with the aid of their clever *amlas*.

(3) For two-thirds of the districts of the province, records-of-right have been prepared and the raiyats of those districts have enjoyed the benefit of this presumption. Their brethren of the remaining one-third of the districts should not be denied that benefit.

*Clause 35, section 58, sub-section 9.*—"Receipt for an instalment" should be "receipt for any amount". The money paid may or may not cover the whole amount of an instalment or instalments but the receipt must be delivered for any amount actually paid. In section 56 (1) the landlord is required to deliver to the tenant "a written receipt for the amount paid by him."

*Clause 38, section 64, sub-clause (a).*—The words "notified under section 63" should not be inserted, or in place of the words "notified under section 63" there should be the word "notified under section 63 or returned undelivered by the post office".

The amount sent by the postal money order under sub-section (1) of section 63 as introduced by the draft bill which cannot be said to be notified may be returned undelivered, in which case that amount shall also have to be paid under this section.

*Clause 39, section 64A.*—This section provides for cases of refusal to receive rent sent by money orders or deposited in courts but there is the period between the date of deposit or date of affixing notice under section 63 in some conspicuous place of the court house on the one side and the service of the notice in the village office of landlord on the other, when the landlord with the view to harass the tenant may institute a suit for rent. Here the section 64A does not apply as there is as yet no refusal to receive.

In such cases the court should be empowered in passing the decree to take into consideration the facts stated and to refuse to allow wholly or partly the interest or damage or the cost.

The landlord or his agent may get the postal peon report "मालिक पत्रका गेन ना". This should be guarded against.

It should be defined what constitutes refusal, i.e., when the non-receipt of the deposited amount should be deemed a refusal.

*Clause 42, section 67.*—The section should remain as it is now.

(1) In all suits except the mortgage ones the original rate of interest ceases on the date of the institution of the suit, i.e., on the date when the matter is placed into the hands of the court. In the mortgage suits the original rate continues during the period of litigation and some months after the decree which is allowed by the court as a period of grace. The court has the special power of allowing grace but beyond that period, the original rate ceases to run. In the rent suits the court has no power to allow any time of grace. So the rent suits are placed in the same position as all other suits and the original rate of interest must cease to run on the date of institution of the suit.

(2) During the period of litigation the matter is placed by plaintiff himself into the hands of the court and the court should determine what interest is to be paid.

(3) It is said that it is the duty of the tenant to pay and if he makes a default, he must take the consequence. But this duty is not a speciality in case of rent and the tenant takes the consequence as he pays at the rate of 12½ per cent. up to the date of the institution of the suit by which the plaintiff landlord takes the matter into the hands of the court.

(4) The raiyat does not pay generally because he has no power to pay. The higher rate will not increase his power to pay but only add to his burden. Had the tenant power to pay he would not like to keep the burden over his head though the interest is lower.

(5) It is said that if a lower rate of interest is allowed he will deliberately put off payment and if the rate is higher he will hasten to pay. But it is to be seen the landlord may execute the decree at any time he likes and if he gets a higher rate of interest he will put off execution of the decree and by the accumulation of interest put a heavy pressure on the tenant to his ruin.

(6) So it is not reasonable to add to the burden of the raiyat by allowing interest at 12½ per cent. till the date of realization.

*Clause 43, section 68.*—The new proviso should be taken away.

(1) The damage is awarded for the tenant's neglect or refusal to pay the rent without any reasonable and probable cause. The court has then to consider the causes or circumstances leading towards the neglect or refusal to pay. The raiyat might be very poor and in dire circumstances and may not afford to pay; or the landlord or his *amlas* might have done something such as a demand for some extra payment or enhancement of rent which contributed or led to the neglect or refusal to pay. The court has to take all the facts and circumstances into consideration and after weighing their effects to determine the amount of damage. This discretion of the court cannot with justice be restricted as it is proposed to be done by clause (2) of the second proviso.

(2) Besides damages and interests are two alternative questions. The landlord by choosing to demand damages does by necessary implication relinquish his right to interest. So he should not be allowed to have the interest in an indirect manner nor should he be allowed to demand both interest and something over and above interest. And this is virtually what is proposed by the second proviso.

*Clause 44, section 69.*—Experience has shown that the power given to the landlord to have order of appraisement or division of crops made by the Collector is much abused by unscrupulous landlords. To satisfy a grudge by oppressing or tyrannising a poor tenant such landlord sometimes induces the police officers by bribes falsely to report that there is a great likelihood of breach of peace which cannot be avoided except by an order under section 69. Sometimes such landlord has recourse to these sections against poor tenants who pay money rent or even where there is no relationship of landlord and tenant inducing the police to report as above. So some provision should be made to the following effect and added to section 69, as sub-section (5).

“(5) The Collector before making order under this section or where for some reasons the order has already been made, shall, at the instance of any party or on his own motion or on any information received as the case may be, enquire into and satisfy himself as to whether—(a) the relationship

of landlord and tenant exists; (b) the rent payable is the produce rent; (c) there is any likelihood of any breach of the peace and whether that can be avoided by any other means, or (d) in the circumstances of the case there is any ground to make the order and take such steps as seems to him proper including steps for the collection, storage, harvesting or preservation or custody of the crops."

*Section 70.*—Sometimes dispute arises which it is difficult and without jurisdiction for the Collector to decide. Some provisions for referring disputes to civil courts have been made in sub-section (5) of section 70. But this is not sufficient, the parties should be given opportunities to bring their cases before the civil court. So a provision should be added to section 70 and sub-section (7) to the effect—

"Any party may bring a suit in the civil court of the lowest grade having jurisdiction to entertain a suit for rent of the holding, for decision of any dispute that may arise between the landlord and the tenant. And on the suit being brought and notified to the Collector, the Collector shall stop further proceedings under section 69, 70 or 71 making such arrangement for the collection, storage, harvesting or preservation or custody of the crops as may seem to him proper."

*Section 71.*—Where the rent is taken by division of the produce, both the landlord and the tenant have some interest in the produce and the landlord should have some power of inspection of the crops without interfering with the tenant's right. A provision to that effect should be added after the sub-section (4) of section 71.

*N.B.*—A tenant paying rent by a share of the produce should cultivate the land in the proper season and proper manner. It is to be considered whether on neglect to do so he should be made liable to assessment on some such principle as is contained in sub-section (4) of section 71.

*Clause 46, sections 74 and 75.*—The poor tenants cannot withstand the oppression of the powerful landlord but suffer everything in silence. They cannot go to the Civil Court for redress. If the Collector does not look to their protection, they shall for ever remain trodden under foot of the landlord. So the Collector should be given power to protect them and a provision to the following effect should be made:—

"75A—(1) If a landlord or his agent realizes, except under any special enactment for the time being in force, from a tenant of such landlord any sum of money or anything in kind in excess of the rent payable by such tenant, the local cess prescribed by section 41 of the Cess Act, 1880, and the interest payable under section 67 on an arrear of such rent or of such cess, the Collector may in a summary proceeding by order impose on the landlord or on his agent a fine not exceeding two hundred rupees or twice the amount or value of what is levied, whichever is greater, or on both the landlord and his agent, fines not exceeding in the aggregate the maximum fine which may under this sub-section be imposed on either of them and may award to the tenant any portion of the fine or fines so imposed."

Where the under-raiyat's interest is avoided by ejection of the raiyat or by sale of the superior holding in execution of a decree for rent thereof, or by pre-emption under section 26G or 26H, the under raiyat making improvements should be treated as a tenant ejected and should be given compensation under this section for improvements made by him on the holding.

An explanation to this effect to be added to section 82.

*Clause 57, section 87.*—In sub-section (4) the words "by a registered instrument" should be substituted by the words "by a written lease".

If it is not desirable to put non-occupancy raiyats to the trouble and expenses of registering their leases in all cases (*see* Amendment and Note on section 44 in clause 26), it is more so in case of non-occupancy under-raiyat

*Clause 57, section 87 A.*—(1) All under-raiyats should have the right under section 87A.

(2) The provision as regards the payment of arrears of rent due from the out going raiyat should be omitted.

(3) The *nazar* should not be more than three times.

The superior landlords gets a *nazar* or increase of annual rent which is sufficient consideration for his retaining the under-raiyat. On the other hand if the arrears of rent are to be paid by the under-raiyat in addition to the *nazar* or the increased rental it will be very hardship and in almost all cases will amount to a denial of the right which it is proposed by the section explicitly to confer on the under-raiyat.

If the arrears of rent are to be paid no *nazar* should be paid.

*Clause 68, section 104 H.*—In sub-section 4 the words “in clause (f) or clause (g)” should be substituted by the words “in clause (d), (c), (f) or (g).”

The clauses (d) and (e) are amongst the subjects of litigation under sub-section (3) but directions are given in sub-section (4) as to the disposal of other clauses mentioned in sub-section (3). The clauses (d) and (e) are not mentioned. These clauses may be disposed of in the same manner as the clause (g). The clauses (d) and (e) refer to the correction of records not to settlement of rent.

*Clause 90, sections 146A and 146B.*—The tenants are made jointly and severally liable. This is sufficient security for the realization of the rent. Beyond this to make the holdings liable to sale in execution of the decree passed for rent, against some of the tenants in the absence of others is a trespass and really criminal on the rights of the tenants. The tenants who are not made parties are made bound by decree passed behind their back. This will open the door of fraud and collusion between the landlord or his *amlas* and some unscrupulous sharers to deprive the others of their just rights. Money compensation for immovable property lost, is not adequate. It might be the poor tenant in whose absence decree is made and whose interest is sold in execution of the decree might have his home and hearth in the portion of the holding sold, and it is very hard thing that he shall have to remove from his home with tears on his eyes.

The female heirs, specially the Muhammadans, will suffer greatly, the brothers and other sharers in collusion with the *amlas* will get rent-decree passed under this section and have their interest sold in execution of that decree, without letting them know about the sale and keeping them asleep over the whole matter.

In sub-section (3) of section 146B in place of the words “that a person or persons in possession of the portion or share” after the words “to set aside the sale” should be “that a person or persons having an interest or entitled to a portion or share” should be substituted.

If the words “in possession” are used, then the person or persons who are not in possession but entitled to a portion or a share are excluded. That is the case in numerous cases in which females succeed with males. The female heirs, helpless as they are, should not be denied the relief contemplated in this section.

To determine whether the portion or the share of the holding held by the applicants under sub-section (3), comprises more than one-fourth of the entire interest of the whole body of co-tenants therein would involve the decision of title to the holding. Some of the tenants might deny the title of others. So all the intricate question of a title suit will arise. Such questions of title suits should not be decided in proceedings in connection with the execution of a decree, which are more or less of summary character.

Sometimes a title suit might be going on with respect to shares of each co-tenant in the holding and landlord may in execution of a decree in a suit framed under this section 146A and 146B against some persons only, bring the whole holding to sale. Thus a conflict may arise. The right given to tenants not made parties to the rent suit to deposit the amount to prevent a sale is no sufficient security.

In effect the provision of section 146B will entail great incommensurable loss and great harassment to the co-tenants specially those who are poor and helpless.

Here only the joint tenants and not the co-sharer tenants who have their liability separated should be made jointly and severally liable.

*Clause 94, section 148A.*—The co-sharer landlord who may institute a suit under the section 148A must be defined. A joint landlord should not be allowed to sue for rent under section 148A.

To be entitled to sue under section 148A a co-sharer must show that his collections are separate and distinct from other co-sharers.

This is a section enabling the co-sharer landlord to bring a suit for his share of rent. His share must be defined and definitely known to the tenant. The Eastern Bengal section 145A made use of the words "where a co-sharer landlord who is entitled to sue for his rent separately" deliberately and the reason is obvious.

A co-sharer landlord who is entitled to sue for his rent separately should be defined as a co-sharer landlord whose collection of rent from tenants is separate and distinct.

A joint landlord should be defined as landlord whose collection of rent from tenants is joint.

*Clause 94, section 148A, sub-section (8).*—The sub-section (8) provides for the realisation of rent by means of a suit for money by landlords who did not join as co-plaintiff under section 148A. The landlords who have big shares are generally kind to tenants and would allow some time for payment but the smaller co-sharers are rather impatient and bring suit against the tenant more often than the larger sharers. If the recovery of rent is barred fully on a co-sharer landlord not joining as a co-plaintiff it would compel all the other co-sharers to join in the suit, so the poor raiyat is deprived of any consideration that might have been shown to him by others and that is to ruin.

*Clause 101, section 160, sub-section (2) of draft bill.*—As has been shown in notes on clause 6, section 4, and clause 14, section 18, all the raiyats at fixed rate have occupancy right in the holding as their rights are permanent and hereditary. Their holding should be protected interest. If this sub-section is being enacted "in order to prevent a purchaser from being defrauded by an outgoing tenure-holder or proprietor giving *mokarari* right on an unduly small rent on payment of a premium" then, as the clause takes away the right of fixity of rent from all raiyats at fixed rent all the *bond fide* tenants are made to suffer for the fault of a few.

The cases of fraud are very few as no tenure-holder or proprietor would like to allow any person to hold at fixed rate at a low rent. If there are some special favourites their number is very few. For these very few all the raiyats at fixed rate ought not to suffer.

The cases of fraud by outgoing tenure-holders or proprietors must be of very recent date, i.e., a few years before they actually go out but for them the people who are holding for 50 or 60 years or even a century ought not to suffer. Only fraudulent tenancy at fixed rate created two years before going out may be treated in the manner prescribed by this new sub-section.

It was under wrong impression of the character of the tenancy that the raiyat at fixed rate was held not to have occupancy right and his interest not to be a protected interest. This wrong impression is to be corrected by declaring explicitly that the raiyats at fixed rate have occupancy right.

*Clause 105, section 167.*—The notice under the section 167 should be served through the Court by which the holding was sold. This will be a more convenient procedure and will have the advantage that report of the service of the notice will form part of the execution record.

*Below clause 107, section 172.*—The section 172 provides that an inferior tenant may deposit into Court the money due under the decree and prevent sale of the superior holding and then 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.

The right is given to the inferior tenant for the protection of his own interest but no mode of work has been laid out. So the right given is

scarcely, if at all, had recourse to. Some provision should be made as to how to deduct the money by the inferior tenant from the rent payable by him to his immediate landlord.

*Section 174.*—In section 174 not only the judgment-debtor but any person having in the tenure or holding sold any interest voidable on the sale should be allowed to pay money into Court under that section.

The lookout of the decree-holder is to get money and not to have any holding sold. If any person whoever he might be, pays the money the holding should be saved from sale.

*Clause 109, section 178, sub-clause (b) (ii).*—The clause (d) should not be omitted. It seems to be quite unnecessary owing to all occupancy rights being made transferable by law but the clause (d) provides against taking away the right of a raiyat whether occupancy or non-occupancy to transfer or bequeath his holding in accordance with the local usage under this section. The non-occupancy raiyat may sell his interest whatever he might have in his holding for the remainder of his term. It is necessary for that purpose at least.

*Clause 113, section 183A.*—The new section 183A has been introduced with a view to protect the interest of the jotedars of Baharband and Patiladaha parganas in Rangpur. The jotedars have been enjoying their jotes in many cases from before the time of the Permanent Settlement and in some cases from a time subsequent to that date. The leases creating the tenancies and the leases subsequent thereto were drawn up almost exactly on the same forms; all the leases making settlement of rent for a certain term and then containing the conditions that "on expiry of the term of the settlement you shall appear and take a second settlement." The leases were renewed sometimes on the expiration of the term, sometimes long after the expiry, and sometimes not at all. But the jotedars under the impression, supported by the acts and conduct of the zamindars that "their rights are permanent but only their rents are enhancible", were all the same in uninterrupted possession and enjoyment of the land from generation to generation; successions and transfer being recognised without objection by the zamindars. The zamindar himself sometimes took mortgages of the jotes and sometimes purchased them from the jotedars and sometimes brought them to sale in execution for decrees for rent thereof, never ejecting a jotedar under section 66 of the Bengal Tenancy Act. Thus the landlords dealt with the jotes in all respects as permanent tenures. Recently some doubts have been thrown on the permanency of the rights of the jotedars in these jotes. The High Court has held in some rulings that the jote in question was a temporary tenure. This has been a great shock to the rights of the jotedars. But justice of the case evidently requires that the permanency of their right should be clearly recognised by law. Hence this section for the protection of these jotedars.

This section is not meant for all the jotedars of Rangpur but only for the jotedars of parganas Baharband and Patiladaha, part of which lies within the district of Mymensingh, to which district also this section should apply. The description of the subject to which this section is meant to apply should be clear. As it is in the section 183A the description is very vague and should be made definite. The insertion of the words "about which some doubts are entertained as to permanency of their rights" after the words "in the district of Rangpur" and before the words "since the 14th day of March" would make it a little more clear.

I, however, think the description should be by quality and character and not by locality.

*The proviso.*—The section 26H cannot and should not apply. The tenants under the jotedars are raiyats and not under-raiyats and the occupancy rights of raiyats are protected interests.

The section 26G should not apply to any such jotes.

The operation of section 183A should be limited to the Baharband and Patiladaha parganas only in Rangpur and Mymensingh. The application of this section to the jote of other parts of Rangpur would affect the

interest of these jotedars prejudicially. The zamindars may claim advantage of section 7 in case of enhancement of rent while in case of transfer these jotedars would not be allowed the advantages of sections 12 to 17 but be subjected to the rigorous provisions of the sections 26A to 26H.

In sub-section (2) of section 183A for the words "to tenures of any class" the words "to tenures of similar class" should be substituted. The reason is stated above. Besides there is no reason why it should be extended to any other class.

*Clause 115, section 188.*—The alterations made to this section take away the importance of the section, if the co-sharer landlord can enhance rent, eject tenants, exercise right of pre-emption, bring rent suit, apply under section 105 or 158 there remains almost nothing to be done by the landlord jointly.

A co-sharer landlord should on no account be allowed to eject a tenant. This is an encroachment upon the rights of other co-sharers and on the rights of peaceful enjoyment of the holding by the tenant. So the sub-clause (i) of clause (a) in sub-section (1) of section 188 must be omitted.

**Note by M. Fuzlal Haq.**

I have gone through the minute of dissent recorded by Mr. Syed Erfan Ali, Rai Saheb Panchanan Barman and others. I agree generally with the observations contained in this note of dissent. My difference with them lies in some minor points of detail, but I do not consider this difference sufficiently vital to necessitate a fresh note of dissent from me. I sign the report subject to these observations.



**Note of dissent by Mr. L. Birley.**

1. *Clause 23, section 26G.*—Pre-emption. I am opposed to this proposal. My view is that the provisions made for transfer of holdings are very beneficial to landlords, giving them a sure means of recovering 25 per cent. of the value in place of the present uncertainty, and that this concession is, therefore superfluous.

My objections to it are—

(a) I am afraid that some landlords will demand and obtain *salami* in excess of 25 per cent. as a condition of abstaining from using the right of pre-emption.

(b) If pre-emption is extensively practised by co-sharer landlords there will be a great deal of litigation, due to several co-sharers making new settlements with different tenants.

2. *Clauses 35 and 26, sections 57 and 58.*—Statement of accounts. These statements are not now given, and I do not think that they will come into general use. I therefore dislike the proposal not to give area in the receipt given at the time of payment. I think that the landlord will always be able to exculpate himself for not granting the statement of account by saying that the tenant did not come to ask for it.

I wish to substitute one year for three months in sub-section (f) of section 58 of the Act. The occasions on which the Collector is likely to receive complaints from parties aggrieved are those of aggravated discontent resulting from this omission, and such discontent may take more than three months to develop. There is no reason why the Collector should be allowed to receive a complaint second hand after two years, but first hand only after three months. I have experience of the inconvenience of this restriction. The omission only occurs in the case of backward tenants, who do not readily complain.

**Note of dissent by Khan Bahadur M. A. Momen.**

*Clause 5, section 3 (9).*—The definition of the term “holding” as at present excludes all tenancies which comprise undivided shares in land. Though it is intended not to recognise an undivided share in land as a separate tenancy as theoretically it would lead to complications, it is the existing practice all over the province, and specially in Eastern Bengal districts like Barisal and Faridpur, to recognise undivided shares as separate tenancies. This will be borne out by the records-of-rights prepared of those districts where a *khatian* which stands for a tenancy often contains fractional shares of plots not always uniform. For instance it is very common to find 8 annas share in a plot settled by one landlord as “*raiya*” while in other 8 annas settled by another landlord as “*tenure*,” the entire plot in possession of the same man. These are also cases when separate tenants hold some plot as garden, homestead and graveyard jointly while cultivated plots are separate. Such tenants pay rents separately and these holdings comprise separate tenancies though they contain undivided shares in some plots. It will lead to complication if existing practice is not recognised. I therefore propose that clause 9 may read as follows:—

“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.

*Clause 18, section 20, Definition of settled raiyat.*—According to the present law only a raiyat holding directly under a zamindar or tenure-holder continuously for a period of 12 years can acquire the status and privileges of a settled raiyat; but a person holding land for any number of years as an under-raiyat in a village will not acquire that or any status. The spirit of the law was to bestow the privilege and protection of occupancy rights to a *bona fide* agriculturist. Twelve years’ continuous occupation of land in a village raises the presumption of a person being a *bona fide* resident agriculturist.\* This applies equally to a person holding and cultivating land in the village for a

\* Or what is called a *khud-khasht* land. length of time in any other capacity. In many districts of Bengal, and specially in Jessore, there is a very large number of cultivators who hold lands only as under-raiyats. By limiting the scope of the section to only one class the law is depriving a large number of *bona fide* agriculturists of this coveted privilege. In practice no distinction is made between the status of tenants holding under a zamindar and those holding under a raiyat. Unless the privilege is extended to under-raiyats also, he will be debarred from acquiring occupancy right in any land he may take under a zamindar, although he may be a resident cultivator of the village for centuries.

Similarly, in the case of small agricultural tenure-holders, such as howladars of Bakarganj, the present law operates very harshly. A man who possesses a small howla in the village, the whole of which may be in his actual cultivation, will not acquire occupancy right in any other land in the same way as a raiyat does. But, if we extend this privilege to small tenure-holders, it will not be possible to exclude the big ones. To avoid the danger, therefore, we may ignore the case of tenure-holders. I therefore propose that the words “as an under-raiyat” be inserted between the words “as a raiyat” and “land.”

I am afraid I could not explain this properly before the Committee and was misunderstood. Some thought that this amendment would make all under-raiyats occupancy raiyats. As a matter of fact the Bill does suggest in another place to give occupancy right to under-raiyats. The intention of section 20 is different. It does not define rights in land but the status of an individual. At present as the section stands it only will elevate a person who happens to cultivate land under a proprietor or tenure-holder for 12 years into the position of a *khud-khasht* tenant, but excludes persons of similar status and position in the village who have been cultivating land under a raiyat. My amendment aims at doing away with this invidious distinction. What I mean is not that all under-raiyats who have cultivated land in a village for 12 years should acquire occupancy rights on whatever land they touch, but that such persons by such continuous cultivation should be deemed to acquire the status of a *bona fide* resident agriculturist

and should acquire occupancy status in any land which they may subsequently hold under a zamindar or proprietor. As a matter of fact this is the practice and no such distinction is made or understood in the country, as the present law indicates.

*Section 20(3).*—The words “or as an under-raiyat” may be inserted in this sub-section also after the word “raiyat.”

*Section 20(4).*—The words “or as an under-raiyati holding” and “or as an under-raiyat” may be inserted in this sub-section respectively after the words “holding” and “raiyat.”

*Section 20(5).*—The words “or an under-raiyat” may be inserted after the words “as a raiyat.”

*Section 20(6).*—The words “or an under-raiyat” may be added after the words “if a raiyat.”

*Section 20(7).*—The words “or as an under-raiyat” may be inserted in this sub-section after the word “raiyat.”

*Clause 22, section 26 G (1).*—The right of pre-emption should not exist in the case where the purchase by third person is in execution of a decree for arrears of rent or of a mortgage decree where the landlord is the mortgagee. These two should be added to the other exceptions in 4th line of section 26 (G)(1).

In the case of purchases by one of the several co-sharer landlords who is the mortgagee and at whose instance the holding is sold, the other co-sharer landlords should have a right to pre-empt. Otherwise in many East Bengal districts, where a rich co-sharer is also the *mahajan* and lends out money to his tenant will in time come into possession of most of the raiyat-holdings in exclusion of other co-sharer landlords. This is undesirable, and I think the co-sharer landlords in such a case should have a right to pre-empt.

*Section 26H.*—There are many under-raiyati holdings not held on a temporary lease and which possess *bona fide* occupancy rights created after 1914. Under clause (1) all such tenancies will be left entirely at the mercy of colluding raiyats and landlords. The agreement that raiyats will avoid transfer fee by first sub-letting and then settling does not apply to under-raiyats already created when there were no provisions in law for the payment of landlords' fees or the exercise of the right of pre-emption. Such an argument may apply to tenancies created after the passing of the amendment Act. I therefore propose to amend clause (1) as follows:—

“(1) the tenancy of such under-raiyat or his predecessor in interest was created after 1st November 1922 or created under a temporary lease after the 31st day of December 1914; and—”

*Clause 28, section 48.*—This section as drafted gives the under-raiyat a better right than the raiyat so far as the acquisition of occupancy right is concerned. A person who is not a settled raiyat will not acquire occupancy right in it if he takes a land from a proprietor or tenure-holder, but he would do so if he takes it under a raiyat. To remove this anomaly I suggest the addition of the words: “who are settled raiyats of the village or have held land in the village for 12 continuous years” after the words “all under-raiyats” in section 48.

*Section 75.*—The reason why in spite of the penalty section the *abwab* is, if at all, on the increase, is that the tenants very seldom put the law in motion by complaint.

No power has been given to the Collector or Revenue Officer to take action on his own initiative in the case of realization of *abwab*, and although inquiries are constantly made by Collectors and Settlement Officers on tour, they are powerless to prevent these illegal exactions as the tenant will not help them by coming forward to complain. If the tenant is sufficiently strong and can successfully resist the undue claim of the landlord, he is not ordinarily made to pay any *abwab*; those who pay are generally the weak who cannot contest the illegal imposition in a court of justice. It is not reasonable to think that a tenant who is too weak to resist the illegal demand of the landlord will subsequently have the courage to bring a suit against him in court. The Behar and Orissa bill contains a similar proposal.

I therefore think that the Collector should be authorized to institute proceedings against the landlord on his own initiative or on the information received from a Revenue Officer. I accordingly propose a section on the analogy of section 58 as follows:—

- “*Section 75A. Amendment.*—(1) If a landlord or his agent realizes any illegal cess, 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.
- (2) The Collector may hold a summary inquiry under sub-section (1), either on information received from a Revenue Officer within one year, or upon complaint of the party aggrieved within 3 months from the date of payment of the illegal cess, or upon the report of the civil court.

*Section 88.*—As discussed in paragraph 39 my view with regard to the amendment of section 88 is that it should be made independent of the subject of the transferability of occupancy right. This section applies, as it should to the recognized tenant in both holdings and tenures, just as in the case of estates separate mutation in tenancies is very much coveted and, in many cases, becomes extremely necessary; for instance, sometimes shares in a holding or tenures descend by inheritance to distant relations who being non-resident generally transfer them to undesirable neighbours, or a portion of a holding is sold by a co-sharer to a person who is well-to-do and covets the entire holding and withholds payment of rent with the intention of ultimately buying up the remaining share. In many similar cases it becomes extremely hard on the co-sharers if there be no provision in law whereby sub-division and separate mutation can be made without the consent of the landlord. The law, as it at present stands, permits such division of land and distribution of rent only with the consent of the landlord and the co-sharer tenants. But where this is not accorded, sub-division is impossible. And this power has given a handle to the landlord to realise exorbitant amounts of *salami* from poor co-sharer tenants whose only desire is to be allowed to leave in peace. The general practice, just as in the case of transfer so also in the case of separate mutation, is that the landlords grant it subject to the payment of certain amount of *salami*, the amount of which depends on the necessity of the tenant, on his capacity to pay and the power of the landlords to realise. While we cannot make separate mutation actually compulsory, as it may lead to undue sub-division, we ought to provide for some authority which may compel an unreasonable landlord to recognize reasonable sub-division. I propose, therefore, the following amendment:—

“*Amendment of section 88.*—A division of a tenure or holding or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his express consent in writing, or in accordance with the following section:—

Provided that (1) if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided, or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

(2) No division or distribution of rent shall be valid unless made with the consent of all the co-sharer landlords and co-sharer tenants.”

“*Section 88 A.—Amendment.*—(1) When any landlord refuses to make a division of tenancy or distribution of rent on the application of a tenant, or where a co-sharer tenant withholds his consent to such sub-division or distribution of rent; .

(2) or where a co-sharer tenant considers himself aggrieved by a division or distribution made by the landlord, the tenant who wants such distribution, or the tenant who is aggrieved, may apply within 6 months from the date of refusal or the date of mutation, as the case may be, to the civil court for a proper division or distribution of rent.

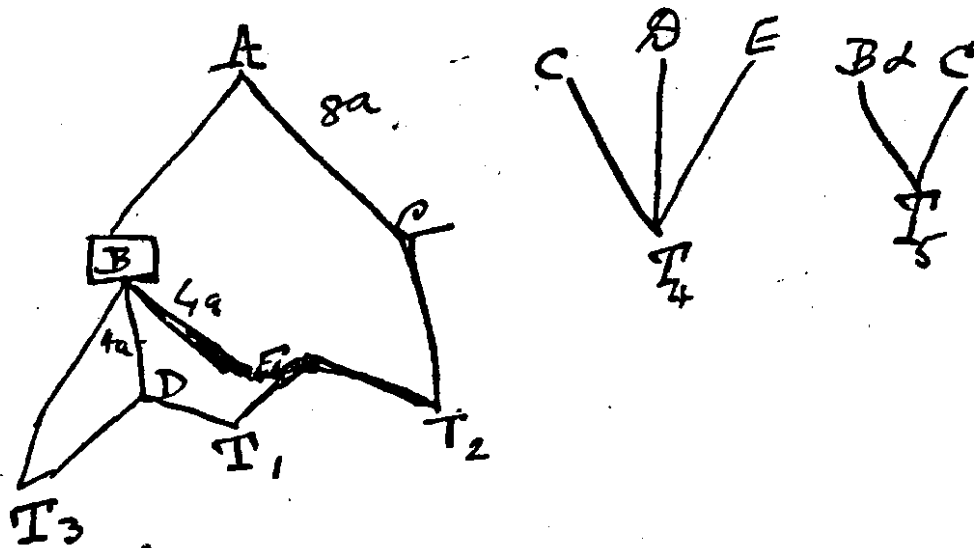
The civil court after notice to all the landlords or tenants of the tenure or holding may, by an order in writing, direct such division of tenancy or distribution of rent as it considers fair and equitable, provided that no order for such division or distribution shall be made if it is likely to be prejudicial to the interest of any landlord or tenant.

When such division or distribution is ordered by the Court it shall direct the applicant tenant to pay to the landlord two times his rent as mutation fee."

*Explanation.*—The following shall be considered prejudicial:—

- (i) that the transfer results in the creation of unreasonably small holdings;
- (ii) that the rent of the portions or shares into which the holding is divided by the transfer has been unfairly distributed.

*Clause 63, section 99 A.*—After mature consideration I am of opinion that the compulsory appointment of a common agent in every case where there are two or more co-sharer landlords will operate very harshly on a very large number of petty landlords in the province. There are few holdings in districts like Barisal and Faridpur which are held only under one landlord and there are many different permutations and combinations of landlords requiring the appointment of different common agents. A perusal of a tenure tree of any average mauza in Bakarganj will clearly demonstrate the extreme difficulty of appointing common agents in every case. A simple illustration below will help to make the position clear.



In this simple case under the section, 5 common agents will have to be appointed for each separate joint property. It is quite possible that the same agent may not be agreeable to all the 4 co-sharers and so 4 separate agents will have to be admitted, which will be an impossible position both for the landlords and tenants.

I therefore suggest that the appointment of a common agent may be made compulsory only when the tenants apply to the Collector for such appointment and not in every case. When parties are living in peace and manage to discharge their respective obligations without disputes we need not interfere. This section should be redrafted on the following lines:—

- (1) Joint co-sharer landlords may amicably appoint common agents.
- (2) Tenants may apply to Collector and the Collector shall direct the appointment of a common agent.
- (3) When co-sharers cannot agree among themselves the Collector to appoint common agent.
- (4) The other such sections in 99A not inconsistent with above to remain.

*Clause 66, section 102(c).*—Under this clause it is compulsory to enter in the record-of-rights one or more of the boundaries of each plot. Formerly all the four boundaries used to be given in the *khatian*. From experience it was found that more than 50 per cent. of these entries were wrong in the final record due to corollary corrections not having been properly made at the subsequent stages in accordance with the changes in the names of actual possessors. These wrong entries were the source of much litigation. Subsequently it was decided to give only two boundaries; and this again was reduced to the present practice of recording only the northern boundary in our record. This entry of northern boundary has no practical utility, as it does not help identification and has only been retained to comply with the compulsory provision in section 102(c). A lot of time and trouble will be saved if we do away with the writing of this boundary. A large staff had to be maintained to check the northern boundary against the map and *khatian* plot by plot, and even then mistakes were not rare. I strongly advocate the discontinuance of the practice of writing the northern boundary. But this cannot be done unless the words "and one or more of the boundaries" be deleted.

*Clause 90, section 146 B.*—I object to clause (3) of this section including the proviso. The idea embodied here specially that of giving money compensation will be unacceptable to the tenants generally and will lead to fraud and collusion. There are many cases where a small co-sharer in a holding is a thorn in the side of the bigger co-sharer who wants to buy him up or secure the whole holding. It will be very easy for such bigger co-sharers to collude with the landlord and get the entire holding sold.

I agree to sub-sections (1), (2) and (4) but not to sub-section (3). I am willing to give a landlord the benefit of a rent decree in every case to the extent of the share purchased. There is a theoretical objection to this that the landlord when he gets khas possession becomes a joint possessor with the remaining tenants, but there is nothing unusual in this. The landlord can have khas possession by a partition.

I propose that sub-section (3) of 146 B be expunged.

**Note of dissent by Mr. Sachse.**

*Clause 113.*—The jotedars who are neither permanent tenure-holders nor raiyats under a strict interpretation of the classification in section 4 of the existing Act are not confined to the present district of Rangpur. The Dewanganj thana of the Mymensingh district was included in the district of Rangpur until 1866 and still belongs to the Patiladaha pargana, which is tauzi No. 203 of the Rangpur collectorate. It is in this area, that the protection this clause is designed to give to jotedars, who have been declared temporary tenure-holders, is most urgently needed.

Instead of the words "in the district of Rangpur" the words "in any area which has at any time been included in the district of Rangpur" or "within the limits of any estate borne on the tauzi roll of the Rangpur collectorate" should be substituted. In that case section 183 A(2) to which some members of the committee object, could be omitted.

It is most unfair that section 26H should be applicable to the under-tenants of jotedars, merely because the latter are technically temporary not permanent tenure-holders.

*Clause 5 (b).*—In many areas it has become the fashion to take *kabuliyats* from produce-paying tenants, in which they are termed labourers. Many of the persons, who execute such *kabuliyats* for the first time have been cultivating the lands for years, possibly for generations. The case is as strong for protecting this class of cultivator from the effects of his own contracts as there was for protecting the raiyat in 1885.

The last part of section 5 (b) should be amended as follows "that person shall, notwithstanding any contract to the contrary, be deemed to be a tenant."