

ASSAM ACT XI OF 1936
THE SYLHET TENANCY ACT, 1936.

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ASSAM ACT XI OF 1936

THE SYLHET TENANCY ACT, 1936.

[Published in the *Assam Gazette* of the 6th January 1937.]

An Act to consolidate and amend certain enactments relating to the Law of Landlord and Tenant in the district of Sylhet.

Preamble. WHEREAS it is expedient to consolidate and amend certain enactments relating to the Law of Landlord and Tenant now in force in the district of Sylhet ;

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 :—

CHAPTER I.

PRELIMINARY.

Short title. 1. (1) This Act may be called the Sylhet Tenancy Act, 1936.

Commencement. (2) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government may, by notification in the local official Gazette, appoint in this behalf.

Local extent. (3) It extends to the district of Sylhet except—

(i) Lands included in any Reserved Forest constituted under the law for the time being in force ;

(ii) Lands acquired under the Land Acquisition Act, 1894, for the Government or any local authority or for a Railway or other Company, when and for

I of 1894.

so long as such lands are utilised for the purposes for which they were acquired or for purposes incidental or ancillary thereto ;

- (iii) Land owned by the Government or by any Local Authority which is used for any public work, such as a road, canal, drain or embankment or is set aside for the repair or maintenance of the same ;
- (iv) Lands expressly reserved from settlement, by the Government or by officers of Government duly empowered in that behalf, for military purposes or for professional graziers or for a public purpose, such as grazing grounds, recreation grounds, burial or cremation grounds ;
- (v) Lands used for special cultivation or for purposes ancillary thereto, so long as such use continues.

Explanation.—The words “ purposes ancillary thereto ” shall include the letting out of portions of such land for the maintenance of the coolies working on such cultivation.

- (vi) Lands settled by Government on annual leases in the temporarily-settled areas.

2. The enactments specified in Schedule I are hereby amended or repealed to the extent mentioned in the fourth column

Repeal.

thereof

is Act, unless there is anything in the context :

horticulture.

means any

(3) "Agricultural year" means the Bengali year commencing on the 1st day of *Baisak*.

(4) "Deputy Commissioner" in any provision of the Act means the Deputy Commissioner in charge of Sylhet district and includes any Revenue Officer, Assistant Commissioner or Extra Assistant Commissioner specially empowered by the Local Government to discharge any of the functions of the Deputy Commissioner under that provision.

(5) "Commissioner" means the Commissioner of the Surma Valley and Hill Division.

(6) "Estate" includes,—

- (i) any land subject either immediately or prospectively to the payment of land revenue for the discharge of which a separate engagement has been entered into;
- (ii) any land subject to the payment of, or assessed with a separate amount as land revenue although no engagement has been entered into with the Government for that amount;
- (iii) any land which is, for the time being included under one entry in the Deputy Commissioner's register of revenue-free estates as well as revenue-free lands which are not so included in such register;
- (iv) any land, being the exclusive property of Government, of which a separate entry has been made in the general register of revenue-paying and revenue-free estate mentioned in Chapter IV of the Assam Land and Revenue Regulation (I of 1886).

(7) "Permanent Settlement" means a permanent settlement of estates made in the district in any year up to and including the year 1869.

(8) "Permanently-Settled Estate" means any estate in the district of Sylhet included in the decennial settlement, or permanently settled at any subsequent date.

(9) "Temporarily-Settled Estate" means any estate not being a revenue-free or permanently-settled estate.

(10) "Proprietor" means a person owning, whether in trust or for his own benefit, a permanently-settled or a revenue-free estate or a part of such estate.

(11) "Landholder" means any person deemed to have acquired the status of a landholder under the provisions of section 8 of the Assam Land and Revenue Regulation of 1886, I of 1886.

(12) "Settlement holder" means any person other than a proprietor, who has entered into an engagement with the Government to pay land revenue, and includes a land holder.

(13) "Holding" means a parcel or parcels of land or an undivided share thereof, held by a tenant other than a tenure-holder and forming the subject of a separate tenancy.

(14) "Land," with reference to a tenancy under this Act, means land which is let out or occupied for agricultural purposes or purposes subservient thereto and includes the sites of buildings appurtenant to such land.

(15) "Landlord" means a person immediately under whom a tenant holds, and includes the Government in the permanently-settled areas.

(16) "Tenant" means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person :

Provided that a person who holds land immediately under the Government in the temporarily-settled areas is not a tenant within the meaning of this definition.

Explanation.—A person who cultivates the land of another person under the system generally known as "Adhi", "Barga" or "Bhag" on condition of delivering a share of the produce to that person [or] under the system known as 'Chakran', 'Kiran', 'Nonkar', 'Etmander' or 'Bhandari' on condition of rendering service to that person, is not a tenant unless—

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

(17) "Land Revenue" means any revenue assessed by Government on any land.

(18) "Rent" means whatever is lawfully payable in money or in kind by a tenant on account of the use and occupation of the land held by the tenant.

(19) "Arrear" means an instalment or part of an instalment of rent which is not paid on or before the date on which it is payable.

(20) "Pay", "Payable" and "Payment" used with reference to rent include "deliver", "deliverable" and "delivery".

(21) "Enhancement" and "Enhanced" do not include an increase of rent in respect of land held by a tenant in excess of the area for which rent has been previously paid by him.

(22) "Prescribed" means prescribed by rules made by the Local Government under this Act.

(23) "Registered" means registered under any Act, for the time being in force for the registration of documents.

(24) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

(25) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.

(26) "Revenue officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue Officer under that provision.

(27) "Revenue Court" means the Court of the Commissioner, Deputy Commissioner, Assistant Commissioner, or Extra Assistant Commissioner or of such other officer as the Local Government may invest with the power of a Revenue Court.

(28) "Village" in the permanently-settled areas of the district means either—

- (i) the area surveyed as a village in the revenue survey, or
- (ii) in the areas not covered by the revenue survey, such area as may be declared by an order as a distinct and separate village by the Local Government for the purposes of this Act and notified as such in the *Assam Gazette*.

In the temporarily-settled areas, "village" means the area surveyed as a village at the last resettlement of the district or part thereof.

CHAPTER II.

CLASSES OF TENANTS.

Classes of
tenants.

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

(1) Tenure-holders, which expression includes under-tenure-holders.

(2) Raiyats.

(3) Under-raiyats, that is to say, tenants holding immediately under raiyats ;

and the following classes of raiyats, namely :—

(a) raiyats holding at fixed rates, which expression means raiyats holding immediately under a proprietor or a permanent tenure-holder either rent-free for all time or at a rent or rate of rent fixed in perpetuity,

(b) occupancy raiyats, that is to say raiyats having a right of occupancy in the land held by them, and

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

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

(2) "Raiyat" means primarily a person who has acquired from a proprietor, a tenure-holder, or a landholder, a right to

hold land for the purpose of cultivating it by himself, or by the members of his family, or by servants or labourers, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

(3) "Under-raiyat" means a person holding land immediately under a raiyat.

(4) In determining whether a tenant is a tenure-holder or a raiyat,

(a) the Court shall have regard to the purpose for which the right of tenancy was originally acquired.

b) where the area held by a tenant exceeds one hundred standard bighas the tenant shall be presumed to be a tenure-holder until the contrary is shown.

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

CHAPTER III

PERMANENT TENURE-HOLDER AND RAIYATS AT FIXED RATES.

Transfer of permanent tenures.

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

Procedure of transfer.

—Voluntary transfer of permanent tenures.

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

(2) A registering officer shall not accept for registration any instrument purporting or operating to transfer by

sale, gift or usufructuary mortgage a permanent tenure in favour of any person other than the sole landlord of such tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process fee of the prescribed amount and a fee (hereinafter called 'the landlord's fee') of the following amount, namely :—

- (a) When rent is payable in respect of the tenure, a fee of two per cent. 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;

together with the prescribed cost of transmission of the landlord's fee to the landlord.

(3) When any such instrument is admitted to registration, the registering officer shall send to the Deputy Commissioner the landlord's fee, the cost necessary for the transmission of the same and the notice of the transfer in the prescribed form and the Deputy Commissioner shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice, or his common agent, if any, in the prescribed manner.

(4) The landlord's fee or the prescribed cost of transmission payable under this section and under sections 8 and 9 shall be paid to the Registering officer or the Court or the Deputy Commissioner, as the case may be, in the prescribed manner.

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

8. (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 a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed, the Court shall, before confirming the sale under rule 92 of 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 required by section 7 together with the prescribed cost of transmission thereof to the landlord, and such further fee for service of notice of the sale or final foreclosure on the landlord as may be prescribed.

Act V of 1908.

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

—Succession to permanent tenure.

9. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Deputy Commissioner in the prescribed form, and shall pay to the Deputy Commissioner the prescribed fee for the service of the notice on the landlord and the landlord's fee required by section 7, together with the prescribed cost of transmission thereof to the landlord, and the Deputy Commissioner shall cause the landlord's fee to be transmitted to, and

the notice to be served on, the landlord named in the notice, or his common agent, if any, in the prescribed manner.

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

—Bar to recovery of rent pending notice of succession.

10. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit or other proceeding any rent payable to him as the holder of the tenure, until the duties imposed upon him by section 9 have been performed.

Interpretation.

11. In sections 8, 9 and 10 the words "person succeeding", "transferee", "purchaser", "mortgagee", and "person becoming entitled to a permanent tenure by succession", include the successors in interest of such persons but do not include the landlord where he is the sole landlord.

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

12. Subject to the provisions of section 103 sections 7 to 11 shall apply to the transfer of, or succession to, a share in a permanent tenure.

—Previous transfers not affected.

13. The provisions of sections 7 to 12 shall not apply to transfers of permanent tenures, or of portions or shares thereof, effected before the passing of this Act.

Tenure held since permanent settlement liable to enhancement only in certain cases.

14. Where a tenure has been held from the time of the permanent settlement its rent shall not be liable to enhancement except on proof—

- (a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(b) that the tenure-holder, by receiving a reduction of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

**Limit of
enhancement
and progressive
enhancement.**

15. (1) When the rent of a permanent tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to such limit as the Court thinks fair and equitable.

(2) In determining what rent is fair and equitable, the Court shall not leave to the permanent tenure-holder as profit less than ten per cent. of the balance which remains after deducting, from the gross rents payable to him, the expenses of collecting them.

(3) If the Court thinks that an immediate increase of rent would produce hardship, 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.

**Intervals
between
enhancements.**

16. When the rent of a permanent tenure-holder has been enhanced by Court or by contract, it shall not be again enhanced during the fifteen years next following the date on which it has been so enhanced, 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 sub-section (3) of section 15, the full rent fixed by such order shall be deemed to have come into effect from the date of such order.

Permanent
tenure-holder
not liable to
ejectment.

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

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

Incidents of
holding at fixed
rates.

18. (1) A "raiyat holding at fixed rates" whether he has acquired a right of occupancy in his land or not shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure.

(2) When a succession by inheritance to the interest of a raiyat at fixed rates takes place the person succeeding is entitled to get his name registered on the rent roll of the landlord by a notice in the prescribed form and on payment of the prescribed fee.

Grounds on
which a raiyat
holding at fixed
rates may be
ejected.

19. A raiyat holding at fixed rates shall not be ejected by his landlord except on the ground—

(i) That he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(ii) That he has broken a condition, relating to the use and occupation of the land of his tenancy, consistent with the provisions of this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Permanent
tenure-holder
and raiyats at
fixed rates not
to be ejected
for arrears of
rent.

20. A permanent tenure-holder or a raiyat holding at fixed rates shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent.

thereof, and the rent shall be a first charge thereon.

Rights to trees of a permanent tenure-holder or a raiyat at fixed rates.

21. (1) A permanent tenure-holder shall have full dominion over all trees standing or grown on his land, unless there is a contract to the contrary.

(2) A raiyat at fixed rates shall have full dominion over all trees standing or grown on his land.

Provision regarding transfer of occupancy holdings not to apply in the case of raiyats at fixed rates with occupancy rights.

22 The provisions of sections 27 to 37, 42, 43 and 45 to 51 will not apply to raiyats, holding at fixed rates, even though such raiyats have a right of occupancy in the land of their holdings.

Rule and Presumption as to fixity of rent.

23. (1) When a permanent tenure-holder or a raiyat and his predecessors in interest have held the tenure or holding at a rent or rate of rent which has not been changed from the time of the permanent settlement, the rent or rate of rent of such tenure or holding shall not be enhanced.

(2) If in any suit or proceeding under this Act, it is proved that a permanent tenure-holder or a raiyat and his predecessors in interest have held the tenure or holding at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is proved, that he and his predecessors in interest have held the tenure or holding at the same rent or rate of rent from the time of "the Permanent Settlement".

CHAPTER IV.

OCCUPANCY RAIYATS.

Continuance of existing occupancy rights.

24. Every raiyat who, immediately before the commencement of this Act, has, by the operation of any enactment,

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

Acquisition of
occupancy
rights.

25. (1) Every person, who for a period of ~~twelve~~ years, whether wholly or partly before or after the commencement of this Act, has continuously held any land as a raiyat shall have a right of occupancy in such land.

(2) Every person holding land as an occupancy raiyat in a village under a landlord shall have rights of occupancy in all land for the time being held by him as a raiyat in that village under the same landlord.

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

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

(5) If a raiyat recovers possession of his holding under sub-section 3 of section 102 or of any other law in force, any period during which he may have been out of possession shall count towards the period specified in sub-section (1).

Exception.

26. Notwithstanding anything contained in this Act, a tenant holding land within a proprietor's private lands, as defined in section 143, shall not acquire a right of occupancy in such land.

Devolution on
death.

27. (1) If a raiyat dies intestate in respect of a right of occupancy, it shall descend in

the same manner as other immovable property : provided that in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

(2) When a succession by inheritance to the interest of an occupancy raiyat takes place the person succeeding is entitled to get his name registered in the landlord's rent roll by a notice in the prescribed form and on payment of the prescribed fee.

Sections applicable to transfer of occupancy holdings.

28. The provisions of sections 29 to 36 shall apply to all transfers of holdings or portions or shares of holdings of occupancy raiyats and the occupancy rights therein made after the commencement of this Act.

Holdings of occupancy raiyats with occupancy rights transferable.

29. The interest of an occupancy raiyat in his holding or portion or share thereof shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property.

Manner of transfer and notice to landlord.

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

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

(a) a notice giving particulars of the transfer in the prescribed form ;

- (b) the process fee prescribed for the service of such notice on the landlord or his common agent if any ;
- (c) a fee (hereinafter referred to as "landlord's transfer fee") of the amount provided by section 81 ; and
- (d) the prescribed cost of transmission of the landlord's transfer fee to the landlord or his common agent, if any :

Provided that where the name of the landlord is mentioned in the instrument, an endorsement therein by such landlord or his common agent admitting receipt of landlord's transfer fee shall be sufficient for the purpose of accepting the instrument for registration.

(3) When any such instrument is admitted to registration, otherwise than on the strength of an endorsement by the landlord or his common agent, the registering officer shall send to the Deputy Commissioner the landlord's transfer fee, the prescribed cost of transmission thereof and the notice of the transfer in the prescribed form, and the Deputy Commissioner shall cause the landlord's transfer fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner :

Provided that where there is no common agent, a co-sharer landlord may, subject to prescribed rule, draw his proportionate share of landlord's transfer fee by an application to the Deputy Commissioner, accompanied by copies of extracts from the general registers of revenue-paying or revenue-free estates where such registers are maintained by the Deputy Commissioner under

section 48 of the Assam Land and Revenue Regulation, or copies of finally published record-of-rights under Chapter IX of this Act or any other document showing the share and title of the applicant :

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

(4) In case of a bequest, the Court shall before granting probate or letters of administration, require the applicant to file a notice giving particulars of transfer in the prescribed form and to deposit a process fee of the prescribed amount, and the landlord's transfer fee provided by section 31, together with the prescribed cost of transmission thereof to the landlord or his common agent, if any.

When probate or letters of administration have been granted, the Court shall send to the Deputy Commissioner the landlord's transfer fee, the prescribed cost of transmission thereof and the notice :

Provided that in case of a bequest by a Mahomedan, where no probate is applied for, the executor or legatees shall file the notice and deposit the fees and costs mentioned in this sub-section in the Court of the Deputy Commissioner.

(5) The Deputy Commissioner shall cause the transfer fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner.

(6) Any sum payable at the date of the transfer as an arrear of rent of the holding, or on account of a mortgage of the holding, or portion or share thereof, which the transferee has paid or agreed to pay in satisfaction of the sale price wholly or in part shall be entered in the instrument of transfer, and such sum shall, as set forth in the instrument, be deemed to be the consideration money or part thereof, as the case may be, for the purposes of sections 31 and 33.

(7) The landlord's transfer fee and the cost of transmission payable under this section or under section 32 shall be paid to the registering officer or the Court, as the case may be, in the prescribed manner.

31. The landlord's transfer fee shall amount—

Scale of
landlord's
transfer fee.

- (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 twenty per cent. of the consideration money as set forth in the instrument of transfer ;
- (b) in the case of the sale of a holding or a portion or share of a holding in respect of which a money rent is payable, to twenty per cent. of the consideration money as set forth in the instrument of transfer, or to five times the annual rent of the holding or of the portion or share transferred, whichever is greater ;
- (c) in the case of a transfer by exchange of a holding or a portion or share of a holding, to five per cent. of the value thereof as set forth in the instrument of transfer or one and a quarter times the annual rent of the holding

or of the portion or share transferred to each party to the transfer, whichever is greater, payable by each party ;

- (d) in the case of a transfer by gift of a holding or a portion or share of a holding, to twenty per cent. of the value thereof as set forth in the instrument of transfer, or to five times the annual rent of the holding or of the portion or share transferred, whichever is greater ;
- (e) in the case of a transfer by bequest of a holding or a portion or share thereof, to ten per cent. of the value thereof as determined by the Court for the purposes of stamp duty for the grant of probate or letters of administration, or to two and a half times the annual rent of the holding or of the portion or share transferred, whichever is greater ;

Provided that where only a portion or share of a holding of an occupancy raiyat is transferred, the rent of that portion or share shall, for the purpose of determining the landlord's transfer fee, under this section or section 32, bear the same proportion to the rent of the entire holding as the area or share transferred bears to that of the entire holding :

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

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

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

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

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

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

Explanation 3.— In calculating degrees of consanguinity the testator or the donor shall be excluded.

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

32.(1) When the holding of an occupancy raiyat or a portion or a share thereof is sold in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, other than a decree or certificate for

Bengal Act III of 1913.

arrears of rent due in respect of the holding or dues recoverable as such, and neither the purchaser nor the decree-holder is the sole landlord, the Court or the Revenue Officer, as the case may be, shall before confirming the sale, require the purchaser to file a notice giving particulars of the transfer in the prescribed form and to deposit in addition to the purchase money a process fee of the prescribed amount, the landlord's transfer fee calculated at the rate of twenty per cent. of the purchase money, or five times the annual rent of the holding sold or of the portion or share thereof sold, whichever is greater, together with the prescribed cost of transmission thereof to the landlord:

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

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

(3) If the purchaser fails to comply with the order of the Court or the Revenue Officer under sub-section (1) within

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

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

Provided that where there is no common agent, a co-sharer landlord may, subject to prescribed rules, draw his proportionate share of landlord's transfer fee by an application to the Deputy Commissioner, accompanied by copies of extracts from the general registers of revenue-paying or revenue-free estates where such registers are maintained by the Deputy Commissioner under section 48 of the Assam Land and Revenue Regulation or copies of finally published record-of-rights under Chapter IX of this Act, or any other document showing the share and title of the applicant.

I of 1886.

Power of immediate landlord to purchase.
(Right of pre-emption).

33. (1) Except in case of transfer—

- (a) to a co-sharer in the tenancy,
- (b) in execution of a decree or a certificate signed under the Bengal Public Demands Recovery

Beng. Act
III of 1913.

Act, 1913, for arrears of rent due in respect of the holding or dues recoverable as such,

- (c) by exchange of lands under the same landlord, or
- (d) referred to in the 2nd proviso to section 31,

the immediate landlord of the holding or the transferred portion or share may within two months of the service of the notice issued under section 30 or 32, apply to the Court that the holding or portion or share thereof shall be transferred to himself.

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

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

(4) (a) When an application has been made by a co-sharer immediate

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

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

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

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

(i) the right, title and interest in the holding or share thereof accruing to the transferee from the transfer shall, subject to the provisions of section 205, be deemed to have vested in the immediate landlord and co-sharer immediate landlord, if any, whose application has been allowed free

from all encumbrances which have been discharged or created after the date of the transfer,

- (ii) the liability of the transferee for the rent due on account of the holding shall cease, and
- (iii) the Court on the further application of such landlord or co-sharer immediate landlord may place him in possession of the property so vested in him.

(7) When a transferee is divested of his right, title and interest under the provisions of sub-section (6), he shall for the purposes of clauses (a) and (b) of sub-section (3) of section 97 be deemed to be a raiyat ejected from his holding by proceedings for his ejection commencing on the date on which the landlord applied to the Court under sub-section (1).

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

What kind of usufructuary mortgage occupancy raiyat may execute.

34. (1) An occupancy raiyat shall not be entitled to enter into any form of usufructuary mortgage in respect of his holding or a portion or share thereof, except a complete usufructuary mortgage which may be for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed nine years :

Provided that, every such complete usufructuary mortgage shall be registered under the Indian Registration Act, 1908.

XVI of 1908.

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

Provided that the mortgagee shall be entitled to compensation for the standing crop.

(3) Notwithstanding anything contained in this Act or any other law, any document creating or purporting to create any other form of usufructuary mortgage of an occupancy holding or a share or portion thereof shall not have any force or effect, and no such document shall be received in evidence or acted upon in Court or by any public servant.

Explanation.—A “complete usufructuary mortgage” means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan, upon the condition that the loan with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage.

Landlord's transfer fee with compensation in certain cases of transfer. — 35. In cases where sections 30 and 32 apply—

(1) A transferee of the holding of an occupancy-raiyat or a share or portion thereof, whose instrument of transfer or sale certificate purports to transfer the interest of a permanent tenure-holder or of a raiyat holding at a rent or rate of rent fixed in perpetuity or of a rent-free holding shall, notwithstanding anything contained in the instrument of transfer, be liable to pay the landlord's transfer fee as provided in those sections.

(2) If such payment is not made, the landlord shall within six months of the payment of any amount as landlord's transfer fee under section 7, 8, 12 or 18, be entitled to apply in the lowest Civil Court for the recovery of the amount claimed and recover the balance of such fee after deducting the amount already paid under the aforesaid sections, together with such compensation as the Court

thinks fit, not exceeding the amount provided in sections 31 and 32 as the case may be, as the landlord's transfer fee.

(3) If it appears to the Court that the landlord has made the application under sub-section (2), without reasonable cause, the Court may award to the transferee by way of damages, such sum, not exceeding twenty-five per cent. on the amount claimed by the landlord together with the cost incurred by the transferee, as it thinks fit.

(4) The provisions of section 33 shall apply to the case of a transfer referred to in sub-section (1) and the immediate landlord shall be competent to exercise his right of purchase under that section within two months of the date of payment into Court of the balance of the landlord's transfer fee and the compensation allowed.

36.(1) In sections 30, 31, (33) and 35 "transferee" includes the successors in interest of the transferee.

(2) In sections 29, 30, 31, (33) and 35 "transfer" includes bequest but in sections 30, 31, (33) and 35 it does not include—

- (i) Succession by inheritance.
- (ii) Divisions of tenancies in accordance with the provisions of sections 103 and (104).
- (iii) Leases executed in accordance with the provisions of this Act.
- (iv) Complete usufructuary mortgage as defined in section 34.
- (v) Simple mortgages or mortgages by conditional sale until a final decree for sale or foreclosure is made.

(8) In section 32 " purchaser " includes the successors in interest of the purchaser and " mortgagee " includes the successors in interest of the mortgagee.

Effect on landlord of acceptance of occupancy transfer fee.

37. Neither the acceptance of the landlord's transfer fee provided in section 31, 32 or 35 nor the making of an application to the Court under the provisions of section 33 shall operate as an admission of the amount of rent or of the area or any incident of such occupancy holding other than the existence of a right of occupancy therein, or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof.

Liability for arrears of rent on transfer.

38. When an occupancy raiyat transfers his holding or a share or portion thereof, the transferor and the transferee shall be jointly and severally liable to the landlord for arrears of rent due at the time of the transfer.

Previous transfers not affected.

39. Nothing in sections 30 to 38 shall affect a transfer of the interest of an occupancy raiyat or a portion or share thereof effected before the commencement of this Act.

Sub-letting.

40. An occupancy raiyat may sub-let his holding or a portion thereof for a period not exceeding nine years.

Rights of an occupancy-raiyat in respect of use of land.

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

Right to trees. 42. Subject to the provisions of section 41, when a raiyat has a right of occupancy in respect of any land, he shall be entitled —

- (i) to plant, (ii) to enjoy the flowers, fruits and other products of,
- (iii) to fell, and (iv) to utilise or dispose of the timber of, any tree on such land:

Provided that in doing so he does not contravene the provisions of any law.

Obligation to pay rent. 43. An occupancy raiyat shall pay rent for his holding at fair and equitable rates.

No ejectment for arrear of rent. 44. An occupancy raiyat shall not be liable to ejectment for arrears of rent, but his holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge on it.

Protection from eviction except on specified grounds. 45. An occupancy raiyat shall not be ejected by his landlord from his holding, ~~except in execution of a decree for ejectment~~ passed on the ground:—

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

ENHANCEMENT OR REDUCTION OF RENT.

Presumption as to fair and equitable rent. 46. The rent for the time being payable by an occupancy raiyat shall be presumed to be fair and equitable until the contrary is proved.

Enhancement of rent by contract. 47. The money rent of an occupancy raiyat may be enhanced by contract, subject to the following conditions:—

- (a) the contract must be in writing and registered;

- (b) the rent must not be enhanced so as to exceed the rent previously payable by the raiyat by more than three-sixteenths ;
- (c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract :

Provided as follows :—

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

from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

**Enhancement
of rent by suit.**

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

- (a) that the rate of rent paid by the raiyat is below the average rate paid by occupancy raiyats for land of a similar description and with similar advantages in the same village or in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate ;
- (b) that there has been a rise in the average local price of staple agricultural produce during the currency of the present rent ;
- (c) that the productive powers of the land held by the raiyat have been increased by an improvement effected wholly by, or at the expense of, the landlord during the currency of the present rent and registered under the provisions of this Act ;
- (d) that the productive powers of the land held by the raiyat have been increased by fluvial action.

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

Reduction of rent. 49. Without any prejudice to the rights conferred by the other provisions of this Act, an occupancy raiyat paying money rent may claim reduction of rent if there is a fall, not due to a temporary cause, in the average local price of staple agricultural produce grown in the locality during currency of the present rent.

Regard to be had to rules in determining enhancement. 50. In deciding a suit for enhancement or reduction of rent the Court shall have regard to the rules prescribed for the guidance of Revenue Officers in settling rents.

Intervals between enhancements. 51. (1) When the rent of an occupancy raiyat has been enhanced by the Court it shall not be again enhanced during the fifteen years next following the date on which it has been so enhanced on the ground that the rate of rent paid is below the average rate for similar lands in the same village or in neighbouring villages, or on the ground of a rise in prices.

Power to order progressive enhancement. (2) If the Court passing a decree for enhancement considers that the immediate increase of rent to its full extent will produce hardship, 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, and, for the purposes of sub-section (1), the full rent shall be deemed to have come into force from the date of the decree.

Price lists of staple agricultural produce. 52. (1) The Deputy Commissioner shall prepare, at prescribed intervals, periodical lists of the market prices of staple agricultural produce grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Local Government for approval or revision.

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

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

(4) The price list shall, when approved or revised by the Local Government, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Deputy Commissioner with the sanction of the Local Government which shall notify such correction in the Official Gazette.

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

(6) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and may presume that the prices shown in the lists prepared are correct unless and until it is proved that they are incorrect.

(7) The Local Government shall make rules for determining what crops are to

be deemed staple agricultural produce in any local area and for the guidance of officers preparing price lists under this section.

CHAPTER V.

NON-OCCUPANCY RAIYATS.

Application of chapter.

53. This chapter shall apply to raiyats, other than raiyats at fixed rates, who have not acquired a right of occupancy in the lands held by them and who are in this Act referred to as non-occupancy raiyats.

Incidents of such tenancies—transfer.

54. The interest of a non-occupancy raiyat shall descend in the same manner as other immovable property, but shall not otherwise be transferable without the consent in writing of the landlord. If a non-occupancy raiyat dies without leaving any heir the holding shall revert to his landlord.

Initial rent of non-occupancy raiyat.

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

Condition of enhancement of rent.

56. (1) The rent of a non-occupancy raiyat shall not be enhanced except by registered agreement:

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

(2) When the rent of a non-occupancy raiyat has been enhanced by registered agreement the raiyat shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement:

Provided that nothing in this subsection shall prevent enhancement of rent being made of any land comprised in his holding even during this period in case of improvement of the land at the cost of the landlord or due to fluvial action.

Grounds on which non-occupancy raiyat may be ejected.

57. A non-occupancy raiyat shall, subject to the provisions of this Act, be liable to be ejected on one or more of the following grounds, and not otherwise :—

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

Provided that in cases coming under clause (c) he shall not be liable to be ejected when the period of 5 years, referred to in section 56, has not expired or when he has acquired a right of occupancy before the expiry of that period.

Court shall allow time.

58. (1) When an arrear of rent remains due at the end of the agricultural year the landlord may, whether he has obtained a decree for the recovery of the arrear of rent or not, institute a suit to eject the raiyat.

(2) The decree in a suit for ejection for an arrear of rent shall specify the amount of the arrear and of the interest (if any) due thereon, and it shall not be executed if the amount and the costs of the suit are paid into Court within 30 days from the date of the decree or such longer period as the Court may, for sufficient reason to be recorded in writing, consider fit.

Explanation of "admitted to occupation". 59. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this Chapter, notwithstanding that the lease may purport to admit him to occupation.

Sub-letting. 60. A non-occupancy raiyat shall have no right to sub-let without the consent in writing of the landlord and even when such consent is obtained the term of sub-lease shall not exceed 5 years.

Right to trees. 61. (1) A non-occupancy raiyat shall not, without his landlord's consent in writing, cut down or appropriate any tree of a species notified by Government for the purposes of this section as a 'valuable tree' standing or grown on his land.

(2) Nothing in this section shall :—

(a) prevent a tenant from clearing his land of scrub-jungle or from enjoying the fruits of trees standing on his land,

(b) entitle a landlord to consent to a tree being cut or appropriated which he could not himself cut or appropriate, or a tenant to do any act in contravention of the provisions of any law for the time being in force.

Saving as to
proprietor's
private lands.

62. Nothing in this Chapter shall apply to proprietor's private lands as defined in section 143.

CHAPTER VI.

UNDER-RAIYATS.

Liability of
under-raiyat to
pay rent.

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

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

Incidents of
such tenancies:
—Transfer.

64. The interest of an under-raiyat shall descend during the period of the lease in the same manner as other immovable property but shall not be otherwise transferable.

Ejectment.

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

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

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

Court to allow time. 66. The provisions of section 58 shall apply *mutatis mutandis* in the case of under-raiyats also.

Rights to trees. 67. The provisions of section 61 shall apply *mutatis mutandis* in the case of under-raiyats also.

Sub-letting. 68. An under-raiyat shall have no right of sub-letting.

CHAPTER VII.

RENT.

Instalment of rent. 69. Subject to agreement express or implied, or established usage a money rent payable by a tenant shall be paid in three equal instalments, namely:—

First instalment on the fifteenth day of Bhadra.

Second „ on the fifteenth day of Magh.

Third „ on the fifteenth day of Chaitra.

Payment of rent. 70. (1) Every tenant shall pay or tender each instalment of rent before sunset of the day on which it falls due :

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

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

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

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 76.

(3) When rent is sent by postal money order in the manner prescribed, the Court shall presume, until the contrary is proved, that such tender has been made.

**Appropriation
of payments.**

71. (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.

receipts.

72. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord or his agent duly authorised in that behalf.

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

(3) The receipt and counterfoil shall be in the prescribed form and shall specify the particulars prescribed.

(4) If a receipt does not contain substantially the particulars prescribed, it shall be presumed, until the contrary

is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Tenant may demand statement of account.

73. (1) Within three months after the end of the agricultural year, a tenant shall, on payment of the prescribed fee, be entitled to get from the landlord a statement of account which shall be in the prescribed form.

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

Penalty for omission to deliver receipt or statement of account.

74. (1) When a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt, or statement, or to prepare and retain a counterfoil, or copy of a receipt or statement as required by sections 72 and 73, the Deputy Commissioner may, in a proceeding under this section, after such enquiry as he may deem necessary, order the landlord to pay as penalty a sum not exceeding Rs. 50 for each default and may, in his discretion, award to the tenant as compensation such portion of the penalty as he thinks fit.

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

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

(b) the statement of account required by section 73

and the refusal of the tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt as required by section 72.

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

(4) When in any proceeding instituted under sub-section (1), the Deputy Commissioner discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false, the Deputy Commissioner may, by his order of discharge, direct the tenant to pay to such landlord or agent such compensation, not exceeding twenty-five rupees, as he thinks fit.

(5) No order shall be passed against any landlord under sub-section (1) or against any tenant under sub-section (4), unless he has been allowed a reasonable opportunity to show cause why such order should not be passed.

Appeal and
revision.

(6) An appeal shall lie to the Commissioner against an order of the Deputy Commissioner imposing a fine under sub-section (1) or awarding compensation under sub-section (4) and the order passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Local Government, be final.

Effect of receipt
of registered
proprietor, land-
holder, manager
or mortgagee.

75. In areas in which a general register under Chapter IV of the Assam Land and Revenue Regulation has been prepared and is maintained, when rent is due to the proprietor, landholder, manager or a mortgagee of an estate, the receipt of the person whose name stands in such register as proprietor, landholder,

manager or mortgagee of that estate, or of his agent authorised in that behalf, shall be a sufficient discharge for the rent due to such proprietor, landholder, manager or mortgagee, and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

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

Deposit of rent in Court. 76. In any of the following cases, in which money-rent is due :—

- (a) when a tenant tenders the full amount of rent due from him, and the landlord refuses to receive it or intimates his unwillingness to grant a receipt for it ;
- (b) when rent is payable to co-sharers jointly and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf ;
- (c) when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent, or
- (d) when the landlord is an absentee landlord who possesses no village office and has not appointed a convenient place for the receipt of rent,

the tenant may present to the Court, having jurisdiction to entertain a suit for rent of his tenancy, an application in writing for permission to deposit a sum not less than the amount of the money then due.

Form of application.

77. (1) The application under the last foregoing section shall contain, in addition to such other particulars as may be prescribed, a statement of the grounds on which it is made.

(2) The application shall be signed and verified as a plaint under the Code of Civil Procedure, 1908, and shall be accompanied by the prescribed cost of transmission of the money deposited to the landlord and, in cases (b) and (c) of section 76, by a fee of the prescribed amount. Act V of 1908.

Court to grant receipt.

78. (1) If it appears to the Court to which an application is made under section 76 that the applicant is entitled under that section to deposit the rent and if the conditions imposed by section 77 have been fulfilled, it shall receive the rent and give a receipt for it under the seal of the Court.

—Effect of such deposit.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent, as if that amount had been received in cases (a) and (b) of section 76 by the person specified in the application as the person to whose credit the deposit was to be entered and in cases (c) and (d), by the person or persons entitled to the rent.

Procedure of Court on receiving deposit.

79. The Court receiving a deposit :—

(i) In case (a) or (d) of section 76, shall forthwith forward the

same by postal money order to the address of the landlord or his common agent, if any, empowered to receive the rent;

- (ii) in case (b) or (c) 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 the prescribed particulars,

and if the amount of deposit is not paid away under section 80 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in case (b), cause a notice of the receipt of the deposit to be posted free of charge at the landlord's village office, if any, and in some conspicuous place in the village in which the tenancy is wholly or partly situated, and

in case (c), 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.

Further procedure in certain cases.

80. (1) The Court may pay the amount of the deposit notified under clause (ii) of section 79 to any person appearing to it to be entitled to the same or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount of rent in deposit may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application.

(3) No suit or other proceeding shall be instituted against the Secretary of State for India in Council or against any officer of the Government in respect of anything done by a Court receiving a deposit, under section 78 or 79, but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this or the preceding section.

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

81. If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money order or deposited in Court, the landlord shall be precluded from recovering by suit interest, costs or damages in respect of the same, and the Court may in addition award to the tenant damages not exceeding 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 tenure or holding shall not be deemed to be a reasonable cause under this section :

Provided that, when a landlord accepts rent, which has been deposited or remitted by postal money order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form, or that he has waived his rights under section 31, 32, 33 or 35.

Interest on arrear.

82. An arrear of rent shall bear simple interest at the rate of nine and three-eighths per cent. per annum from the expiration of the date on which each instalment falls due to the date of payment or institution of suit whichever date is earlier.

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

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

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

Provided also that where damages are awarded—

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

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

Alteration of rent on alteration of area. 84. Subject to the provisions of any contract between the landlord and the tenant, every tenant shall—

- (a) be liable to pay fair and equitable rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him,

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area for which rent has been previously paid by him.

Rules for assessment of rent of excess land. 85. In determining the excess or deficiency in the area of a holding and the addition or reduction of rent to be made in consequence under clauses (a) and (b) of section 84 the Court shall have regard to the rules prescribed for the guidance of the Revenue Officers in determining such area and in settling a rent for such lands.

Reduction of rent. 86. (1) A raiyat or under-raiyat may claim abatement of rent either by a suit or in a defence in a suit for arrears of rent on either of the following grounds, namely :—

- (a) that the soil of the holding has, without the fault of the tenant, become permanently deteriorated by a deposit of sand or other specific causes, sudden or gradual, or
- (b) that the landlord has refused or neglected to carry out arrangements in respect of the irrigation or maintenance of embankments which were in force at the time the rent was settled, and the soil of the holding has thereby deteriorated.

(2) In any such suit the Court may direct such reduction of rent as it thinks fair and equitable.

87. In all cases where—

Alteration of rent on alteration of revenue in temporarily settled areas.

- (a) revenue is for the first time made payable in respect of the land covered by a holding, or

(b) the revenue payable in respect of the land covered by a holding is diminished or increased whether by remission or alteration of previous revenue, the tenant's rent shall be liable to be altered fairly and equitably with reference to the new revenue.

(b) the revenue payable in respect of the land covered by a holding is diminished or increased whether by remission or alteration of previous revenue, the tenant's rent shall be liable to be altered fairly and equitably with reference to the new revenue.

Notwithstanding anything in the contract between the parties, a Revenue Court acting on the application of the landlord or the tenant filed before the end of the agricultural year in the course of which revenue becomes for the first time payable or is altered and the Court of the Deputy Commissioner or any Settlement Officer acting of its own motion, may order remission for a period for which the landlord receives the benefit of remission or alter the rent (as the case may be) accordingly.

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

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

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

ILLEGAL CEBSES, ETC. .

Illegal cesses prohibited.

89. (1) All impositions upon a tenant for the use and occupation of the lands of his tenancy, in addition to the actual rent, which are not specially authorised by this Act, or by any other Act or Regulation for the time being in force,

shall be illegal, and all stipulations and reservations for the payment of such impositions shall be void.

—Penalty.

(2) Every tenant from whom any such illegal exaction has been made by a landlord or his agent may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding one hundred rupees :

Provided that, when the Court is satisfied that the allegation was false, it may, in its discretion, direct the tenant to pay to his landlord such compensation not exceeding fifty rupees, as it may think fit.

CHAPTER VIII.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

EJECTION PROCEDURE.

No ejection except in execution of a decree. 90. No tenant shall be ejected from his tenancy except in execution of a decree.

Procedure in certain cases. (Relief against forfeitures). 91. (1) A suit for ejection of a tenant on the ground—

- (a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or
- (b) that he has broken a condition, relating to the use and occupation of the lands of his tenancy, on breach of which he is, under the terms of a contract between him and the landlord, liable to ejection, shall not be entertained,

unless the landlord, who has instituted the suit, has served, in the prescribed manner, a notice on a tenant specifying the

particular misuse or breach complained of, and where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and where it is not capable of remedy, to pay reasonable compensation and the tenant has failed to comply within a reasonable time with the requisition.

(2) In passing a decree for ejectment in any such suit, the Court shall allow the defendant such time as it thinks fit to remedy the misuse or breach, or, where it is not capable of remedy, to pay a suitable compensation declared by the Court to be recoverable for the misuse or breach.

(3) If the misuse or breach is remedied or the compensation declared to be recoverable is paid, within the time allowed by the Court, the decree for ejectment shall not be executed

When plaintiff may claim alternative relief.

92. A plaintiff may in a suit for the ejectment of a trespasser, if he thinks fit, claim as an alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

IMPROVEMENTS.

Definition of 'improvement.'

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

(2) Until the contrary is shown, the following shall be presumed to be

improvements within the meaning of this section:—

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

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

- (b) the preparation of land for irrigation ;

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

- (d) the erection of a dwelling house for the tenant and his family, together with all necessary out-offices ; and

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

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

Right of land-
lord and tenant
to make im-
provements.

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

Provided that a non-occupancy raiyat or an under-raiyat shall not be entitled

to make any improvement other than those mentioned below without the landlord's permission, namely,—

- (i) to construct, maintain or repair a well whether of masonry or not,
- (ii) to erect a dwelling house of materials other than bricks, stone or masonry for himself and his family with all necessary out-offices :

Provided further, that no raiyat shall be entitled to construct a tank exceeding one standard bigha in area without the permission of his landlord.

(2) If both the tenant and his landlord wish to make the same improvement the tenant shall have a prior right, unless it affects land not held by any tenant or another holding or other holdings under the same landlord.

Deputy Commissioner to decide the question as to right to make improvement.

95. If a question arises between the raiyat or under-raiyat and his landlord—

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

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

Registration of landlord's improvement.

96. (1) A landlord may, by application to the Deputy Commissioner, register any improvement which he has lawfully made or which has been lawfully made wholly at his expense.

(2) The application shall be in such form and shall contain such information, as the Local Government may, from time to time, prescribe.

(3) The Deputy Commissioner may reject it, if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act, from the date of such commencement ;

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

(4) If the application is not rejected under sub-section (3) the Deputy Commissioner shall issue notice on the tenant concerned, take such evidence as may be adduced by the landlord and the tenant, and after making or causing to be made a local enquiry, in the prescribed manner, to verify the information contained in the application, pass an order directing or refusing registration.

(5) The Deputy Commissioner shall refuse to register the improvement unless it is proved that the improvement was effected by, or at the expense of, the landlord.

(6) Improvements effected before the commencement of this Act shall be deemed to be improvements made in accordance with this Act.

COMPENSATION.

Compensation
for tenant's
improvements.

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

(2) Whenever a Court makes a decree or order for the ejection of a tenant from his holding, it shall determine the amount of compensation, if any, due under this

section to the tenant for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the tenant :

Provided that no compensation shall be ordered to be paid when the improvement has been effected in pursuance of a contract in consideration of some substantial advantage to be obtained by the tenant, and which has been obtained by him.

(3) The Court which executes a decree for the ejectment of a tenant from his holding may, in its discretion, make an order for the payment of—

- (a) compensation to the tenant for crops sown or planted on the land by him, and not gathered in before his ejectment ;
- (b) compensation to the tenant for the cultivation or preparation of the land for ordinary agricultural purposes, when the tenant has not been able to sow or plant the crops before his ejectment;
- (c) compensation to the landlord, in lieu of rent, for the use and occupation of the land, when the landlord allows the tenant to retain possession of the land after the date of the decree, and to use it for the purpose of tending or gathering crops sown or planted before such date ;
- (d) compensation to the tenant for trees standing on his land which he is entitled to cut and appropriate :

Provided that, in the case of a tenant other than a permanent tenure-holder, no compensation shall be payable under clause (d) when the tenant is being ejected on the ground that he has used the land in a manner which renders it unfit for the purpose of the tenancy :

Provided also, that in the case of a non-occupancy raiyat or an under-raiyat, no compensation shall be payable under clause (d) when such tenant is being ejected for an arrear of rent.

Principle on which compensation is to be estimated.

98. (1) In estimating the compensation to be awarded under section 97 for an improvement, regard shall be had—

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

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

ACQUISITION OF LAND BY LANDLORD.

Acquisition of land by landlord.

99 (1). The Deputy Commissioner may, on the application, in the prescribed manner, of the landlord of a holding, and on

being satisfied that he is desirous of acquiring the holding or part thereof—

- (i) for ~~some reasonable and sufficient purpose having relation to the good of the holding or of the tenure or estate in which it is comprised, including the use of the land as building ground, or~~
- (ii) for any religious, educational or charitable purpose,

authorise the acquisition thereof by the landlord upon such conditions as the Deputy Commissioner thinks fit, and may require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved, including full compensation to the tenant and any other person interested.

(2) If the applicant tenders to the tenant, or other person having such interest, such sum as the Deputy Commissioner has approved under sub-section (1) for payment to such tenant or person, and the tenant or person refuses to receive the sum, the applicant may deposit the same with the Deputy Commissioner, and thereupon the land shall pass to the applicant free of all incumbrances from the date of such deposit, and the Deputy Commissioner shall, at the request of the applicant, deliver possession of the land to him in the prescribed manner.

(3) In giving effect to the provisions of sub-sections (1) and (2), the Deputy Commissioner shall have regard to the rules prescribed in this behalf.

(4) An appeal shall lie to the District Judge against any order passed by the Deputy Commissioner under this section.

SURRENDER AND ABANDONMENT.

Surrender.

100. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, sur-

render his holding, but he shall not be entitled to surrender a portion or share only of his holding.

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

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

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

(5) When a holding or a part thereof is subject to an incumbrance, or has an under-raiyat thereon, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer or the under-raiyat, as the case may be.

(6) Save as provided in sub-section (5), nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for the surrender of the whole or a part of the holding.

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

101. (1) If—

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

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

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

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

Abandonment. 102. (1) If a raiyat or under-raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat or under-raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself :

Provided that when there is in such abandoned holding a *bona-fide* and valid sub-tenancy, the sub-tenant shall be entitled to continue to hold his land as a sub-tenant under the landlord, as if the tenancy abandoned were still in existence, or under any person to whom the landlord has let the abandoned holding for the remaining period of his sub-lease :

Provided also, that on proof that the land is held by such sub-tenant at a rent which was not at the time the sub-lease

was granted, a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

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

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

SUBDIVISION OF TENANCY.

Division of tenancy. of 103. Subject to the provisions of section 104, a division of a tenancy or distribution of the rent payable in respect thereof, shall not be binding on the co-sharer tenants unless made with their consent, or on the landlord unless it is made with his express consent in writing or with that of his agent duly authorised in that behalf :

Provided that, if there be in any landlord's rent-roll an entry showing that the tenancy 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.

Civil Courts
empowered to
effect division
or distribution.

104. A competent Civil Court may, in a suit brought by a landlord or a tenant, pass a decree for a division of the tenancy or distribution of the rent :

Provided that, when the suit has been brought by a tenant, the Court—

(i) shall not pass such decree when such distribution may jeopardise the security for the rent due, or where such division will result in the creation of unreasonably small holdings, unless the landlord agrees to such distribution or division, and

(ii) shall, when it passes a decree for such distribution or division make an order for the payment of a fee to the landlord amounting to rupees two or twice the amount of rent made payable by the tenant whichever is greater, for each separate account ordered to be opened, or for each separate tenancy created by the division, and the decree shall not take effect until such fee has been paid.

COMMON MANAGER AND COMMON AGENT.

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

105. (i) When any dispute exists between co-owners of an estate or permanent tenure as to the management thereof, or

(ii) When, owing to the existence of a large number of co-owners in an estate or permanent tenure the tenants or landlords are put to inconvenience and harassment in the payment or receipt of the rent due, and a common agent has not been appointed for the receipt or payment thereof,

the District Judge may, if it appears to him to be just and convenient, on the application of—

In case (i)—

The Deputy Commissioner, or
in case (ii)—

(a) more than one-fourth of the tenants, or

(b) co-owners holding more than half the aggregate interests in the estate or tenure,

direct notice to be served on all the co-owners calling on them to show cause why they should not be ordered to appoint a common manager for such estate or permanent tenure :

Provided that a co-owner of an estate or permanent tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless he can prove the extent of his interest in such estate to the satisfaction of the District Judge.

Power of District Judge to make order when no cause shown.

106. If the co-owners fail to show cause as aforesaid within one month after service of notice under section 105, the District Judge may make an order directing them to appoint a common manager and a copy of the order shall be served on any co-owner who did not appear before it was made.

Alternative powers of District Judge.

107. If the co-owners do not, within such period, not being less than one month, after the making of an order under section 106, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it

is shewn to his satisfaction that there is a prospect of satisfactory arrangement being made within a reasonable time,—

(a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof, or

(b) in any case, appoint a manager.

Local Government may nominate manager for local areas.

108. The Local Government may nominate a person for any local area to manage all estates and permanent tenures within the local area for which it may be necessary to appoint a manager under clause (b) of section 107, and when any person has been so nominated no other person shall be appointed manager under that clause by the District Judge, unless the District Judge thinks fit to appoint one of the co-owners themselves as manager.

Applicability of Court of Wards Act in certain cases.

109. In any case in which the Court of Wards undertakes under section 107 the management of an estate or permanent tenure, so much of the provisions of the Bengal Court of Wards Act, 1879, as relates to the management of immovable property shall apply to the management.

Bengal Act,
IX of 1879.

Provisions applicable to manager.

110. (1) A manager appointed under section 107 may, if the District Judge thinks fit, be remunerated at a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge may, from time to time, direct.

(2) He shall give such security for the proper discharge of his duties as the District Judge may direct.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might, but for his appointment, have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts at such intervals and in such manner as the District Judge may direct.

(6) He shall pass his accounts at such periods, and in such form as the District Judge may direct.

(7) He may make an application which the co-owners could make under section 117, or 141 or 176.

(b) He shall be removable by the order of the District Judge but not otherwise.

Power to
restore manage-
ment to co-
owners.

111. When an estate or permanent tenure or any portion of it has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 107, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the co-owners or to the tenants of such estate or tenure.

High Court
may define
Manager's
duties by rule.

112. The High Court may, from time to time, make rules defining the powers and duties of managers under the foregoing sections.

Appointment
of common
agent.

118. (1) Where two or more persons are joint or co-sharer landlords, they may by an instrument in writing appoint a common agent for the whole of their joint property or for any portion thereof to exercise the powers and perform the duties prescribed as being those of common agent.

(2)(a) The Deputy Commissioner shall, on application by the common agent and on production by him of the instrument

of appointment, register the names of the common agent and the landlords appointing him and their addresses and other particulars in the prescribed manner.

(b) The name and address of such common agent shall be entered upon the receipt required under section 72 to be given on the payment of rent for the tenure or holding situated within the area for which he has been appointed under sub-section (1)

MEASUREMENTS.

Measurement
by landlord.

114. (1) Subject to the provisions of this section and of any contract, a proprietor, a tenure-holder or a land holder may, by himself or by any authorised agent, enter on and measure by the standard prescribed all land held by his tenant.

(2) Such measurement shall not, without the consent of the tenant or the written permission of the Civil Court, take place more than once in ten years, except in the following cases (namely) :—

(a) where the area of the tenancy is liable, by reason of alluvion or diluvion, to vary from year to year and the rent payable depends on the area ;

(b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation ;

(c) where the landlord is a purchaser otherwise than by voluntary transfer, and not more than two years have elapsed since the date of his entry under the purchase ;

(d) where the land held by the tenant is contiguous to his landlord's *khas* lands and the landlord has reason to believe that the tenant has encroached upon such land, and one year has elapsed from the date of the last measurement.

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

Power of Civil Court to order tenant to attend and point out boundaries.

115. (1) Where a landlord desires to measure any land which he is entitled to measure under section 114, he may apply to the Civil Court in whose jurisdiction the land or any portion of it is situate, and the Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) The Court shall cause a notice to be served on such tenant requiring him to show cause why the order applied for should not be made, and if the tenant fails to show cause or if the cause shown is, in the opinion of the Court, unsatisfactory, the Court may make the order.

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

Tenants' right to have the land measured in certain circumstances in the temporarily-settled areas.

116. In the temporarily-settled areas, a tenant may apply to the Revenue officer for the correct measurement of such portion of his holding as does not form entire cadastral plots in the village map and land records prepared and maintained under the authority of Government.

The Revenue Officer, on the deposit of prescribed fees and after notice to the landlord, shall arrange for the correct measurement of the area by a Revenue Officer not below the rank of a Sub-Deputy Collector.

The correct measurement shall thereupon be entered in the record of tenants, rights (if any) maintained.

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CHAPTER IX.

RECORD-OF-RIGHTS

PART I.

Survey and preparation of record-of-rights.

Power to order survey and preparation of record-of rights.

117. (1) The Local Government may make an order directing that a survey be made and a record-of-rights prepared by a Revenue Officer in respect of all lands in any local area, estate or tenure or part thereof, whether such lands have been let out or occupied for agricultural purposes or not :

Provided that, when any person having an interest in such lands makes an application for an order under this section, he shall deposit or give security for such amount for the payment of expenses, as the Local Government may direct :

Provided also that the provisions of sections 121, 122, 135 and 136 shall not apply in respect of land other than land as defined in this Act.

(2) A notification in the official gazette of an order under sub-section (1) shall be conclusive evidence that the order has been duly made.

(3) The survey shall be made and the record-of-rights prepared in the prescribed manner.

Particulars to be recorded in record-of-rights.

118. (1) When an order is made under section 117, the particulars to be recorded shall be specified in the order, and may

include, either without or in addition to other particulars, some or all of the following, namely :—

- (a) the name of each person in occupation of the land whether as proprietor, tenure-holder, raiyat holding at fixed rates, occupancy raiyat, non-occupancy raiyat or under-raiyat, and of any other person who has under this Act or otherwise, an interest in the land ;
- (b) the class or classes to which each tenant belongs, that is to say, whether he is—
 - (i) a tenure-holder and, if so, whether his rent is liable to enhancement or not ;
 - (ii) a raiyat and, if so, whether he holds at fixed rates or not, and whether he is an occupancy raiyat or a non-occupancy raiyat ;
 - (iii) an under-raiyat ;
- (c) if the person in occupation is not a tenant within the meaning of this Act, or if the person has an interest in the land which is not comprised within any of the clauses mentioned in clause (b), the character of such occupation or of such interest ;
- (d) the situation and quantity and one or more prescribed boundaries of the land held by each tenant or other occupant ;
- (e) the rent, if any, payable at the time the record-of-rights is being prepared ;
- (f) the amount payable, if any, at the time the record-of-rights is being prepared, in respect of any rights of pasturage, forest

rights, rights over fisheries and the like which the tenant enjoys by reason of his holding the tenancy, the conditions and incidents appertaining to such rights and, if the amount is a gradually increasing amount, the time at which, and the steps by which it increases ;

- (g) the mode in which the rent referred to in clause (e) or (f) has been fixed, *i.e.*, whether by contract, by order of a Court or otherwise ;
- (h) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases ;
- (i) the rights and obligations of each tenant and landlord in respect of—
 - (i) the use by the tenant of water for agricultural purposes, whether obtained from a river, ~~bit~~, tank, or well, or any other source of supply, and
 - (ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land ;
- (j) the special conditions and incidents if any, of the tenancy ;
- (k) any right-of-way or other easement over, or appurtenant to the land for which the record-of-rights is being prepared ;

(2) if the land is claimed rent-free whether or not rent is actually paid and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority and subject to what conditions, if any.

(2) Where lands have not been let out or occupied for purposes connected with agriculture, it shall be sufficient to record that fact, together with such particulars as may be prescribed.

Preliminary publication, amendment and final publication of record-of-rights.

119. (1) When a draft record-of-rights has been prepared, the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom, during the period of publication.

(2) When such objections have been considered and disposed of in the prescribed manner, the Revenue Officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

Certificate of, and presumption as to final publication and presumption as to correctness of record-of-rights.

120. (1) When a record-of-rights has been finally published under section 119, the Revenue Officer shall, within such time as the Commissioner may, by general or special order, direct, make a certificate stating the fact of such final publication and the date thereof, and shall date and subscribe the same with his name and official title.

(2) The certificate of final publication, or, in the absence of such certificate, a certificate signed by the Deputy Commissioner, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication, and the date thereof.

(3) The Local Government may, by notification, declare with regard to any specified area that a record-of-rights has been finally published for every village included in such area and such notification shall be conclusive proof of such publication.

(4) In any suit or other proceeding in which a record-of-rights prepared and published under this chapter, or a duly certified copy thereof or extract therefrom is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied.

(5) Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

**Settlement of
rents.**

121.(1) If, within four months from the date of the certificate of the final publication of the record-of-rights under section 119,—

- (i) the landlord,
- (ii) the tenant, or
- (iii) the occupant, in case the occupant has been recorded in pursuance of sub-section (1)(l) of section 118 as entitled to hold the land but not without payment of rent, applies for a settlement of rent, the Revenue Officer shall, on payment of the prescribed fee, settle a fair and equitable rent in respect of the land held by such tenant or occupant.

(2) In settling rents under this section, the Revenue Officer shall have regard to the prescribed rules.

Decision of
issues arising
during settle-
ment of rents.

122. Where, in any proceedings for the settlement of rent under section 121, any of the following issues arises, namely :—

- (a) whether the land is or is not, liable to the payment of rent,
- (b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent,
- (c) whether the relation of landlord and tenant exists,
- (d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy,
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging,
- (f) whether the special conditions and incidents of the tenancy, or any right-of-way or other easement over, or appurtenant to, the land, have not, or has not, been recorded or have, or has, been wrongly recorded,
- (g) whether the rent recorded as payable at the time of final publication of the record-of-rights was correctly entered, and, if not, what was the rent payable at the time,

the Revenue Officer shall, on payment of the prescribed fee, try and decide such issue, and settle the rent under section 121 accordingly :

Provided that the Revenue Officer shall not try any issue, under this section, which has been, or is already, directly and

substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried by the Revenue Officer in a suit instituted before him under section 123.

Institution of
suit before
Revenue
Officer.

123. (1) In proceedings under this chapter, a suit may be instituted before a Revenue Officer, at any time within four months from the date of certificate of the final publication of the record-of-rights under section 119, for the decision of any dispute regarding any entry, which a Revenue Officer has made in, or any omission which he has made from, the record whether such dispute be —

- (a) between landlord and tenant, or
- (b) between landlords of the same or of neighbouring estates, or
- (c) between tenant and tenant, or
- (d) as to whether the relationship of landlord and tenant exists, or
- (e) as to whether land held rent-free is properly so held, or
- (f) as to any other matter,

and the Revenue Officer shall hear and decide the suit :

Provided that the Revenue Officer may, subject to such rules as may be prescribed, transfer any particular case or class of cases to a competent Civil Court for trial :

Provided also that, in any suit under this section, the Revenue Officer shall not try any issue which has been, or is, already, directly and substantially in issue between the parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this chapter, where such issue has been tried and decided, or is already being tried, by a Revenue Officer under section 122.

(2) Where the Revenue Officer, before whom a suit is instituted under sub-section (1), is the officer who at an earlier stage has made or confirmed the entry in or omission from the record in respect of which the dispute has arisen, such Revenue Officer shall transfer the suit to another Revenue Officer or to a competent Civil Court for trial.

Limitation. 124. Where the lands of a tenancy, in respect of which an application is made under section 121, or the lands to which a dispute referred to in section 123 relates are situated in local areas for which separate records are framed, the period of limitation, specified in sub-section (i) of section 121 or sub-section (1) of section 123 shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to such tenancy or lands, as the case may be.

Procedure. 125. In all proceedings under section 121 or section 122 and suits under section 123, the Revenue Officer shall, subject to such rules as may be prescribed, adopt the procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits, and his decision in every such proceeding or suit shall have the force and effect of a decree of a Civil Court in a suit between the parties and, shall, subject to the provisions of sections 126, 127 and 129, be final. Act V of 1908.

Revision of certain orders by Revenue Officer.

126. Any Revenue Officer specially empowered by the Local Government in this behalf may, on application or of his own motion, within two years from making any order or decision under sections 121, 122, 123 or 131, revise the same, whether it was made by himself or by any other Revenue Officer, but not so as to affect any order passed or decree made under section 129 :

Provided that no such order or decision shall be so revised if an appeal from it has been filed under section 129, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Correction of
record by
Revenue
Officer.

127. Any Revenue Officer specially empowered by the Local Government in this behalf may, on application or on his own motion, within two years from the date of the certificate of final publication of the record-of-rights under section 119, correct any entry in such record-of-rights which, he is satisfied, has been made owing to a *bona fide* mistake :

Provided that no such correction shall be made if an appeal affecting such entry has been filed under section 129, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Bar to jurisdic-
tion of Civil
Court.

128. Subject to the provisions of section 129, a Civil Court shall not entertain any application or suit concerning any matter which is, or has already been, the subject of an application made, suit instituted, proceedings taken or correction made under sections 121 to 127 (both inclusive) :

Provided that nothing contained in this section shall debar a Civil Court from entertaining a suit concerning any matter which—

(a) was the subject matter of an application under section 121 or section 122 or of a suit under section 123, if such application or suit has been dismissed for default or withdrawn with or without liberty to make a fresh application or file a fresh suit, as the case may be, or

(b) has not been finally adjudicated upon in any such proceeding or suit.

Appeal from
order or deci-
sion of Revenue
Officer.

129. (1) An appeal shall lie to the District Judge, or a Subordinate Judge specially empowered by the Local Government in this behalf, from the order or decision of a Revenue Officer under sections 121 to 127 and the provisions of the Code of Civil Procedure, 1908, relating to appeal shall, as far as may be, apply to all such appeals.

Act V of 1908.

(2) Subject to the provisions of sections 100 to 103, 107, 108 and 144 of, and Order XLII in Schedule 1 to, the Code of Civil Procedure, 1908, an appeal shall lie to the High Court against any decision of the lower appellate Court :

Act V of 1908.

Provided that if, in a second appeal the High Court alters the decision of the lower appellate Court in respect of any of the particulars with reference to which the rent of any tenancy has been settled, the Court may settle a new rent for such tenancy, but in so doing shall be guided by the rents of the other tenancies of the same class comprised in the same record as ascertained under section 118 or settled under sections 121, 126 or 127.

(3) The Local Government may, on application or of its own motion, in proceedings undertaken within one year from the date of the order of a Revenue Officer settling a fair rent under section 121, direct the revision of the rent so settled :

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Power of
Revenue Officer
to give effect
to agreement
or compromise.

130. In framing a record-of-rights and in deciding disputes and suits and in all other proceedings under this chapter, the Revenue Officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant and may presume that an agree-

ment or compromise made or entered into by any landlord and his tenant is lawful :

Provided that when the terms of the agreement or compromise are such as might unfairly and inequitably affect the rights of third parties, he shall not give effect to such agreement or compromise until he has given reasonable notice to such third parties to appear and be heard in the matter, and unless and until he is satisfied that the statements made by the parties to the agreement or compromise are correct.

Entry of decisions and orders in record.

131. A note, under the signature of a Revenue Officer, of all rents settled under section 121, of all decisions of issues under section 122, or disputes under section 123, and of all orders regarding the same on revision under section 126 or as corrected under section 127 or on appeal under section 129 shall be made in, or appended to, the record-of-rights finally published under section 119 and such note shall be considered as part of the record.

Stay of Civil Court proceedings during preparation of record.

132. When an order has been made under section 117 directing the preparation of a record-of-rights and is subsisting, a Civil Court shall not, until four months after the final publication of the record-of-rights, entertain any application made under section 147, or any suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the record-of-rights applies.

Limitation of Civil Court's jurisdiction in certain matters.

133. Except as provided in this Act, no suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this chapter, or in respect of the framing, publication, signing, or alteration of such a record or any part of it.

Stay of suits
in which certain
issues arise.

184. (1) When a record-of-rights in respect of any land has been prepared and finally published under this chapter, no application or suit affecting any such land or any tenant thereof, shall, within four months from the date of the certificate of final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely :—

- (a) whether the land is or is not liable to the payment of rent ;
- (b) whether the relation of landlord and tenant exists ;
- (c) whether the land is part of a particular estate or tenancy ;
- (d) whether there is any special condition or incident of the tenancy ; or
- (e) whether any right-of-way or other easement exists over or is appurtenant to the land .

(2) If before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in the sub-section (1) has been instituted in a Civil Court, the Revenue Officer shall not, in any proceeding under section 122 or in a suit under section 123, try such issue, unless in such civil suits such issue is not in fact tried or decided.

(3) Where, in the course of settling fair rents under section 121, the Revenue Officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court before the final publication of the record-of-rights or before a Revenue Officer under section 123, he is unable to settle a fair rent, until such issue is decided, the Revenue Officer shall stay the proceedings for the settlement of a fair rent, pending a final decision on the issue ;

and, after the issue has been finally decided, he shall settle a fair rent, as if the record-of-rights had been framed in accordance with such decision.

(4) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (1), the period of four months therein mentioned shall be excluded in computing the period of limitation provided for such application or suit.

Date from which settlement of rent to take effect.

135. Where a rent is settled by a Revenue Officer under this chapter, it shall have effect from the beginning of the Agricultural year next after the date of the decision fixing the rent or from such later date as the Revenue Officer may fix :

Provided that if the existing rent has been fixed by contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term or from such other date after the expiration of that term as may be fixed by the Revenue Officer.

Period for which rents settled are to remain unaltered.

136. For the purposes of determining the admissibility of any future enhancement of rent, the rent of a tenancy settled under this chapter shall, from the date on which it takes effect, be treated as if it were an enhancement secured by the landlord under the provisions of this Act.

Recovery of expenses.

137. (1) When the preparation of a record-of-rights has been directed or undertaken under this chapter, the expenses incurred in carrying out the provisions of this chapter in any local area, estate, permanent tenure or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of record-of-rights, in the maintenance, repair or restoration of boundary marks and other survey marks erected for the purposes of carrying out the provisions.

of this chapter) or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords, tenants and other occupants of lands in that local area, estate, permanent tenure or part, in such proportions, and in such instalments, if any, as the Local Government, having regard to all the circumstances, may determine.

(2) The cost of preparing copies of survey maps and extracts from record-of-rights under this chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this chapter.

(3) The estimated amount of expenses likely to be incurred for the maintenance, repair, or restoration of boundary marks for a period not exceeding fifteen years, or such part of such amount as the Local Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

(4) The portion of the expenses referred to in the foregoing provisions of this section which any person is liable to pay shall be recovered by the Government as if it were an arrear of land revenue due in respect of the said local area, estate, permanent tenure, or part.

No presumption as to fixity of rent after record of-rights has been prepared. 138. When the particulars mentioned in clause (b) of section 118 have been recorded under this chapter in respect of any tenancy, the presumption under section 23 shall not thereafter apply to that tenancy.

Unit of Survey. 139 (1) In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this chapter a Revenue Officer shall, so far as possible and subject to the provisions of Part B of Chapter III of the Assam Land and Revenue Regulation, 1886, preserve as the unit of survey and

record, the area contained in the exterior boundaries of village maps of the revenue survey, or other survey, if any, and adopted under clause (28) of section 3 as defining "village" and where village maps prepared at any such revenue or other survey exist, he shall not without the sanction of the Commissioner, adopt any other area as such unit.

(2) In any area where villages have not been surveyed and recorded in a revenue survey made by or under the authority of Government, a Revenue Officer shall, in fixing his unit of survey and record, have regard to any village unit adopted by the landlord as a basis of his survey and record.

PART II.

RECORD OF PROPRIETOR'S PRIVATE LANDS.

Survey and record of proprietor's private lands. 140. The Local Government may make an order directing a Revenue Officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands.

Application by proprietor or tenant. 141. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land and on his depositing the required amount for expenses a Revenue Officer may, subject to and in accordance with such rules as may be prescribed in this behalf, ascertain and record whether the land is or is not a proprietor's private land.

Procedure. 142. When a Revenue Officer proceeds under either section 140 or 141 the provisions of sections 119, 120, 123, 125, 126, 127, 128, 129 and 137 shall apply.

What land to be recorded as proprietor's private land. 143. (1) The Revenue Officer shall record as a proprietor's private land—

- (a) land which is proved to have been cultivated as *Nij-jote* or *khamar* by the proprietor himself with his own stock, or by his own servants or with the aid of labourers for twelve continuous years immediately preceding the passing of this Act ;
- (b) cultivated land, which, though not cultivated in the manner mentioned in clause (a) for twelve continuous years immediately preceding the passing of this Act, is proved to have been recognised by village usage as proprietor's *nij-jote* or *khamar* ; and
- (c) land commonly known as *Khana-bari*, that is to say, land, whether cultivated or not, which is proved to have been recognised at the time of the passing of this Act as included within an area reserved by the proprietor for the accommodation of his family and relations or of his personal and estate staff for which no rent is realised.

(2) If any question arises in any Court as to whether any land is or is not a proprietor's private land, the Court shall have regard to the principles laid down in this section for the guidance of Revenue Officers.

(3) The term 'proprietor' for the purposes of Part II of this Chapter includes a permanent tenure-holder.

PART III.

SPECIAL PROVISIONS REGARDING MAINTENANCE OF RECORD OF TENANTS' RIGHTS IN TEMPORARILY-SETTLED AREAS.

Maintenance of record of tenant's rights.

144. When a record of tenant's right has been prepared in any temporarily-settled area, either under the provisions of Chapter III, Part D, of the Assam Land and Revenue Regulation or under Chapter IX of this Act, the Local Government may make an order that the record so prepared shall be maintained up to date by registering all changes in the ownership accompanied by possession of the interests of occupancy raiyats and in the amount of rent payable by them.

I of 1886.

Procedure on application for registration or on information received otherwise.

145. The Deputy Commissioner or the Officer invested with the powers of a Deputy Commissioner under sections 50 to 54 of the Assam Land and Revenue Regulation who receives information through an application or otherwise of any change in the ownership and possession of such interests may make an order directing the registration of the name of the person so entering into ownership and possession :—

I of 1886.

Provided that—

(a) the information has been verified by local enquiry made by an officer having the powers of a Deputy Commissioner under sections 50 to 54 of the Assam Land and Revenue Regulation ;

I of 1886.

or
(b) notice has been published and the enquiry held in a manner similar to that prescribed by sections 52 and 53 of the Assam Land and Revenue Regulation.

I of 1886.

Application to set aside order directing the registration.

146. Where any person is aggrieved by an order directing registration under section 145, which has been made after

verification of the information received, by local enquiry only, he may apply to the officer passing the order or his successor in office to set aside the order and on receipt of such application the officer receiving it shall cancel the registration and then proceed to publish the notice and hold the enquiry as in clause (b) of the proviso to section 145.

CHAPTER X.

PART I.—JUDICIAL PROCEDURE.

Application to determine incidents of tenancy in the Civil Court 147. (1) Subject to the provisions of section 132, the Court having jurisdiction to determine a suit for possession of land may, on the application either of the landlord or the tenant of the land, determine all or any of the following matters namely :—

- (a) the situation, quantity and boundaries of the land ;
- (b) the name and description of the tenant thereof (if any) ;
- (c) the class or classes to which he belongs, that is to say, whether he is a permanent tenure-holder, a raiyat holding at fixed rates, occupancy raiyat, non-occupancy raiyat, or under-raiyat and if he is a permanent tenure-holder, whether his rent is liable to enhancement during the continuance of his tenure ;
- (d) the rent payable by him at the time of the application ; and
- (e) any other incident of the tenancy.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Order XXVI in Schedule I to the Code of Civil Procedure, 1908, by

such Revenue Officer not below the rank of a Sub-Deputy Collector, as the Local Government may authorise in that behalf by rule made under rule 9 of Order XXVI in Schedule I to the said Code.

(3) The order or any application under this section shall have the effect of, and be subject to the like appeal as a decree.

Power to modify Civil Procedure Code in its application to suits under Act.

148. (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules consistent with this Act, declaring that any portion of the Code of Civil Procedure, 1908, shall not apply to suits or proceedings between landlord and tenant as such, or to any specified classes of suits or proceedings, or shall apply to them subject to modifications specified in the rules.

Act V of 1908

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure, 1908, shall apply to all such suits or proceedings.

Act V of 1908.

Jurisdiction in suits and proceedings under Act.

149. (1) Notwithstanding anything contained in section 20 of the Code of Civil Procedure, 1908, no suit between landlord and tenant as such shall be instituted in any Court other than a Court within the local limits of whose jurisdiction the lands of the tenancy are wholly or partly situate.

Act V of 1908.

(2) When under this Act, a Civil Court is authorised to make an order on the application of the landlord or a tenant, the application shall be made to the Court within the local limits of whose jurisdiction the lands are wholly or partly situated.

Special register of suits under Act to be kept.

150. The particulars mentioned in rule 1 of Order VII in Schedule I to the Code of Civil Procedure, 1908, shall in the case of suits, instead of being entered in the register of civil suits provided by rule 2

Act V of 1908.

of Order IV in Schedule 1 to the said Code, be entered in a special register to be kept by each Civil Court, in such form as may be prescribed in this behalf.

Time bar for institution of successive rent suits.

151. Subject to the provisions of rule 1 of Order XXIII in Schedule 1 to the Code of Civil Procedure, 1908, when a landlord has instituted a suit against a raiyat or an under-raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after six months from the date of the institution of the previous suit :

Act V of 1908.

Provided that when a subsequent suit for rent is instituted by a co-sharer landlord and has been consolidated with a previous suit for rent under the provisions of sub-section (4) of section 162, the date of the institution of the subsequent suit shall for the purposes of this section, be deemed to be the date of the suit which was first instituted and with which it was consolidated.

Plaint in rent suits to contain certain particulars.

152. (1) The plaint in a suit for recovery of rent shall contain, in addition to the particulars specified in rules 1, 2, 4, 5 and 6 and sub-rule (2) of rule 9 of Order VII in Schedule 1 to the Code of Civil Procedure, 1908, a statement of the situation, designation, extent, and boundaries of the land held by the tenant, or, when the plaintiff is unable to give the extent or boundaries, in lieu thereof, a description sufficient for its identification, and it shall further contain a statement as to whether a record-of-rights has been prepared and finally published in respect of such land.

Act V of 1908.

When the land to which the suit relates is situated in a temporarily-settled area which has been cadastrally surveyed and forms one or more complete plots, the number and area of the plots and the

name of the cadastral village in which they are included, will be considered as sufficient description for the identification of the land.

(2) When the suit is for the rent of land situated within an area for which a record-of-rights has been finally published under Part I, Chapter IX of this Act, the plaint shall contain a statement of the serial number or numbers borne by the tenancy in the record-of-rights and of the area and rental of the tenancy according to such records, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement :

Provided that, in all cases in which the Court admits a plaint which does not contain such statement, the Court shall, and in any other case in which it sees fit the Court may, require the Deputy Commissioner to supply, without payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy :

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 provided in sub-section (1) shall be required.

(3) Where an alteration has been made in the area of the tenancy, since the record-of-rights was prepared and finally published under Part I, Chapter IX of this Act the plaint shall further contain a statement of the rental of the original tenancy according to the record-of-rights together with a statement showing how the amount of the rent claimed in the suit has been computed.

**Naib, tahsildar
or gumasta
recognised agent
of landlord.**

153. Every naib, tahsildar or gumasta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall as such, for the purpose of every suit or application mentioned in section 149, be deemed to be the recognised agent of the landlord within the meaning of the Code of Civil Procedure, 1908, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made, and every such naib, tahsildar or gumasta shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, be entitled as such to verify the pleadings on behalf of the landlord.

Act V of 1908.

Act V of 1908.

**Summons in
rent suit.**

154. (1) The summons in a suit for recovery of rent shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only.

(2) Every summons shall be accompanied by a copy of the plaint.

(3) The service of summons may, if the Local Government by rule, either generally or specially for any local area, so directs, be effected either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Chapter VI of the Indian Post Office Act, 1898.

VI of 1898.

(4) When a summons is so forwarded in a letter, and it is found that the letter was duly posted and registered, the Court may presume that the summons has been duly served.

(5) Notwithstanding anything contained in the Code of Civil Procedure, 1908, or any rules made thereunder, the plaintiff in a suit for recovery of arrear of rent shall not be required to supply any identifier for the purpose of serving the summons on the defendant or on any

Act V of 1908.

witness; and the serving officer shall serve the summons after due enquiry as to the identity of the person on whom, or the house or property where, the summons is to be served. The summons shall be served in the presence of at least two persons and the serving officer shall, whenever possible, require the signature of those persons to be endorsed on the original summons, and when he is unable to serve the summons he shall, whenever possible, require the signature of two persons of the locality to be so endorsed.

**Appointment
of guardians.**

155. Notwithstanding anything contained in sub-section (3) of rule 4 of Order XXXII in Schedule 1 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 shall 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.

Act V of 1908.

**Evidence in
suits under Act.**

156 (1) The rules for the recording of evidence of witnesses contained in rule 13 of Order XVIII in Schedule 1 to the Code of Civil Procedure, 1908, shall apply to a suit for the recovery of rent, whether an appeal is allowed or not.

Act V of 1908.

(2) When any account books, rent-rolls, collection papers, maps or extracts from record-of-rights have been produced by a party before any Court and have been admitted in evidence in a suit pending therein, copies of, or extract from, such documents may be certified by a

duly authorised officer of such Court to be true copies or extracts without the payment of any court-fee, and such copies or extracts may, with the permission of the Court, be substituted on the record for the originals which may then be returned to the parties and, thereafter copies and extracts so certified may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals.

When one rent-suit may be instituted for several tenancies.

157. A landlord may institute one suit in respect of the rent of more than one tenancy, if the tenancies in respect of the rent of which the suit is brought, are held in similar right and equal status by the same tenant under him :

Provided that —

- (i) the claim in respect of each tenancy shall be stated separately in the plaint ;
- (ii) separate decrees shall be made in respect of each tenancy ;
- (iii) the cost 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.

Co-sharer tenants jointly and severally liable for rent.

158. (1) Notwithstanding anything contained in the Indian Contract Act, 1872, all co-sharer tenants and their successors in interest shall be liable to the landlord jointly and severally for the rent payable to such landlords on account of the tenancy, whether such rent has accrued during the time of their own occupation or during the time of the occupation of their predecessors in interest and the right, title and interest of such tenants, as

IX of 1872.

are made parties defendant to the suit, shall pass by a sale in execution of a decree obtained against them.

Decree for rent valid against entire tenancy when defendants represent entire body of tenants.

(2) Notwithstanding anything contained elsewhere in this Act or in any other law, a decree for arrears of rent due in respect of a tenancy obtained by a sole landlord, or by a co-sharer landlord in accordance with the provisions of section 162 and a sale in execution of such decree, shall be valid against all the co-tenants whether they have been made parties defendant to the suit or not, and against the holding in the manner provided in Part III of this chapter, if the defendants to the suit represented the entire body of co-sharer tenants in the tenancy for the rent of which the suit was brought.

Criterion for representation.

(3) The entire body of co-sharer tenants in the tenancy shall for the purposes of sub-section (2) be deemed to be represented by the defendants to the suit if such defendants include —

- (i) all the co-sharer tenants in the tenancy who are actually in the village or villages in which the lands of the tenancy are wholly or partly situated at the time of the institution of the suit ;
- (ii) such of the co-sharer tenants in the tenancy, as may have, at any time during the three years previous to that for the rent of which the suit is brought, made any payment of the rent in respect of the tenancy ;
- (iii) such co-sharer tenants who having purchased an interest in the tenure or holding, have given notice of the purchase under sub-section (3) of section 7, section 30, or section 32,

as the case may be, or who having succeeded to an interest by inheritance have given notice of their succession under section 9 ; and

(iv) all other co-sharer tenants in the tenancy whose names are entered in the landlord's rent-roll.

Right of co-tenant to be joined as defendant.

159 (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 arrear of rent due in respect of a tenancy may, at any time before the hearing of the suit has been commenced, apply to be made a party defendant to the suit, and the Court shall consider his claim, and, if it finds that he should have been joined, shall join him as a party defendant.

IX of 1908.

(2) The provisions of sub-sections (2) and (3) of section 158 shall, so far as may be, apply in the case of a co-tenant joined as a defendant under sub-section (1) of this section.

Regard to be had to entries in record-of-rights

160. In all areas for which a record-of-rights has been prepared and finally published under sub-section (2) of section 119 and also in all areas for which a record-of-tenants' rights is maintained under Part III, Chapter IX, a Civil Court shall, in all suits between landlord and tenant as such, have regard to the entries in such record-of-rights relating to the subject matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect ; and when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

Agreement or
compromise not
to be confirmed
—when illegal.

161. (1) Notwithstanding anything contained in rule 3 of Order XXIII in Schedule 1 to the Code of Civil Procedure, 1908, if any suit between landlord and tenant as such is wholly or partly adjusted by agreement or compromise, the Court shall not order an agreement or compromise to be recorded, and shall not pass a decree in accordance with such agreement or compromise, unless it is satisfied, for reasons, to be recorded in writing, that the terms of such agreement or compromise are such that, if embodied in a contract, they could be enforced under this Act.

Act V of 1908.

When rights
of third parties
are prejudiced.

(2) When the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise, unless and until it is satisfied by evidence that the statement made by parties thereto are correct.

Illustration.—A, a proprietor agrees that B, his tenant shall be recorded as an occupancy raiyat; this affects the rights of the tenants of B. The Court must under this sub-section enquire whether B is a permanent tenure-holder or a raiyat as defined in section 5. If the Court finds on the evidence that B is a raiyat it may pass a decree in accordance with the agreement but shall not do so if it finds that B is a permanent tenure-holder.

Procedure in
suit for rent by
co-sharer land-
lords.

162. (1) A co-sharer landlord may institute a suit to recover the rent due to him in respect of his share in a tenancy, 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 tenancy.

(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 tenancy up to the date of the institution of the suit.

(3) On the date named in the summons for his appearance or on any subsequent date fixed by the Court in this behalf, any co-sharer landlord, who has been summoned as defendant, may apply to be joined in the suit as co-plaintiff, and on his paying the court-fee on the amount of his claim, he shall be joined as a co-plaintiff in respect of the rent claimed to be due to him up to the date of the institution of the suit.

(4) If it comes to the notice of the Court that any co-sharer landlord has, before the service upon him of a summons under sub-section (2), instituted a separate suit to recover his share of the rent of the tenancy, the separate suit shall be consolidated with that brought under sub-section (1) and such co-sharer landlord shall be deemed to be a co-plaintiff and shall amend his plaint so as to claim the rent due to him up to the date of the institution of suit under sub-section (1):

Provided that if the Court is not competent to consolidate and try the suit, it shall get the suit transferred to, a Court of competent jurisdiction for consolidation and trial.

(5) The summons on all the defendants to the suit, other than co-sharer landlords, shall thereafter be served and the Court shall thereupon proceed to the trial of the suit.

(6) A decree passed by the Court for the rent claimed in a suit brought in accordance with the foregoing provisions

of this section shall, so far as may be, specify separately the amounts payable to each co-sharer plaintiff and shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords.

(7) When a suit has been instituted under the provisions of sub-section (1), no co-sharer landlord who has been made a party defendant thereto and duly served with summons issued under sub-section (2), shall be entitled to recover, save as co-plaintiff in that suit, any rent in respect of the tenancy for the period in suit or for any period previous thereto.

(8) Where a suit instituted under the provisions of sub-section (1) has been withdrawn with leave to bring a fresh suit, the procedure, remedies and disabilities hereinbefore provided by this section shall apply to such suit when instituted and to the parties thereto.

(9) In the event of the tenancy not being sold as a result of a suit instituted under sub-section (1), nothing contained in rule 2 of Order II in Schedule 1 to the Code of Civil Procedure, 1908, shall preclude a co-sharer landlord who has been joined as plaintiff under sub-section (3) or is deemed to be a co-plaintiff under sub-section (4) from recovering by suit, rent and interest due to him and damages, if awarded, in respect of the tenancy for the period subsequent to the date of the institution of the suit under this section,

Act V of 1908.

(10) If the rent claimed in a plaint as amended under sub-section (4) is less than the rent claimed in the original plaint in the separate suit referred to in that sub-section, the balance of rent may be recovered under the provisions of sub-section (9) or of clause (ii) of the proviso to sub-section (1) of section 188.

Payment into Court of money admitted to be due to third person.

163. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due, not to the plaintiff but to a third person, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) When such payment is made the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person, within three months from the receipt of the notice, institutes a suit against the plaintiff, and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

Payment into Court of money admitted to be due to landlord.

164. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, whatever may be the nature of the other matter in dispute between the parties, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment of portion of admitted amount.

165. When a defendant is liable to pay money into Court under section 163 or section 164, if the Court thinks there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Effect of receipt of such payment by Court.

166. When a defendant pays money into Court under section 163 or section 164, the Court shall give the defendant

a receipt, and the receipt shall operate as an acquittance in the same manner and to the same extent, as if it had been given by the plaintiff or the third person, as the case may be.

Execution to issue on oral application.

167. Subject to the provisions of section 181 the Court may, when passing a decree for arrears of rent, order, on the oral application of the decree-holder, the execution thereof, unless it is a decree for ejectment for arrears.

No copy of decree or fresh *Fakalatnama* required.

168. (1) Notwithstanding anything contained in sub-rule (3) of rule 11 of Order XXI in Schedule 1 to the Code of Civil Procedure, 1908, the Court shall not, unless for special reasons to be recorded in writing, direct the decree-holder to file a copy of the decree or any fresh *Fakalatnama* for the purpose of executing the decree. Act V of 1908.

Assignee of decree may not apply.

(2) An application for the execution of a decree for arrears of rent obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him, notwithstanding anything contained in rule 16 of Order XXI in Schedule 1 to the Code of Civil Procedure, 1908.

Act V of 1908.

Bar to certain provisions of Civil Procedure Code.

169. Sections 68 to 72 of the Code of Civil Procedure, 1908, and rules 1 to 13 of Order XI, rule 88 of Order XXI and rule 2 of Order XLVIII in Schedule 1 and Schedule III to the said Code, shall not apply to any suit for recovery of rent.

Act V of 1908.

Procedure in case of appeals against the order of Revenue Courts.

—Appeals.

170. (1) In all proceedings under this Act preferred before Revenue Officer except when express provision has been made to the contrary, appeals shall lie as follows :—

- (a) To the Commissioner from orders, original or appellate, passed by the Deputy Commissioner,

(b) to the Deputy Commissioner from orders passed by any Revenue Court or Officer subordinate to him even when exercising the powers of the Deputy Commissioner :

Provided that no appeal shall lie against an appellate order of the Deputy Commissioner which does not reverse or alter the order of a subordinate Revenue Court or Officer.

Limitation of appeals.

(2) Unless otherwise specially provided in the Act or in the rules issued thereunder, no appeal shall lie, to the Deputy Commissioner after the expiration of thirty days from the date of the order appealed against and, to the Commissioner after the expiration of six weeks from the date of the order appealed against.

In computing the period prescribed for an appeal by this section, the day on which the order appealed against was passed and the time requisite for obtaining a copy of such order shall be excluded.

An appeal may be admitted after the period of limitation prescribed therefor by this section, if the appellant satisfies the Court to which he appeals that he had sufficient cause for not presenting the appeal within that period.

Procedure of appellate Court on appeal.

(3) The Court to which the appeal lies may either admit or summarily reject the appeal. If the Court admits the appeal, it may reverse, modify or confirm the order appealed against, or it may direct, such further investigation to be made or such additional evidence to be taken, as it may think necessary, or the Court may itself take such additional evidence.

Suspension of
order appealed
against.

(4) In any case in which an appeal is admitted, the appellate Court may, pending the result of the appeal, direct the order appealed against to be suspended.

Bar to appeals
in certain cases.

171. An appeal shall not lie from any decree or order passed, whether in the first instance, or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(a) the decree or order is passed by a District Judge, or Additional Judge or Subordinate Judge, and the total amount claimed in the suit does not exceed one hundred rupees, or

(b) the decree or order is passed by any other Judicial Officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the total amount claimed in the suit does not exceed fifty rupees,

unless in either case the decree or order has decided a question relating to title to land or to some interest in land, or a question of a right to enhance or vary the rent of a tenant or a question of the amount of rent annually payable by a tenant, including a question relating to the suspension or abatement of rent or a question as to relationship of landlord and tenant when such question has been raised and decided :

Provided that the District Judge may call for the record of any case in which a Judicial Officer referred to in clause (b) has passed a decree or order to which this section applies, if it appears that the Judicial Officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has

acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit.

Explanation.—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land.

Deposit on application to set aside *ex-parte* decree.

172. Every application for an order under rule 13 of Order IX in Schedule I to the Code of the Civil Procedure, 1908, Act V of 1908. to set aside a decree passed *ex-parte*, or for a review of judgment under section 114 and rule 1 of Order XLVII in Schedule I to the said Code, in a suit between landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment ;

and no such application shall be admitted—

- (a) unless the applicant has, at or before the time when the application is admitted, deposited in the Court, to which the application is presented, the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded in writing, direct ; or
- (b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded in writing, that no such deposit is necessary.

Date from which order fixing or altering rent takes effect.

173. Subject to the provisions of section 135 an order fixing or altering the rent of a holding under this Act shall take effect from such date as the Court may fix as being equitable.

Matters exempted from cognizance of Civil Court.

174. Except where otherwise expressly provided in this Act, no Civil Court shall exercise jurisdiction in any of the following matters:—

(a) Question as to landlord's failure to deliver to the tenant receipt or statement of account, or retain a counterfoil or copy thereof and the penalty therefor,

(b) question as to the right to make improvement, whether a particular work is an improvement and the registration of improvement:

Provided that in a case coming under section 97, the Civil Court may decide the question whether a work is an improvement, if it has not already been decided under section 95,

(c) application for acquisition of land by landlord, and

(d) the formation and maintenance of the record-of-rights or portion thereof or the preparation, signing and alteration of any record.

Jurisdiction of Civil Court.

175. Except as provided in section 174 and subject also to the other provisions of this Act, the Civil Court shall have jurisdiction in all suits between landlord and tenant as such.

PART II.

SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE BENGAL PUBLIC DEMANDS RECOVERY ACT, 1918.

Recovery of arrears of rent under the certificate procedure in certain cases.

176. (1) Any landlord, whose land is situated in an area for which a record-of-rights has been prepared and finally published under the provisions of Chapter IX, Part I of this Act, or has been prepared under Chapter III, Part D, of Assam Land and Revenue Regulation, may apply

to the Local Government through the Deputy Commissioner, for the application of the procedure provided by the Bengal Public Demands Recovery Act, 1913 to the recovery of the arrears of rent which he alleges are, or may accrue due to him for lands in such area. Bengal Act
III of 1913.

(2) The Local Government may, after considering the manner in which the record is maintained, reject any such application, or may allow it subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed, or withdraw its allowance of the application, without, in any of these cases, assigning any reason for its action.

(3) When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed, to such Revenue Officer as the Local Government may appoint, for the purpose of this section, to perform the functions of a certificate officer under the Bengal Public Demands Recovery Act, 1913, for the recovery of any arrears of rent which he alleges are due to him from any tenant. Bengal Act
III of 1913.

(4) Every such requisition shall be signed and verified by the landlord making it, in the manner provided by rule 1 in Schedule II of the said Act as amended for the time being by rules made under section 39 thereof, and shall be chargeable with a fee of the amount which would be payable under the Court Fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due. VII of 1870

(5) On receipt of such requisition, the said Revenue Officer may, in accordance with such rules as may be prescribed, and if he is satisfied that the arrear is due, sign a certificate in the prescribed form,

stating that the arrear is due, and shall include in the certificate the fee paid under sub-section (4), and shall cause the certificate to be filed in his office :

Provided that—

(a) no certificate shall be signed for the recovery of the arrears of rent of a tenancy regarding which a suit has been instituted in Civil Court for the alteration of the rent payable by the tenant or the determination of his status as a tenant, in respect of the period during which it is alleged in the requisition made under sub-section (3) that the arrears of rent sought to be recovered have accrued ; and

(b) if after the signing of a certificate it is found that such suit was instituted in a Civil Court before the certificate was signed, such certificate shall be cancelled.

(6) The person in whose favour any certificate is signed under sub-section (5) shall be deemed to be the certificate-holder for the amount mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount ; and all proceedings taken by the certificate officer for the recovery of such amount shall be taken at the instance of the first mentioned person and at his cost and on his responsibility, and not otherwise.

(7) The Bengal Public Demands Recovery Act, 1913, with such restrictions and modifications, if any, as may be prescribed, shall apply to the execution and to all proceedings arising out of the execution of certificates filed under sub-section (5).

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(8) No landlord shall, during the pendency of any proceedings under this

section, institute a suit in a Civil Court for the recovery of any arrear of rent in respect of which he has made a requisition under sub-section (3) ; and subject to the provisions of section 84 of the Bengal Public Demands Recovery Act, 1913, no tenant shall, after the signing of any certificate against him, under sub-section 5 of this section, institute a suit in, or apply to, a Civil Court for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent, for which such certificate was signed, have accrued.

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of 1913.

(9) The word "landlord" in this section includes an entire body of landlords, and also one or more co-sharer landlords who collect or collect his or their share or shares of the rent separately ; and where a Revenue Officer signs a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate.

PART III.

SALES FOR ARREARS UNDER DECREE.

Passing of
tenancy sold in
execution of
decree or certi-
ficate,

177. (1) When a tenancy is sold in execution of—

(a) a decree for arrears of rent due in respect thereof, or

(b) a certificate for arrears of rent signed under the Bengal Public Demands Recovery Act, 1913,

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of 1913.

the tenancy shall, subject to the provision of section 205, pass to the purchaser, if such a decree was obtained by—

(i) a sole landlord, or

(ii) the entire body of landlords, or

(iii) one or more co-sharer landlords who has or have sued for rent due in respect of a tenancy in manner provided in section 162,

or if such certificate was signed on the requisition of, or in favour of, a sole landlord or the entire body of landlords.

(2) When one or more co-sharer landlords, having obtained a decree in a suit framed under section 162, applies or apply for the execution of the decree by the sale of the tenancy, the Court shall, before proceeding to sell those lands, give notice of the application for execution to the other co-sharers.

General power of purchaser to avoid incumbrances.

178. When a tenancy is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take, subject to any subordinate interests defined in this chapter as "protected interests", but with power to annul any interests defined in this chapter as 'incumbrances':

Provided as follows :—

- (a) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf ;
- (b) the power to annul shall be exercisable only in manner by this chapter directed.

Protected interests.

179. (1) The following shall be deemed to be protected interests within the meaning of this chapter :—

- (a) any permanent under-tenure existing from the time of 'the Permanent Settlement' ;
- (b) the interest of a raiyat at fixed rates holding from the time of

- (c) any lease in respect of land whereon in accordance with the purpose of the lease granted by the tenant whose interest is being sold, permanent dwelling houses, manufactories or other permanent buildings have been erected, or permanent gardens or plantations, tanks or canals, public places of worship, or public burning or burying grounds have been made, provided that such tenant was under the terms of a written engagement with his landlord entitled to grant such lease ;
- (d) any right of occupancy ;
- (e) the right of a non-occupancy raiyat to hold for five years at a rent enhanced by a registered agreement under section 56, or settled by a Revenue Officer under Part I of Chapter IX ;
- (f) any right conferred on an occupancy raiyat to hold at a rent which was fair and reasonable at the time the right was conferred ; and
- (g) any right or interest, consistent with the provisions of this Act, which the landlord, at whose instance the tenancy is sold, or his predecessor in title, has expressly, and in writing, given the tenant for the time being permission to create.

(2) In the case of a raiyat at fixed rates having a right of occupancy in the lands of a holding not existing from the time of the permanent settlement, the right 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 land on payment of such rent as would be payable for land of a similar description with similar advantages in the same village, or at such other rate as may be deemed fair and equitable by the Court.

Meaning of incumbrances and registered and notified incumbrances.

180. For the purposes of this chapter—

(a) the term 'incumbrance' used with reference to a tenancy, means any lien, sub-tenancy, easement, or other right or interest created by the tenant on his tenancy, or in limitation of his own interest therein and not being a protected interest as defined in section 179 ;

(b) the term 'registered and notified incumbrance', used with reference to a tenancy sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument, of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided ;

(c) the terms 'arrear' and 'arrear of rent' in this section shall be deemed to include interest decreed under section 82 or damages awarded in lieu of interest under section 83.

Application for sale of tenancy.

181. When a decree has been passed for an arrear of rent due in respect of a tenancy, and the decree-holder applies under clause (2) of rule 11 of Order XXI in Schedule 1 to the Code of Civil Procedure, 1908, for the attachment and sale of the tenancy in execution of the decree, he shall produce a statement

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showing the pargana, estate and village in which the land is situated, the yearly rent payable for the same, and the total amount recoverable under the decree.

Combined order of attachment and proclamation of sale to issue. 182. (1) Notwithstanding anything contained in the Code of Civil Procedure, of 1908, when a decree-holder makes the application mentioned in section 181, the Court shall, if it admits the application under rule 17 of Order XXI in Schedule 1 to the said Code and orders execution of the decree as applied for, issue a combined order of attachment and sale-proclamation in the prescribed form. Act V. of 1908

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in rule 66 of Order XXI in Schedule 1 to the said Code announce—

(a) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs ; and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given with power to annul all incumbrances ; and

(b) in the case of an occupancy holding not held at fixed rates—that the holding will be sold with power to annul all incumbrances.

(3) Notwithstanding anything contained in rule 54 and sub-rules (1) and (2) of rule 67 of Order XXI in Schedule 1 to the said Code, the attachment shall

be made and the sale proclamation shall be published in the following manner :—

- (a) by beat of drum at some place on or adjacent to the land comprised in the tenure or holding ordered to be sold and by fixing up a copy of the combined order of attachment and sale proclamation in a conspicuous place on such land ;
- (b) by affixing a copy thereof in a conspicuous place at the courthouse of the issuing Court ;
- (c) by sending in the prescribed form by registered post to the judgment-debtor a concise statement of the order of attachment and proclamation at the time of the issue of the proclamation ; and
- (d) in such other manner as may be prescribed.

(4) Notwithstanding anything contained in rule 68 of Order XXI in Schedule 1 to the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least 30 days, calculated from the date on which the copy of the proclamation has been fixed upon the land comprised in the tenure or holding ordered to be sold.

Sale of tenure or holding at fixed rates subject to registered and notified incumbrances, and effect thereof.

183. (1) When a permanent tenure or holding of a raiyat at fixed rates has been advertised for sale under section 182, it shall be put up to auction subject to registered and notified incumbrances, and if the bidding reaches a sum sufficient to liquidate the amount of the decree and cost of sale, the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided in section 186, and not otherwise, annul any

incumbrance upon the tenure or holding, not being a registered and notified incumbrance

Sale of tenure or holding at fixed rates with power to avoid all incumbrances and effect thereof.

184. (1) If the bidding for a permanent tenure or holding of a raiyat at fixed rates put up to auction under section 183 does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale, and publish a fresh proclamation under sub-section (3) of section 182 announcing that the tenure or holding will be put up to auction, and sold with power to avoid all incumbrances, upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement, and upon that day the tenure or holding shall be put up to auction, and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 186, and not otherwise, annul any incumbrance on the tenure or holding.

185. (1) When the holding of an occupancy raiyat has been advertised for sale under section 182, it shall be put up to auction and sold with power to avoid all incumbrances.

Sale of holding of occupancy raiyat with power to avoid all incumbrances and effect thereof.

(2) The purchaser at a sale under this section may, in manner provided in section 186, and not otherwise, annul any incumbrance on the holding.

Procedure for annulling incumbrances under the foregoing sections.

186. (1) A purchaser having power to annul an incumbrance under section 183, 184 or 185, or under the Bengal Public Demands Recovery Act, 1913, and desiring to annul the same may, within one year from the date of the confirmation of the sale, or the date on which he first has notice of

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the incumbrance, whichever is later, present to the Court which passed the decree or the Revenue Officer who made the order, as the case may be, for the sale of the property, an application in writing accompanied by the prescribed fee, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) When an application for service of notice is made in manner provided in this section, the Court or the Revenue Officer, as the case may be, shall cause the notice to be served in compliance therewith and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(3) When a permanent tenure or holding is sold in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in clause (c) of section 179 the purchaser may, if he has power under this chapter or that Act to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not, at the time the lease was granted, a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

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This sub-section shall not apply to land which has been held for a term exceeding twelve years at a rent equal to the rent of good arable land from the time the lease was granted.

Power to direct that holdings of occupancy raiyats be dealt with under foregoing sections as tenures. 187. (1) The Local Government may, from time to time, by notification in the official gazette, direct that holdings of occupancy raiyats or any specified class of such holdings in any local area put up

for sale in execution of a decree for an arrear of rent or a certificate signed under the Bengal Public Demands Recovery Act, 1913, be put up subject to registered and notified incumbrances, and may, by like notification, rescind any such direction.

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(2) While any such direction remains in force in respect of any local area, all holdings of occupancy raiyats or, as the case may be, such holdings of the specified class, in that local area, shall, for the purposes of the sale under the foregoing sections of this chapter, be treated in all respects as if they were permanent tenures.

Rules for disposal of sale proceeds.

188 (1) In disposing of the proceeds of a sale under this chapter, the following rules, notwithstanding anything contained in section 73 of the Code of Civil Procedure, 1908, shall be observed, that is to say,

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- (a) there shall be paid to the decree-holder the costs incurred by him in bringing the tenancy to sale ;
- (b) there shall, in the next place be paid to the decree-holder the amount due to him under the decree in execution of which the sale was held ;
- (c) if there remains a balance after these sums have been paid, there shall be paid therefrom to the decree-holder and to the defendant landlords, if any, who have not joined as plaintiffs any rent which the Court, after giving notice to the judgment-debtor, finds to have

fallen due to them in respect of the tenancy between the institution of the suit and the date of the confirmation of the sale, in proportion to their respective shares in the tenancy ;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor on his application unless the Court for reasons to be recorded in writing otherwise directs.

(2) If the judgment-debtor disputes the right of the decree-holder or of the co-sharer landlord who has been made a party defendant to receive any sum on account of rent under clause (c), the Court shall determine the dispute and the determination shall have the force of a decree.

Tenancy to be released from attachment only on payment into Court of amount of decree with costs or on confession of satisfaction by decree-holder.

189. (1) Rules 58 to 63 (both inclusive) of Order XXI in Schedule 1 to the Code of Civil Procedure, 1908, shall not apply to any tenancy attached in execution of a decree for arrears due in respect thereof.

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(2) When an order for the sale of a tenancy in execution of such a decree has been made, it shall not be released from attachment, unless, before it is knocked down to the auction purchaser, the amount of the decree, including the costs decreed together with the costs incurred in bringing the tenancy to sale, is paid into Court, or the decree-holder makes an application for the release of the lands of the tenancy on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor, or any person whose interests are affected by the sale, may pay money into Court under this section.

(4) The withdrawal of the amount deposited under this section or under section 193 shall not operate as an admission of the transferability of the lands of the tenancy sold in execution of the decree.

Amount paid into the Court to prevent sale to be in certain cases a mortgage-debt on the tenancy.

190. (1) When any person having in a tenancy advertised for sale under this chapter or in execution of a certificate for arrears of rent due in respect thereof signed under the Bengal Public Demands Recovery Act, 1913, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

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- (a) the amount so paid by him shall be deemed to be a debt bearing interest at ~~twelve and a half per cent. per annum~~, and secured by a mortgage of the lands of the tenancy to him ;
- (b) his mortgage shall take priority of every other charge on the lands of the tenancy other than a charge for arrears of rent ; and
- (c) he shall be entitled to possession of the lands of the tenancy as mortgagee of the tenant, and to retain possession of them as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Inferior tenant paying into Court may deduct from rent.

191. When a tenancy is advertised for sale—

- (a) under this Chapter, or
- (b) in execution of a certificate, signed under the Bengal Public Demands Recovery Act, 1913,

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or when such sale is set aside under section 193,

and any tenant, holding immediately or mediately under the defaulter, pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid, from any rent payable by him to his immediate landlord ; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord and so on until the defaulter is reached.

Decree-holder
may bid at sale ;
judgment-debtor
may not.

192. (1) Notwithstanding anything contained in rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the holder of a decree in execution of which a tenancy is sold under this Chapter may, without the permission of the Court, bid or purchase the tenancy.

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(2) The judgment-debtor shall not bid for or purchase the tenancy so sold.

(3) When the judgment-debtor purchases himself, or through another person, the tenancy so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale ; and the costs of the application and order, and any deficiency of price which may happen on the resale, and all expenses attending it, shall be paid by the judgment-debtor.

Application
by judgment-
debtor or other
person whose
interests are
affected, to set
aside sale.

193. (1) Rules 89 and 90 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply in cases where a tenancy has been sold for arrears of rent due thereon, but in such cases the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the

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sale, apply to the Court to set aside the sale, on his depositing—

(a) for payment to the decree-holder, the amount recoverable under the decree up to the date when the deposit is made, with costs ;

(b) for payment to the auction purchaser, as penalty, a sum equal to five per cent. of the purchase money, but not less than one rupee.

(2) When a person makes an application under sub-section (3) for setting aside the sale of his lands, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under sub-section (1).

(3) When a tenancy has been sold for arrears of rent due thereon, the decree-holder, the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within sixty days from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale :

Provided as follows :—

(a) no sale shall be set aside on any such ground unless the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud ; and

(b) no application under this sub-section shall be entertained unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court, for reasons to be recorded in writing, that such deposit is not necessary.

(4) Rule 91 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, Act V of 1908.

shall not apply to any sale under Part III of this chapter.

(5) An appeal shall lie against an order setting aside or refusing to set aside a sale :

Provided that, where the Court has refused to set aside the sale on the application of the judgment-debtor and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the applicant deposits such amount in Court.

Sale when to become absolute or be set aside, and return of purchase money in certain cases. 194.(1) When no application is made under section 193 or when such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.

(2) When such application is made and allowed, and when in the case of an application under sub-section (1) of section 193, the deposit required by that sub-section is made within thirty days from the date of the sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its repayment with or without interest as the Court may direct.

(4) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

(5) 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 **Act V of 1908**

and the sale is confirmed the purchase shall take effect from the date of confirmation of the sale.

Registration of certain instruments creating incumbrances.

195. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1908, an instrument creating an incumbrance upon the lands of any tenancy which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under this Act, if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

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Notification of incumbrances to landlord.

196. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant and creating an incumbrance on the tenancy, shall, at the request of the tenant or the person in whose favour the incumbrance is created, and on payment by him of the prescribed fee, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Power to create incumbrances not extended.

197. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER XI.

(Special provisions.)

CONTRACT AND CUSTOM.

Restriction on exclusion of Act by agreement. (Contracts.)

198.(1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act shall—

- (a) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land,

- (b) take away an occupancy-right in existence at the date of the contract,
 - (c) entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act,
 - (d) take away or limit the right of a tenant, as provided by this Act, to make improvements, and claim compensation for them,
 - (e) take away or limit the right of an occupancy raiyat to transfer his holding, or any share or portion thereof, in accordance with the provisions of sections 29 to 36,
 - (f) take away or limit the rights of raiyats at fixed rates, and occupancy raiyats, in trees on their holdings, as provided in sections 21 and 42.
 - (g) enhance the rate of interest payable under section 82.
 - (h) entitle a landlord to recover as rent from a tenant whose rent is a share, as opposed to a fixed quantity, of produce, produce in excess of half the gross produce of the land for the year for which the rent is claimed.
- (2) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—
- (a) take away or limit the right of an occupancy-raiyat to use the land as provided by section 41 ;
 - (b) take away the right of a raiyat to surrender his holding in accordance with section 100 ;
 - (c) take away the right of an occupancy raiyat to sub-let subject to, and in accordance with, the provisions of this Act ;

- (d) take away the right of a tenant to apply for reduction or alteration of rent under section 49, 84 or 86;
- (e) take away the right of a tenant to such compensation as may be payable to him under the provisions of this Act or under any other Act for the time being in force.

Saving as to permanent mukarrari lease. 199. Nothing in this Act shall be deemed to affect the terms of a permanent mukarrari lease granted by a proprietor or a permanent tenure-holder before the commencement of this Act :

Provided that the proprietor or tenure-holder shall not be entitled to recover interest at a rate exceeding that set forth in section 82 or anything the recovery of which is illegal under the provisions of section 89.

Saving of custom. 200. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with or not expressly or by necessary implication modified or abolished by its provisions.

HOMESTEADS.

Homesteads. 201. When a raiyat or an under-raiyat holds his homestead otherwise than as part of his holding within the same village or any village contiguous to that village, his status in respect of his homestead shall be that of a raiyat or an under-raiyat according to the status of the landlord of the homestead, and the incidents of his tenancy of such homestead shall be governed by the provisions of this Act applicable to raiyats or under raiyats, as the case may be.

CO-SHARER LANDLORDS.

Action to be taken collectively by co-sharer landlords or by their common agents except in certain cases, 202. (1) Subject to the provisions of section 162 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 authorised to act on behalf of both or all of them :

Provided that one or more co-sharer landlords, if all the other co-sharer landlords are made parties defendant to the suit or proceeding in manner provided in sub-sections (1) and (2) of section 162 and are given the opportunity of joining in the suit or proceeding as co-plaintiffs or co-applicants, may—

- (i) file an application under ~~sub-section (1) of section 33~~ or under section 35,
- (ii) bring a suit for enhancement of the rent of a tenure under section 15 or of the holding of an occupancy raiyat under section 48, or for alteration of rent on account of alteration in area under section 84,
- (iii) bring a suit for ejectment of a tenant on the grounds specified in section 17, 19, 45, 57 or 65,
- (iv) make applications as regards improvements under sections 95 and 96,
- (v) apply for measurement under sections 114 and 115,
- (vi) file an application under section 121,
- (vii) bring a suit under section 123,
- (viii) apply for record of private lands under section 141,

(ix) apply for the determination of the incidents of a tenancy under section 147:

Provided also that it shall be competent for any co-sharer landlord to serve a notice under section 91, or to file a notice under section 102, if he has served in the prescribed manner a copy of such notice on the other co-sharer landlords.

(2) Any decree passed or order made in a suit or proceeding in which the conditions set forth in sub-section (1) of this section have been complied with, shall have the effect of a decree passed or order made, on the application of the sole landlord or the whole body of landlords, and shall take effect as regards the whole tenure or holding, as the case may be :

Provided that where a suit is brought under section 15 or section 48 for enhancement of rent, or under section 84 for alteration of rent, or where an application is made under section 121 by a co-sharer landlord for settlement of rent, the Court or Revenue Officer, as the case may be, when the rent has been fixed or settled, shall distribute any amount by which the rent has been increased or reduced, between the co-sharer landlords of the tenancy in proportion to their respective shares in such tenancy whether they have or whether they have not joined as plaintiffs or applicants, and such distribution shall be binding on the co-sharer landlords as if they had all sued or applied for the same and for the purposes of any appeal, application or suit in regard to such distribution they shall be deemed to have sued or applied under sub-section (1) of this section together with the plaintiff or applicant.

AGENT AND REPRESENTATIVES OF LANDLORDS.

Power of landlord to act through agent.

203. (1) Any appearance, application or act in, before, or to, any Court or authority required or authorised by this Act to be made or done by a landlord may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord, shall, if served on, or given to, an agent empowered as aforesaid to accept service of the same on behalf of the landlord, be as effectual for the purposes of this Act, as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorising an agent, may be signed or certified by an agent of the landlord authorised in writing in that behalf.

DAMAGES FOR DENIAL OF LANDLORD'S TITLE.

Damages for denial of landlord's title.

204. (1) When, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up without a reasonable or probable cause, title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

(2) The amount of damages decreed under sub-section (1) together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be first charge on the tenancy; and the

landlord may execute such decree for damages and interest, either as a decree for a sum of money, or, subject to the provisions of section 177, in any of the modes in which a decree for rent may be executed.

MERGER.

Merger.

205. When the entire interests of the immediate landlord and tenant in the whole of the tenancy become united in the same person by transfer, succession or in any other way whatsoever, the tenancy is extinguished:

Provided that the tenancy shall be deemed to continue only in respect of any incumbrance, validly created by the tenant in favour of a third person.

RECOVERY OF CERTAIN DUES.

Rights of
pasturage, forest
rights, etc.

206. The provisions of this Act applicable to arrears of rent, and to suits and proceedings for the recovery thereof, shall, so far as may be, apply to anything payable or deliverable in respect of any right of pasturage, forest rights, rights over fisheries and the like:

Provided that the provisions of Part II of Chapter X shall only apply to the recovery of such dues—

- (i) When the particulars mentioned in clause (f) of section 118 have been recorded and the record has been finally published under Part I of Chapter IX, and
- (ii) subject to the conditions specified in sub-sections (1), (2) and (3) of section 176.

Recovery of
fines and com-
pensation by
Deputy Com-
missioner.

207. Any fine or penalty imposed, or compensation awarded, by the Deputy Commissioner under the provisions of this Act, may be recovered in the manner prescribed by any law for the time being in force, for the recovery of a public demand.

LIMITATION.

Limitation in suits, appeals and applications in Schedule III. 208. (1) The suits, appeals, and applications, specified in Schedule II annexed to the Act, shall be instituted and made within the time provided in that Schedule for them respectively; and any such suit or appeal instituted, and application made, after the period of limitation so provided, shall be dismissed, although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or appeal, or make any application, which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

Portions of Indian Limitation Act not applicable to such suits, etc. (3) Sections 6, 7, 8, and 9 and subsection (2) of section 29 of the Indian Limitation Act, shall not and, subject to the provisions of this section, the remaining provisions of that Act, shall apply to all suits, appeals and applications specified in Schedule II annexed to this Act.

IX of 1908.

RULES UNDER ACT.

Power to make rules.

209. The Local Government may, from time to time, by notification in the Official Gazette, make rules, consistent with this Act, to carry out the purposes of the Act after previous publication.

SAVING FOR OTHER ENACTMENTS.

Saving for special enactments.

210. Nothing in this Act shall affect—

- (a) the powers and duties of Settlement Officers as defined by any law not expressly repealed by this Act;
- (b) any enactment regulating the procedure for the realisation of rents in estates belonging to the Government or under the management of the Court-of-Wards or of the Revenue Authorities;

- (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears for the Government revenue ;
- (d) any enactment relating to the partition of revenue-paying estates ;
- (e) any enactment relating to *Patni* tenures, in so far as it relates to those tenures, except that the expression 'Khudkast raiyat or resident and hereditary cultivator' in sub-section (3) of section 11 of the Bengal Patni Taluks Regulation, 1819, shall be deemed to include all raiyats having a right of occupancy ; or
- (f) any other general, special or local law not repealed, either expressly or by necessary implication, by this Act.

VIII of 1819.

CHAPTER XII.

SUPPLEMENTAL.

Penalties for
illegal inter-
ference with
produce.

211.(1) If any person, otherwise than in accordance with any enactment for the time being in force, —

- (a) distrains or attempts to distrain the produce of a tenant's holding, or
- (b) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding, he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

Act XLV of 1860.

(2) Any person who abets, within the meaning of the Indian Penal Code, the doing of any act mentioned in subsection (1) shall be deemed to have abetted the commission of a criminal trespass within the meaning of that Code.

Act XLV of
1900.

Tenant not enabled by Act to violate conditions binding on landlords.

212. Where a proprietor or permanent tenure-holder holds his estate, or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition :

Provided that this section shall not apply to a raiyat or an under-raiyat doing any act in exercise of the rights conferred by this Act upon raiyats or under-raiyats, as the case may be.

Sale of holding of occupancy riyat in temporarily-settled area for recovery of loan granted under Land Improvement Loans Act, 1883, etc.

213. Nothing in this Act shall prevent a holding of an occupancy riyat in the temporarily-settled area from being sold for the recovery of a loan granted by the Local Government under the Land Improvement Loans Act, 1883, or Agriculturists' Loans Act, 1884 or otherwise. The rent of the holding, however, shall be the first charge on the sale proceeds.

Act XLV of
1900.

Transfer of land.

214. All landlords' fees and landlords' transfer fees deposited with the Deputy Commissioner after the commencement of this Act shall, unless accepted or claimed by the landlord within six years from the date of service of notice, be forfeited to the Government to be credited to the Local Boards.

SCHEDULE I.

(See Section 2.)

Enactments repealed or amended.

Year	No.	Short title.	Extent of repeal.
1	2	3	4
1869	VIII	The Landlord and Tenant Procedure Act.	The whole Act.
1793	VIII	The Bengal Decennial Settlement Regulation.	Sections 51, 52, 53, 54, 55, 64 and 65.
1885	VIII	The Bengal Tenancy Act	Sections 103A, 103B, 105, 105A, 106, 107, 108, 108A, 109A, 109B, 109C, 110, 111, 111A, 111B, and 147B, as modified under Assam Notification No. 5335B, dated the 9th December 1915.
1886	I	The Assam Land and Revenue Regulation as amended by Regulations II of 1889 and II of 1905.	Sections 40, 41, 42 in so far as they are applicable to the permanently-settled areas.
1885	XI	The Bengal Alluvion and Diluvion Regulation.	In clause (c) of section 4— (a) For the words "Regulation II of 1819" the words "The Assam Land and Revenue Regulation I of 1886" shall be substituted. (b) The words commencing with "nor if annexed to a subordinate tenure" to "any increase of rent to which he may be justly liable" shall be omitted.