



SUPPLEMENT

TO THE

BOMBAY GOVERNMENT GAZETTE,

CONTAINING

Acts and Bills of the Legislative Council of India.

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Legislative Council of India.

30th April 1859.

The following Act, passed by the Legislative Council of India, received the assent of the Right Honorable the Governor General on the 30th April 1859, and is hereby promulgated for general information:—

ACT No. IX. of 1859.

An Act to Provide for the Adjudication of Claims to Property Seized as Forfeited.

Whereas it is expedient to make provision for the adjudication of claims to property seized as forfeited, with a view to the speedy determination of the same; and whereas it is also expedient to remove doubts concerning the powers of Officers or other persons to whom Commissions may have been issued for the trial of heinous offences in certain districts, and concerning the validity of convictions and adjudications of forfeiture made by such Officers or other persons; It is enacted as follows:—

Preamble.

I. It shall be lawful for the Executive Governments of the Lower and North-Western Provinces of the Presidency of Bengal to establish, within any part of the Territories subject to their respective Governments, Courts of Special Commission for the trial and determination of claims to property seized as forfeited, and to assign, from time to time, such local jurisdiction to the Courts so established as may appear proper. Provided that no additional expense shall be incurred by the establishment of any such Court without the previous sanction of the Governor General of India in Council.

Proviso.

II. Every Court established under this Act shall consist of not less than three Commissioners, who shall sit together for the trial and

determination of claims; but any one or more of them shall have power to make all such orders as may be necessary for preparing the cases that may be instituted for trial and decision.

III. Whenever any Court shall be established under the provisions of this Act, with jurisdiction in any district or districts, notice thereof shall be given by a written proclamation, of which copies shall be affixed in the several Courts and in the Offices of the several Collectors and Magistrates of such district or districts; and the powers heretofore vested in the Courts of such district or districts in respect of all cases cognisable by the Courts established under this Act, shall be suspended until such Courts shall be informed, by an order under the signature of the Secretary to Government, that the local jurisdiction of such Court of Special Commission has ceased, of which notice shall be given by proclamation in the manner aforesaid.

IV. Any case pending before any Court sitting as a Court of original jurisdiction at the time of the passing of this Act, in respect of a matter made cognisable by Courts established under its provisions, shall be transferred to the Court of Special Commission, within the limits of whose jurisdiction the property in dispute is situate, and such Court shall summon the defendant, and proceed to dispose of the case in the same manner as if it had been instituted before it.

V. The Courts established under this Act shall be held at such place within the limits of their respective jurisdiction, as shall from time to time be appointed by the local Government.

VI. The plaint in suits instituted under this Act shall be written on the stamp paper prescribed for petitions of plaint in regular suits, and shall contain the following particulars, namely:—

Form of plaint.

The name, description, and place of abode of the

plaintiff, the relief sought for, the subject of the claim, and the cause of action; and if the suit be brought against a defendant other than the Government or some Officer on the part of Government, the name, description, and place of abode of such defendant.

VII. The plaint shall be verified in the manner prescribed for the verification of plaints in Section XXVII.

Act VIII. of 1859 (for *Simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter*); and if the plaint contain any averment

which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

VIII. The plaint may be presented by the plaintiff in person or by his duly constituted representative,

either in the principal Civil Court of original jurisdiction in the district in which the property or any part of the property in dispute is situate, or in the Court of Special Commission having jurisdiction over the claim under this Act. If the plaint be not presented in the Court of Special Commission, it shall be forwarded to such Court without delay.

IX. The Court shall fix a day for the appearance of the parties and for the hearing of the suit, of which due notice shall be given to the parties or their representatives, and on the day so fixed the parties shall bring their witnesses into Court, together with any documents on which they may intend to rely in support of their respective statements. If either party require the assistance of the Court to procure the attendance of a witness on such day, he shall apply to the Court in sufficient time before the day fixed for the hearing of the suit, and the Court shall issue a subpoena requiring such witness to attend the Court on that day. It shall be competent to the Court to require the personal attendance of the plaintiff on the day fixed for the hearing of the suit or at any subsequent stage.

X. On the day fixed for the hearing of the suit or as soon after as may be practicable, the Court shall proceed to examine the plaintiff or his representative (when his personal attendance is not required) and the witnesses of the parties; and upon such examination, and after inspecting the documents of the parties and making any further inquiry that may appear necessary, shall proceed to pass such order in the case in respect both to the claim and to the costs of suit as it may consider just and proper.

XI. It shall not be necessary to take down the depositions of the witnesses in writing at length; but the Court, as the examination of each witness proceeds, shall reduce into writing the substance of what such witness deposes, and the deposition so taken shall form part of the record. In all other respects the provisions of the Regulations and Acts for procuring the attendance of witnesses and for the examination, remuneration, and punishment of witnesses in suits before the Civil Courts, shall be of equal force and effect in cases tried under this Act.

XII. The rules contained in Act XII. of 1843 (concerning the Time at which and the Language in which the Decisions of the Judges in the Courts of the East India Company are to be written) shall be applicable to decisions passed under this Act.

XIII. No appeal shall lie from any decision passed under this Act, nor shall any such decision be open to revision.

XIV. The decrees of the Courts of Special Commission established under this Act shall be enforced by the Civil Courts of the district in which the property in dispute is situate, under the rules applicable to the execution of decrees passed by those Courts.

XV. The records of cases disposed of by Courts established under this Act shall be deposited amongst the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

XVI. Whenever any person shall have been convicted of an offence for which his property was forfeited to Government, no Court has power in any suit or proceeding relating to such property to question the validity of the conviction.

XVII. Whenever any person shall have been convicted as above by an Officer having power to try and convict, the validity of any such conviction shall not be questioned upon the ground that the record of the conviction does not show in what capacity such Officer acted, or that it represents him to have acted in a different capacity from that in which he had power to convict.

XVIII. Whenever any property shall have been attached or seized without either conviction or an adjudication of forfeiture by any Officer of Government as property forfeited or liable to be forfeited to Government for an offence for which, upon conviction, the property of the offender would be forfeited, the validity of such attachment or seizure shall not be called in question by any Court or other authority in any suit or proceeding, unless the offender or alleged offender shall, within one year after the seizure of his property, have surrendered himself for trial, and upon trial before a competent Court shall have been or shall be acquitted of the offence, and shall prove to the satisfaction of the Court that he did not escape or keep out of the way for the purpose of evading justice.

XIX. No Judge or other person acting as Commissioner under the provisions of Acts XIV. and XVI. of 1857 has power to release property attached or seized as forfeited or as liable to be forfeited to Government, except under the provisions of Section VIII. Act XXV. of 1857, when the offender or alleged offender shall have surrendered himself for trial and shall be tried and acquitted by such Judge or Commissioner, and shall prove that he did not escape or keep out of the way for the purpose of evading justice; and any order passed by any such Judge or Commissioner for the release of any property attached or seized as forfeited or liable to be forfeited to Government, except upon the acquittal before him of the person accused, and upon proof that he did not escape or keep out of the way for the purpose of evading justice, is hereby declared null and void.

Proviso. Nothing in this Section shall extend to persons entitled to pardon under Her Majesty's proclamation published in the *Calcutta Gazette Extraordinary*, dated the 1st November 1858, or to any person who, having surrendered himself within the period of one year after the seizure of his property, shall be discharged by order of Government without a prosecution.

XX. Nothing in this Act shall be held to affect the rights of parties not charged with any offence for which, upon conviction, the property of the offender is forfeited, in respect of any property attached or seized as forfeited or liable to be forfeited to Government; provided that no suit brought by any party in respect of such property shall be entertained, unless it be instituted within the period of one year from the date of the attachment or seizure of the property to which the suit relates.

Proviso.

W. MORGAN,
Clerk of the Council.

Legislative Council of India.

30th April 1859.

The following Act, passed by the Legislative Council of India, received the assent of the Right Honorable the Governor General on the 29th April 1859, and is hereby promulgated for general information:—

ACT No. X. OF 1859.

An Act to Amend the Law Relating to the Recovery of Rent in the Presidency of Fort William in Bengal.

Whereas it is expedient to re-enact, with certain modifications, the provisions of the existing law relative to the rights of ryots with respect to the delivery of pottahs and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same; to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears; and to amend the law relating to distraint; It is enacted as follows:—

Preamble.

I. The following Regulations and Acts and portions of Regulations and Acts are hereby repealed, except in so far as they repeal any other Regulation or Act, and except as to proceedings commenced before the date of this Act coming into force, namely—

Regulation XVII. 1793 (*to empower landholders to distrain and sell the personal property of ryots, &c.*),
So much of Regulation IV. 1794 (*to determine disputes regarding the grant of pottahs to ryots, &c.*) as is still in force,

Regulation XXXV. 1795 (*for better enabling individuals to recover arrears of rent or revenue due to them*),

Regulation XLV. 1795 (*to empower landholders in the Province of Benares to distrain, &c.*),

Sections IX. and X. Regulation LI. 1795 (*respecting ryotty pottahs in the Province of Benares*),

Sections I. to XX. Regulation VII. 1799 (*to enable landholders to realise their rents with greater punctuality, &c.*),

Sections I. to XX. Regulation V. 1800 (*to enable landholders in the Province of Benares to realise their rents with greater punctuality, &c.*),

Regulation XXVIII. 1803 (*to empower landholders in the Ceded Provinces to distrain, &c.*),

Sections IX. and X. Regulation XXX. 1803 (*prescribing rules for the grant in the Ceded Provinces of pottahs to ryots, &c.*),

Section IV. Regulation II. 1805 (*to provide a limitation of time for certain suits, &c.*),

Section XIX. Regulation VIII. 1805 (*for extending certain Regulations to the Ceded and Conquered Provinces, &c.*),

Sections V. to XXIII. Regulation V. 1812 (*for amending some of the rules at present in force for the collection of the Land Revenue*),

Sections XV. and XVI. Regulation XIX. 1817 (*for amending certain Regulations in force relative to process for recovery of arrears of rent*),

Section XXVII. Regulation XX. 1817 (*relating to resistance to distraint for arrears of rent, &c.*),
Sections XVIII. and XIX. Regulation VIII. 1819 (*relating to Putnee Talooks and the system established for the collection of rents generally, &c.*),

Section IV. Regulation II. 1821 (*relating to the duties of City and Zillah Judges, &c.*),

Section XXII. and so much of Section XX. and the following Sections of Regulation VII. 1822 (*relating to the settlement of the Land Revenue in the Ceded Provinces and Cuttack*) as apply to suits for rent, to complaints of excessive demand or undue exaction of rent, or of the non-delivery of pottahs or receipts, to suits against agents for money or accounts, or to any other suits or complaints arising out of disputes between landholders or farmers and their under-tenants, respecting the rent and occupancy of land,

Regulation XIV. 1824 (*for modifying the rules in force for referring to the Collectors summary suits in cases of arrear or exaction of rent*),

Regulation VIII. 1831 (*for amending the existing provisions relative to the trial of summary suits and claims for arrears or exactions of rent*),

Act I. of 1839 (*relating to the appointment of persons to sell property distrained for the recovery of arrears of rent*),

Act X. of 1846 (*for regulating the proceedings in certain cases of distraint for arrears of rent*), and

Act VIII. of 1848 (*to modify the provisions of Sections IX., X., XI., and XIII. of Regulation V. 1812 of the Bengal Code*),

Sections XIV. and XV. Regulation IX. 1833 (*for the more speedy decision of certain suits, and for enforcing the production of village accounts*), so far as the same are applicable to the territories under the Government of the Lieutenant Governor of Bengal, are also repealed.

Such parts of Regulation VIII. 1793 (*prescribing rules for the decennial settlement of the Public Revenue in Bengal, Behar, and Orissa*), and Regulation XXX. 1803, as relate to the adjudication of penalties for the refusal of pottahs and receipts for rent and for the exaction of any sums as abwab, or in excess of the amount specified in any engagements for the payment of rent, and such parts of Section XXVI. Act I. of 1845 (*to amend Act No. XII. of 1841, entitled "An Act for amending the Bengal Code in regard to sales of land for arrears of Revenue"*) as relate to the enhancement of rents and the ejection of tenants by the purchaser of an estate sold for arrears of Government Revenue, are declared subject to the following modifications.

II. Every ryot is entitled to receive from the

Ryot entitled to a pottah. person to whom the rent of the land held or cultivated by him is payable, a pottah containing the following particulars:—

The quantity of land; and, where fields have been numbered in a Government survey, the number of each field.

The amount of annual rent.
The instalments in which the same is to be paid.
And any special conditions of the lease.

If the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery.

III. Ryots who, in the Provinces of Bengal, Behar, Orissa, and Benares, hold Ryots holding land at fixed rates to receive pottahs. lands at fixed rates of rent, which have not been changed from the time of the permanent settlement, are entitled to receive pottahs at those rates.

IV. Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a ryot in the said Provinces, has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the

land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

V. Ryots having rights of occupancy, but not holding at fixed rates, as described in the two preceding Sections, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

Ryots having right of occupancy, but not holding at fixed rates, to receive pottahs.

VI. Every ryot who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khomar, neejote, or seer land belonging to the proprietor of the estate or tenure and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sub-let for a term or year by year by a ryot having a right of occupancy. The holding of the father, or other person from whom a ryot inherits, shall be deemed to be the holding of the ryot within the meaning of this Section.

Right of occupancy of ryot cultivating or holding land for 12 years.

VII. Nothing contained in the last preceding Section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot when it contains any express stipulation contrary thereto.

Saving of terms of written contracts.

VIII. Ryots not having rights of occupancy are entitled to pottahs only at such rates as may be agreed on between them and the persons to whom the rent is payable.

Pottahs to which ryots not having rights of occupancy are entitled.

IX. Every person who grants a pottah is entitled to receive from the person to whom the pottah is granted a kuboohiyet or counterpart engagement in conformity with the terms of the pottah. The tender to any ryot of a pottah, such as the ryot is entitled to receive, shall be held to entitle the person to whom the rent is payable to receive a kuboohiyet from such ryot.

Person granting pottah entitled to a counterpart engagement.

X. Every under-tenant or ryot, from whom any sum is exacted in excess of the rent specified in his pottah, or payable under the provisions of this Act, whether as abwab or under any other pretext; and every under-tenant, ryot, or cultivator, from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so exacted or paid. Receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid; and any refusal to make such specification shall be held to be a withholding of a receipt.

Exactions in excess of rent or receipt withheld.

Form of receipt.

XI. The power heretofore vested in Zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents, or for any other purpose, is withdrawn, and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them other than are authorised by the provisions of this Act.

Landholder not to compel the attendance of tenant for adjustment of rent or for any other purpose.

XII. If payment of rent, whether the same be legally due or not, is extorted from any under-tenant or ryot by illegal confinement or

Payment of rent to be enforced only under this Act.

Damages for extorting payment of rent by duress.

other duress, such under-tenant or ryot shall be entitled to recover such damages, not exceeding in any case the sum of Two Hundred Rupees, as may be deemed a reasonable compensation for the injury done him by such extortion. An award of compensation under this Section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law.

XIII. No under-tenant or ryot who holds or cultivates land without a written engagement not specifying the period of such engagement, or whose engagement has expired, or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held cultivated by him is situate, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or ryot, in or before the month of Cheit, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed. Such notice shall be served by order of the Collector on the application (which may be on plain paper) of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or ryot. If for any reason the notice cannot be served personally upon the under-tenant or ryot, it shall be affixed at his usual place of residence, or if he have no such place of residence in the District in which the land is situate, the mode of service of such notice shall be by affixing it at the Mal cutchery of such land or other conspicuous place thereon, or at the village Chowree or Chowpal, or at some other conspicuous place in the village in which the land is situate.

Enhancement of rent of ryot holding without, or after expiry, &c. of written engagement.

XIV. Any under-tenant or ryot, on whom such notice as aforesaid has been served, may contest his liability to pay the enhanced rent demanded of him, either by complaint of excessive demand of rent as hereinafter provided, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent.

Mode of contesting enhancement of rent.

XV. No dependent talookdar or other person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the ryots, who, in the Provinces of Bengal, Behar, Orissa, and Benares holds his talook or tenure (otherwise than under a terminable lease) at a fixed rent, which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in Section LI. Regulation VIII. 1793 or in any other law to the contrary notwithstanding.

Dependent talookdar, &c., holding land at fixed rent, without change since permanent settlement, not liable to enhancement of rent.

XVI. Whenever, in any suit under this Act, it shall be proved that the rent at which a talook or other tenure is held in the said Provinces, has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such talook or tenure has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.

Rent of talookdar, &c., not changed for twenty years to be *prima facie* evidence of occupancy at that rent since permanent settlement.

XVII. No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely:—

That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

That the rate paid by him is below that prevailing in adjacent places.

That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

That the value of the land, &c. has increased independently of the ryot.

That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

That the quantity of land held by the ryot is greater than he has paid rent for.

XVIII. Every ryot having a right of occupancy, shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot, or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

When ryot may claim abatement of rent.

XIX. Any ryot who desires to relinquish the land held or cultivated by him, shall be at liberty to do so, provided he gives notice of his intention in writing to the person entitled to the rent of the land, or his authorised agent, in or before the month of Chait of the year preceding that in which the relinquishment is to have effect. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land. If the person entitled to the rent of the land or his agent refuse to receive any such notice and to sign a receipt for the same, the ryot may make an application on plain paper to the Collector, who shall thereupon cause the notice to be served on such person or his agent in the manner provided in Section XIII.

XX. Any instalment of rent which is not paid on or before the day when the same is payable according to the pottah or engagement, or, if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage, shall be held to be an arrear of rent under this Act, and, unless otherwise provided by written agreement, shall be liable to interest at twelve per centum per annum.

XXI. When an arrear of rent remains due from any ryot at the end of the Bengal year, or at the end of the month of Jeth of the fasly or Willaytee year, as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due. Provided that no ryot, having a right of occupancy, or holding under a pottah the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Liability of ryot to be ejected for arrear due

Proviso.

XXII. When an arrear of rent shall be adjudged to be due from any farmer or other lease-holder not having a permanent or transferable interest in the land, the lease of such leaseholder shall be liable to be cancelled, and the leaseholder to be ejected. Provided that no such lease shall be cancelled, nor the leaseholder ejected, otherwise than in execution of a decree or order under the provisions of this Act.

XXIII. 1. All suits for the delivery of pottahs or kubooyets, or for the determination of the rates of rent at which such pottahs or kubooyets are to be delivered;

Liability of farmer to have his lease cancelled for arrear adjudged due.

Proviso.

2. All suits for damages on account of the illegal exaction of rent, or of any unauthorised cess or impost, or on account of the refusal of receipts for rent paid,

Cognisance of suits under this Act.

or on account of the extortion of rent by confinement or other duress;

3. All complaints of excessive demand of rent, and all claims to abatement of rent;

4. All suits for arrears of rent due on account of land either kherajee or lakheraj, or on account of any rights of pasturage, forest-rights, fisheries, or the like;

5. All suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejection, or a lease may be liable to be cancelled;

6. All suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same;

7. All suits arising out of the exercise of the power of distraint conferred on Zemindars and others by Sections CXII. and CXIV. of this Act, or out of any acts done under colour of the exercise of the said power as hereinafter particularly provided;

shall be cognisable by the Collectors of land revenue, and shall be instituted and tried under the provisions of this Act, and, except in the way of appeal as provided in this Act, shall not be cognisable in any other Court, or by any other Officer, or in any other manner.

XXIV. Suits by Zemindars and others in receipt of the rent of land against any agents employed by them in the management of land or collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession, shall be cognisable by the Collectors, and shall be instituted and tried under the provisions of this Act, and shall not be cognisable in any other Court, except in the way of appeal as provided in this Act.

Suits by Zemindars against their agents for money or accounts.

XXV. If any Zemindar or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejection expressly authorised by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to inquire into the case and pass orders in the manner provided for suits under this Act. Provided that no such application for the ejection of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated ticca zur-i-peshgee, or the like, in which an advance has been made by the leaseholder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court.

Proviso.

XXVI. When rent is payable by an under-tenant or ryot at a certain rate or rates, according to the quantity of land held or cultivated by him, or when any written engagement conditioned for the payment of a certain amount of rent on account of land held or cultivated by an under-tenant or ryot has expired or become cancelled by the sale for arrears of revenue or rent of the estate or tenure in which the land is situate, the person to whom the rent is payable has a right to measure such land for the purpose of ascertaining the quantity of land actually held or cultivated by such under-tenant or ryot. And every proprietor of an estate or tenure has a right of making a general survey or measurement of the lands comprised in such estate or tenure, unless restrained from doing so by express engagement with the occupants of the lands. If any person intending to measure any land which he has a right to measure is opposed in making such

Measurement of lands, ryot at a certain rate or rates, according to the quantity of land held or cultivated by him, or when any written engagement conditioned for the payment of a certain amount of rent on account of land held or cultivated by an under-tenant or ryot has expired or become cancelled by the sale for arrears of revenue or rent of the estate or tenure in which the land is situate, the person to whom the rent is payable has a right to measure such land for the purpose of ascertaining the quantity of land actually held or cultivated by such under-tenant or ryot. And every proprietor of an estate or tenure has a right of making a general survey or measurement of the lands comprised in such estate or tenure, unless restrained from doing so by express engagement with the occupants of the lands. If any person intending to measure any land which he has a right to measure is opposed in making such

measurement by the occupant of the land, or if any under-tenant or ryot, having received notice of the intended measurement of land, held or cultivated by him which is liable to such measurement, refuses to attend and point out such land, such person may make application to the Collector, and the Collector shall thereupon proceed to inquire into the case in the manner provided for suits under this Act, and shall pass an order, either allowing or disallowing the measurement, and, if the case so require, enjoining or excusing the attendance of any such under-tenant or ryot. If any under-tenant or ryot, after the issue of an order enjoining his attendance, neglects to attend, it shall not be competent to him to contest the correctness of the measurement made in his absence.

XXVII. All dependent talookdars and other persons possessing a permanent transferable interest in land intermediate between the Zemindar and the cultivator are required to register, in the Sherishteh of the Zemindar or superior tenant to whom the rents of their talooks or tenures are payable, all transfers of such talooks or tenures, or portions of them by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every Zemindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and all such successions and divisions. If any Zemindar or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferee or successor may make application to the Collector, and the Collector shall thereupon proceed to inquire into the case in the manner provided for suits under this Act, and if no sufficient grounds are shown for the refusal, shall pass an order enjoining the Zemindar or superior tenant to admit to registry and otherwise give effect to such transfer or succession.

Provido. Provided that no Zemindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the Zemindar or superior tenant.

XXVIII. So much of Section X. Regulation XIX. 1793, Section X. Regulation XLI. 1795, Section VI. Regulation XXXI. 1803, Section XXI. Regulation VIII. 1805, and Section XXIV. Regulation XII. 1805, as authorises and requires proprietors and farmers of estates and dependent talooks, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said Sections, of their own authority to collect the rents of such land and to dispossess the grantees of the proprietary right in the land and to re-annex it to the estate or talook in which it may be situate, is repealed; and any proprietor or farmer who may desire to assess any such land, or to dispossess any such grantee, shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this Act. Every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued. If such period has already elapsed, or will elapse within two years from the date of the passing of this Act, such suit may be brought at any time within two years from such date.

XXIX. All suits which, under the provisions of this Act, may be brought by or against Zemindars or other persons in the receipt of the rent of land, may be brought by or against Surburakars or Tuhseeldars of estates held khas.

Suits by or against Surburakars or Tuhseeldars of estates held khas. Suits by or against Surburakars or Tuhseeldars of estates held under khas management, whether such estates are

the property of Government or of individuals. If the Collector or the Surburakar or Tuhseeldar of any such estate in the Provinces of Bengal, Behar, and Orissa proceed against any defaulting ryot or under-tenant of such estate under the powers vested in him by Section XXV. Regulation VII. 1799, and not according to the provisions of this Act, such ryot or under-tenant may contest the demand on account of which he is so proceeded against by suit in the Civil Court.

XXX. Except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action.

XXXI. Suits for the delivery of pottahs or kubooliyets and for the determination of the rates of rent at which such pottahs or kubooliyets are to be delivered, may be instituted at any time during the tenancy.

XXXII. Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year, or from the last day of the month of Jeth of the Fusly or Willayuttee year in which the arrear claimed shall have become due. For arrears of rent due at the passing of this Act, suit shall be brought within three years after the passing of this Act; or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire.

Provided that, if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under Section XIII., and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengal year, or of the month of Jeth of the Fusly or Willayuttee year, on account of which such enhanced rent is claimed.

XXXIII. Suits for the recovery of money in the hands of an agent, or for the delivery of accounts or papers by an agent, may be brought at any time during the agency or within one year after the determination of the agency of such agent, or in the case of claims now existing, within one year after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire.

Provido. Provided that if the person having the right to sue shall, by means of fraud, have been kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person; but no such suit shall in any case (except the case of claims now existing as aforesaid) be brought at any time exceeding three years from the termination of the agency.

XXXIV. Suits under this Act shall be instituted by presenting to the Collector a plaint or statement of claim, which shall contain the name, description, and place of abode of the plaintiff; the name, description, and place of abode of the defendant, so far as they can be ascertained; the substance of the claim, and the date of the cause of action.

XXXV. The statement of claim shall be presented by the plaintiff, or by an authorised agent of the plaintiff who has personal

knowledge of the facts of the case, or by an agent who shall be accompanied by a person who has such knowledge.

XXXVI. The statement of claim shall be subscribed and verified at the foot of the plaintiff or his agent in the manner following, or to the like effect:—

I, A. B., do declare that the above statement is true, to the best of my knowledge and belief.

If the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

XXXVII. In suits for the recovery of arrears of rent or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court. In all other suits the statement shall be written on paper bearing a stamp of the value of Eight Annas. No stamp shall be required in respect of the production or filing of any document, or the summoning of any witness, or of any application for the execution of any order or judgment passed in a suit under this Act.

XXXVIII. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Collector at the time of presenting his statement of claim, unless such document be delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

XXXIX. If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his statement of claim, deliver to the Collector a description of the document, in order that the defendant may be required to produce the same.

XL. If the suit be for the recovery of an arrear of rent, the statement shall specify the name of the village and estate, and of the Parganna or other local division in which the land is situate; and if the arrear is alleged to be due from any ryot, the quantity of land; and where fields have been numbered in a Government Survey, the number of each field; the yearly rent of the land, the amount (if any) received on account of the year for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due.

XLI. If the suit be for the ejectment of a ryot, farmer, or tenant, from any land, farm, or tenure, or for the recovery of the occupancy or possession of any land, farm, or tenure, the statement shall describe (as circumstances may require) the extent, situation, and designation of the same; and, if necessary for the identification of the land, shall set forth the boundaries of such land.

XLII. If the statement of claim do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Collector may return the statement to the plaintiff, or, at his discretion, allow it to be amended.

XLIII. If the statement of claim be in proper form,

the Collector, except as otherwise hereinafter especially provided, shall direct the issue of a summons to the defendant, and if the plaintiff require the personal attendance of the defendant, and satisfy the Collector that such personal attendance is necessary, or the Collector, of his own accord, require such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons, otherwise the summons shall order the defendant to appear personally, or by an agent duly authorised on his behalf who has personal knowledge of the subject, or who shall be accompanied by a person who has such personal knowledge.

XLIV. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held, and the summons shall order the defendant to produce any document which he may have in his possession, of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence. It shall also enjoin him to bring with him his witnesses if they are willing to attend without issue of process; and shall be in the form A contained in the Schedule to this Act, or to the like effect.

XLV. The summons shall be served by delivering a copy of the summons to the defendant personally when practicable; or if the summons cannot be served on the defendant personally, by affixing a copy of it to some conspicuous part of his usual place of abode, and also affixing a copy of the same in the Collector's Office.

XLVI. If the summons be served personally, the Nazir shall endorse on the summons the fact of such service. If personal service be not effected, the Nazir shall endorse on the summons the reason of not serving it personally, and how it has been served.

XLVII. If the usual place of abode of the defendant be in another District, the summons, together with the cost of the service thereof, shall be sent by the public post to the Collector of such District, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the Officer by whom it was transmitted to him.

XLVIII. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next succeeding Section, of serving the warrant, shall in all cases be deposited in Court upon the same day or the day next following that on which the plaint or statement of claim is presented to the Collector. If the said amount be not so deposited (except in cases in which the Collector may allow the issue of summons free of cost under the discretion reserved to him in Section CXLVI.), the case shall not be brought on the file of suits: but in such case the plaintiff may present another plaint at any time within the period allowed by the rules for the limitation of actions.

XLIX. If in any suit against an under-tenant or ryot for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers, or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, he shall present with his statement of claim an application for the issue of such warrant.

XLIX. If in any suit against an under-tenant or ryot for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers, or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, he shall present with his statement of claim an application for the issue of such warrant.

When such application is presented, the Collector shall examine the plaintiff or his agent, on his oath or affirmation or otherwise according to the law for the time being in force in relation to the examination of witnesses, and inspect the documents adduced by him in support of his claim; and if there be *prima facie* grounds for believing the claim to be well-founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Collector may issue a warrant for the arrest of the defendant. The Collector shall fix a reasonable time for the return of the warrant, which shall be in the form (B) contained in the Schedule to this Act, or to the like effect, and the Officer entrusted with the service of the warrant shall, at the time of arresting the defendant, deliver to him a notice addressed to the defendant (which shall be in the form (C) in the Schedule, or to the like effect) containing the particulars of the claim, and requiring the defendant, if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence. But no such warrant shall be issued in a suit for arrears of rent due in respect of a dependent talook or other transferable tenure, which, as hereinafter provided, is liable to sale in execution of any decree which may be passed in the case.

L. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Collector, and the Collector shall commit him to custody, unless he deposit in Court such sum as may be specified in the notice.

LI. When a defendant is brought before the Collector under warrant, the Collector shall, with all convenient speed, proceed to try the case in the manner hereinafter provided; and if the suit cannot be at once adjudicated, the Collector may, if he think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is depending or until execution of the final decree which may be passed thereon, and may commit the defendant to the Civil jail, to be there detained until he shall furnish such security or deposit such sum as the Collector shall order. The security bond shall be in the form (D) contained in the Schedule to this Act, or to the like effect.

LII. If the defendant cannot be arrested under the warrant, the Collector, on the application of the plaintiff, shall either postpone the case for such period as he may think proper, in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation, to be affixed in his own Office and at the residence of the defendant, fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice at the residence of the defendant. If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding Section.

LIII. If it shall appear to the Collector that the arrest of the defendant was applied for without reasonable cause, the Collector may in his decree award to the defendant such sum, not exceeding One Hundred Rupees, as he may deem a reasonable compensation for any injury or loss which the defendant may have sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

LIV. On the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be

adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case shall be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules for the limitation of action.

LV. If on any such day the defendant only appear, the Collector shall pass judgment against the plaintiff by default, unless the defendant admit the cause of action, in which case the Collector shall proceed to give judgment for the plaintiff upon such admission without costs; provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

LVII. If on any such day the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or oral evidence adduced by him, may either dismiss the case, or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

LVI. If plaintiff only appear, Collector may proceed *ex parte*.
 LVII. If the defendant shall appear on any subsequent day to which the hearing of the suit may be postponed under the last preceding Section, the Collector may, upon such conditions, if any, as to costs or otherwise, as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

LVIII. No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But in all such cases, if the party against whom judgment has been given shall appear, either in person or by agent, if a plaintiff within fifteen days from the date of the Collector's order, and if a defendant within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shall show good and sufficient cause for his previous non-appearance, and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and alter or rescind the decree, according to the justice of the case; but no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

LIX. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned for sufficient reason to be recorded by the Collector, the Collector shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other. If either of the parties be not bound to attend personally, any agent by whom he shall appear, or any person who shall accompany such agent, shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally. At the time of examination the defendant, if he think fit, may file a written statement of his defence.

LX. The examination of the parties or their agents, or such other persons as aforesaid, shall be upon oath Examination of parties, &c.

or affirmation or otherwise, according to the law for the time being in force relative to the examination of witnesses. The substance of the examination shall be reduced to writing in the vernacular language of the Collector and filed with the record.

LXI. If either of the parties shall bring forward a witness on such day, the Collector may take the evidence of such witness.

LXII. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit; and unless such document be so delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

LXIII. If after the examination required by Section LIX., and also the examination of any witness who may attend to give evidence on behalf of either of the parties; and after a consideration

of the documentary evidence adduced, a decree can be properly made without further evidence, the Collector shall make his decree accordingly.

LXIV. If on such examination as aforesaid the agent of either party be unable to answer any material question relating to the case which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to answer as aforesaid shall attend in person on such day; and if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default, or make such other order as he may deem proper in the circumstances of the case.

LXV. If on such examination as aforesaid it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.

LXVI. The parties shall bring forward their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply to the Collector in sufficient time before the day fixed for the trial, to enable the parties to be summoned to attend on that day; and the Collector shall issue a summons requiring such witness to attend.

LXVII. The provisions of the Regulations and Acts, and all other rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration, and punishment of witnesses, whether parties to the case or not, in cases before the Civil Courts of the Presidency of Bengal, shall, except so far as the same may be inconsistent with the provisions of this Act, apply to and be of equal force and effect in suits under this Act.

LXVIII. If, on the day fixed for the trial of any issue, neither of the parties appear, the case shall be struck off under the conditions provided in Section

LIV. If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party upon such proof as may be then before the Court.

LXIX. When suits under this Act are instituted or defended by Naibs, Gomastahs, or other persons employed in the collection of rent or management of land in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such Naibs, Gomastahs, or other persons; and anything which by this Act is required or permitted to be done by a party in person may be done by any such person as aforesaid. Processes served on any such person shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person, and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such person.

LXX. A plaintiff or defendant shall not be required to attend in person if of the female sex and of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

LXXI. Any party to a suit may employ an authorised agent or mookhtar to conduct the case on his behalf, but the appointment of such agent or mookhtar shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or any order of the Court; and no fee for any agent shall be charged as part of the costs of suit in any case under this Act.

LXXII. The Collector may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to the production of further proof, or for other sufficient reason to be recorded by the Collector, adjourn the hearing or further hearing of any case in such manner as to him may seem fit.

LXXIII. The Collector may at any stage of a case cause a local inquiry, and report respecting the matter in dispute to be made by any Officer subordinate to him, or by any other Officer of Government with the consent of the authority to whom such Officer is subordinate, or may himself proceed to the spot and make such local inquiry in person. The provisions of the law for the time being in force relative to local inquiries by Ameens or Commissioners under orders of the Civil Courts shall apply to any local inquiry made by any Officer under this Section, and, so far as they are applicable, to inquiries made by the Collector in person. In the latter case the Collector, after completing the inquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.

LXXIV. The defendant in any action under this Act may pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sum shall be paid to the plaintiff. If the defendant deposit less than the sum claimed, and the plaintiff elect to proceed in the case, and ultimately recover no further sum than

Defendant may pay money into Court in satisfaction of the demand.

If plaintiff elect to proceed and ultimately recover no further sum than that paid into Court, he shall be liable to the subsequent costs.

shall have been paid into Court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

LXXXV. No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

LXXXVI. If, on the trial of a suit for the delivery of a pottah instituted by a ryot having a right of occupancy, the parties do not agree as to the term for which the pottah is to be granted, the Collector shall fix such term as under the circumstances of the case he may think just and proper. Provided that the term shall not in any case

be longer than ten years, and in estates not permanently settled shall not extend beyond the period for which the proprietor of the estate has engaged with Government. Provided also that, if the defendant be a farmer or other person having only a temporary interest in the land, the term of the pottah shall not extend beyond the period of the continuance of such interest. For cultivators not having a right of occupancy, the term of pottah shall be exclusively in the discretion of the person entitled to the rent of the land.

LXXXVII. When in any suit between a landholder and a ryot or under-tenant under this Act, the right to receive the rent of the land or tenure cultivated or

held by the ryot or under-tenant is disputed, and such right is claimed by or on behalf of a third person, on the ground that such third person or a person through whom he claims has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be inquired into and the suit shall be decided according to the result of such inquiry. Provided

always, that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

LXXXVIII. Any person desiring to eject a ryot or to cancel a lease on account of non-payment of arrears of rent, may sue for such ejection or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejection or cancelment. In all cases of suits for the ejection of a ryot or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed.

LXXXIX. The Collector shall pronounce judgment in open Court. The judgment shall be written in the vernacular language of the Collector, and shall contain the reasons for the same, and shall be dated and signed by the Collector at the time when it is pronounced.

LXXX. When a decree is given for the delivery of a pottah, if the person required by the decree to grant such pottah refuse or delay to grant the same, the Collector may grant a pottah in conformity with the terms of the decree under his own hand and seal, and such pottah shall be of the same force and effect as if granted by the person aforesaid.

LXXXI. When a decree is given for the delivery of a kubooliyet, if the person required by the decree to execute such kubooliyet shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person, and a copy of the decree under the hand and seal of the Collector shall be of the same force and effect as a kubooliyet executed by the said person.

LXXXII. If the decree be for the ejection of any ryot from land occupied by him, or for the reinstatement of any ryot in the occupancy of land from which he has been ejected, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy. If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the order is made, the Magistrate, on the application of the Collector, shall give effect to the same.

LXXXIII. If the decree be for the cancelment of any lease, or the ejection of any farmer or other person (not being an actual cultivator), or for the reinstatement of any farmer or other such person in the possession of a farm or tenure from which he has been ejected, the decree shall be executed by proclaiming the substance of the decree to the cultivators or other occupants by beat of drum, or in such other manner as may be customary, and affixing the same in some conspicuous place within or adjacent to the farm or tenure.

LXXXIV. If the decree be for arrears of rent, or for money, papers, or accounts, and the defendant have been committed to jail or appear pursuant to the conditions of any security bond given under Section LI., the Collector may order that he be detained in or committed to the Civil jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree.

LXXXV. If the judgment-debtor have given security for his appearance and be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety. If the decree be for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety for the sum due under the bond in the same manner as if a decree for that sum had been passed against the surety.

LXXXVI. Process of execution may be issued against either the person or the property of a judgment-debtor; but process shall not be issued simultaneously against both person and property. Process of execution against the person or moveable property of a debtor shall be in the form (E) or (F) contained in the Schedule to this Act, or to the like effect.

LXXXVII. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor; but if the creditor is unable to furnish such list, he may apply for a general

Application for execution against moveable property.

attachment of the debtor's effects to the amount of the judgment and costs. In either case the property to be seized shall be pointed out to the Officer entrusted with the execution of the process by the creditor or his agent.

LXXXVIII. Every warrant of execution shall bear date on the day on which it is signed by the Collector, and shall continue in force for such period as the Collector may direct, not being more than sixty days, calculated from such date.

LXXXIX. Second and successive warrants of execution may be issued by order of the Collector on the application of the judgment-creditor after the expiration of the period fixed for the continuance in force of a previous warrant.

XC. Process of execution shall not be issued upon any judgment without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year shall have elapsed from the date of the judgment or from the date of the last previous application for execution.

XCI. Execution on a judgment shall not issue against the heir or other representative of a deceased party without notice to such heir or other representative to appear and be heard.

XCII. No process of execution of any description whatsoever shall be issued, on a judgment under this Act, after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding Five Hundred Rupees, in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Civil Courts.

XCIII. If a warrant issue for taking in execution the body of any person, the officer charged with the execution of the warrant shall bring him with all convenient speed before the Collector. If such person shall not then deposit in Court the full amount specified in the warrant, or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor, or satisfy the Collector that he has no present means of paying the debt, the Collector shall send him to the Civil jail, there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall in the meantime pay the full amount for the payment of which he is liable under the decree. Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three calendar months when the amount decreed, exclusive of costs, does not exceed Fifty Rupees, or six calendar months when such amount does not exceed Five Hundred Rupees, or two years in any other case. If the decree against any person arrested under a warrant be

XCIV. Any person once discharged from jail shall not be imprisoned a second time under the same judgment. If the amount due under the decree do not exceed One Hundred Rupees, the Collector may declare

such discharged person absolved from further liability under that decree. In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to such person from attachment in execution of the same.

XCIV. Any person applying for a warrant of arrest under Section XLIX, or suing out process of execution against the body of any person, shall deposit in Court, at the time of issue of the warrant, diet-money for one month of thirty days at such rate as the Collector may direct, not exceeding Two Annas per diem, unless the Collector for any special reason direct that deposit be made at a higher rate, which shall not exceed Four Annas per diem.

XCVI. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, in failure of which the party confined shall be discharged.

XCVII. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit, and any diet-money not so spent shall be returned to the person who deposited the same.

XCVIII. In executing a writ of execution against the moveable property of a debtor liable under this Act, the officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor. A copy of the said proclamation and list shall be transmitted to the Collector, and shall be affixed in his Office.

XCIX. No sale of any moveable property taken in execution shall be made until after the end of ten days next following the day on which such property may have been so taken. Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the Officer executing the writ. The provisions of Sections CXXIX, to CXXXIII., so far as the same are applicable, shall be applied to sales under this Section.

C. If, before the day fixed for the sale, a third party appear before the Collector and claim a right or interest in any of the moveable property taken in execution, the Collector shall examine such party or his agent on oath or affirmation or otherwise, according to the law for the time being in force relative to the examination of witnesses, and, if he see sufficient reason for so doing, may stay the sale of such property.

CI. The Collector shall adjudicate upon such claim and make such order between the claimant and the plaintiff and defendant in the original suit as shall seem fit. In trying such claim the Collector shall be guided by the rules contained in this Act, so far as they may be applicable.

CII. If the claimant shall fail to establish his right to the property taken in execution, the Collector at the time of disposing of the case may award to the judgment-creditor against such claimant, as part of the costs, such sum as he may

consider sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

CIII. No appeal shall lie from any order passed by the Collector under the two last preceding Sections. But the party against whom the same may be given shall be at liberty to bring a suit in the Civil Court to establish his right at any time within one year from the date of the order; provided that, if the order be for the sale of the property, the suit shall not be for the recovery of the property, but shall be for damages against the judgment-creditor by whom the property was brought to sale.

CIV. No irregularity in publishing or conducting a sale of moveable property under an execution shall vitiate such sale, but this rule shall not be held to deprive any person who may sustain damage by reason of such irregularity from recovering such damage by action in the Civil Court; provided such action be brought within one year from the date of sale.

CV. If the decree be for an arrear of rent due in respect of an under-tenure, which, by the title-deeds or the custom of the country, is transferable by sale, the judgment-creditor may make application for the sale of the tenure, and the tenure may thereupon be brought to sale in execution of the decree, according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force. But no such application shall be received when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor, so long as such warrant remains in force. If after sale of an under-tenure any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immovable, belonging to the debtor, and any such immovable property may be brought to sale in the manner provided in Section CX. of this Act.

CVI. If, before the day fixed for the sale of any such under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of such under-tenure, a third party appear before the Collector, and allege that such third party, and not the person against whom the decree has been obtained, is the proprietor of such under-tenure, and was in lawful possession of the same at the time when such decree was obtained, the Collector shall examine such party in the manner provided in Section C. for the examination of third parties, and if he see sufficient reason for so doing, and such party shall deposit in Court the amount of the decree or give sufficient security for the same, the Collector shall stay the sale and proceed to inquire into and adjudicate upon the claim; provided that no transfer of an under-tenure which, by the provisions of this Act or any other law for the time being in force is required to be registered in the Sherishteh of the Zemindar or superior tenant, shall be recognised unless it have been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Collector.

CVII. In trying such claim the Collector shall be guided by the rules contained in this Act, so far as the same may be applicable, and the Collector on such claim shall not be subject to appeal, but the party against whom it is given may bring a suit in the Civil Court, to establish

his right, at any time within one year from the date of the judgment.

CVIII. If a decree is given in favour of a sharer in a joint undivided estate, dependent talook, or other similar tenure for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate or talook or tenure, application for the sale of such under-tenure shall not be received unless execution shall have been first taken out against any moveable property which the judgment-debtor may possess within the District in which the suit was instituted, and the sale of such property, if any, shall have proved insufficient to satisfy the judgment. In such case such under-tenure, if of the nature described in Section CV., may be brought to sale in execution of the decree in the same manner as any other immovable property may be sold in execution of a decree for money under the provisions of the two next following Sections.

CIX. In the execution of any decree for the payment of money under this Act, not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the District in which the suit was instituted, the judgment-creditor may apply for execution against any immovable property belonging to such debtor.

CX. If the immovable property against which execution is applied for be a house or other building, process shall be issued in the same manner as for the attachment and sale of moveable property, and the provisions of Sections XCVIII. and XCIX. shall be applicable to the execution of such process. If the property be a saleable under-tenure, it shall be sold under the provisions of the law for the time being in force applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof. If the property be an estate or a share of an estate, it shall be sold under the rules in force for the sale of estates for the recovery of demands recoverable by the same process as arrears of land revenue.

CXI. If, before the day fixed for the sale of any immovable property as aforesaid, objection shall be offered to the sale on the ground of such property not belonging to the judgment-debtor, and consequently not being liable to be sold in execution of a decree against him, the Collector shall examine the party making the objection in the manner prescribed in Section C. for the examination of third parties, and if satisfied that there is sufficient ground for so doing, shall stay the sale and proceed to inquire into and adjudicate upon the objection, in the same manner, and subject to the same right of suit by the party against whom judgment may be given, as is provided in Section CVII.

CXII. The produce of the land is held to be hypothecated for the rent payable in respect thereof; and when an arrear of rent, as defined in Section XX. of this Act, is due from any cultivator of land, the zemindar, lakherajdar, farmer, dependent talookdar, under-farmer, or other person entitled to receive rent immediately from such cultivator, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the pro-

Execution of decrees given in favour of sharers in undivided estates or tenures.

In all cases of decrees for money, if judgment cannot be satisfied by sale of debtor's moveable property, execution may be had against his immovable property.

Mode of executing process if immovable property be a house or other building.

If it be a saleable under-tenure.

If it be an estate or a share of an estate.

Consequence of objection being offered before the sale of any immovable property.

Produce of the land to be held hypothecated for the rent.

Arrears of rent may be recovered by distraint under the following rules.

If third party claim to be the proprietor and lawful possessor of such under-tenure, Collector to stay the sale and to inquire into and adjudicate upon the claim.

Proviso.

Mode of adjudicating such claims.

Proviso.

duce of the land on account of which the arrear is due under the following rules. Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to distraint. Provided also, that no sharer in a joint estate, dependent talook, or other tenure, in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorised to collect the rents of the whole estate, talook, or tenure, on behalf of all the sharers in the same. Provided further, that in putteedaree estates situated in districts under the Government of the Lieutenant Governor of the North-Western Provinces, distraint shall be made only through a lumberdar.

Cultivators who have given security to be exempt from distraint.

Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to distraint. Provided also, that no sharer in a joint estate, dependent talook, or other tenure, in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorised to collect the rents of the whole estate, talook, or tenure, on behalf of all the sharers in the same. Provided further, that in putteedaree estates situated in districts under the Government of the Lieutenant Governor of the North-Western Provinces, distraint shall be made only through a lumberdar.

CXIII. Distraint shall not be made for any arrear which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.

CXIV. The power of distraint vested by Section CXII. in Zemindars and other persons entitled to receive rent from cultivators of land, may be exercised by managers under the Court of Wards, Surburakars, and Tehseeldars of estates held under khas management, and other persons lawfully entrusted with the charge of landed property; and also by the Naibs, Gomashahs, and other agents employed by any such persons as aforesaid in the collection of rent if expressly authorised by power of attorney in that behalf. Provided, that if any illegal act is committed by any such Naib, Gomashah, or other agent under colour of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

Proviso. any illegal act is committed by any such Naib, Gomashah, or other agent under colour of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

CXV. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing-floor or place for treading out grain, or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act. But no such crops or products other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce, after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

CXVI. Before or at the time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter, or, if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

CXVII. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid of value proportionate to the amount of the arrear with costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

List of property to be distrained, to be served on owner.

affix it at his usual place of residence.

CXVIII. Standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries or other places as are commonly used by him for the purpose. If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood. In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose. Crops or products which from their nature do not admit of being stored, may be sold before they are cut or gathered, under the rules hereinafter provided; but in such case the distraint shall be made at least twenty days before the time when the crops or products or any part of the same would be fit for cutting or gathering.

Standing crops, &c. when attached, to be reaped and stored by the cultivator, or, if he neglect to do so, by the distrainer.

for the purpose. If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood. In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose. Crops or products which from their nature do not admit of being stored, may be sold before they are cut or gathered, under the rules hereinafter provided; but in such case the distraint shall be made at least twenty days before the time when the crops or products or any part of the same would be fit for cutting or gathering.

CXIX. If a distrainer shall be opposed, or shall apprehend resistance, and shall desire to obtain the assistance of a Public Officer, he may apply to the Collector, and the Collector may, if he thinks necessary, depute an Officer to support the distrainer in making the distraint.

Distrainer may apply for aid to the Collector upon occasion of resistance made or apprehended.

CXX. When any person, empowered to distrain property under Section CXII. or Section CXIV. shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority (which may be on plain paper) for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

CXXI. If at any time after property has been distrained, and prior to the day fixed for its being put up to sale as hereinafter provided, the owner of the property shall tender payment of the arrear demanded of him and of the expenses of the distress, the distrainer shall receive the same and shall forthwith withdraw the distress.

CXXII. Within five days of the time of the storage of any distrained crops or products, or, if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same to the Civil Court Ameen, or other Officer authorised to sell property in satisfaction of decrees of the Civil Court within the circle in which the distrained property is situate, or to such other public Officer as the local Government shall appoint for the purpose.

CXXIII. The application shall be in writing, and shall contain an inventory or description of the property distrained, the name of the defaulter, and his place of residence, the amount due, and the date of the distress, and the place in which the distrained property is deposited. Together with the application, the distrainer shall deliver to the Civil Court Ameen or other Officer the amount necessary for the service of a notice upon the defaulter as hereinafter provided.

CXXIV. Immediately on receipt of the application the Civil Court Ameen or other Officer shall transmit a copy of it to the Collector; and shall serve a notice (which shall be in the form (G) contained in the Schedule to this Act, or to the like effect) on the person

Cost of notice upon defaulter to be deposited by distrainer.

Procedure by Civil Court Ameen, &c. on receipt of application.

whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice. He shall at the same time send to the Collector, for the purpose of being put up in his Office, and if in the North-Western Provinces in the cutcherry of the Tahseeldar, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited. The proclamation shall contain a description of the property, the demand for which it is to be sold, and the place where the sale is to be held.

CXXV. If a suit shall be instituted before the Collector in pursuance of the aforesaid notice, the Collector shall transmit to the Civil Court Ameen or other Officer, or if so requested shall

Ameen to suspend sale on receipt of Collector's certificate of the institution of a suit.

deliver to the owner of the distrained property, a certificate of the institution of such suit; and on such certificate being received by or presented to the Ameen or other Officer, he shall suspend proceedings in regard to the sale of the distrained property.

CXXVI. A person whose property has been distrained in the manner hereinbefore provided, may institute a suit to contest the demand of the distrainer

Suit to contest distrainer's demand before issue of notice of sale.

immediately after the distraint of his property, and before the issue of notice of sale. When such suit is instituted, the Collector shall proceed in the manner prescribed in the last preceding Section. If thereafter application for the sale of the property is made to the Civil Court Ameen or other Officer, he shall transmit a copy of the application to the Collector, and suspend further proceedings pending the decision of the case.

CXXVII. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with security binding himself to pay whatever sum may be adjudged to be due

from him with interest and costs of suit, and when such bond is executed, the Collector shall give to the owner of the property a certificate to that effect, or if so requested shall serve the distrainer with notice of the same; and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector, the property shall be released from distraint.

CXXVIII. On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainer has not been certified to the Civil Court Ameen or other Officer in

On expiration of period fixed in the proclamation of sale, if institution of suit to contest distrainer's demand have not been certified, sale may be proceeded with.

the manner hereinbefore provided, he shall, unless the said demand, with such costs of the distress as shall be allowed by him, be discharged in full, proceed to sell the property, or such part of it as may be necessary, in the manner following.

CXXIX. The sale shall be held at the place where the distrained property is deposited, or at the nearest gunge, bazar, haut, or other place of public resort, if the Civil Court Ameen or other Officer should be of opinion that it is likely to sell there to better advantage. The property shall be sold by public auction in one or more lots as the Officer holding the sale may think advisable, and if the demand with the costs of distress and sale be satisfied by the sale of a portion of the

property, the distress shall be immediately withdrawn with respect to the remainder.

CXXX. If, on the property being put up for sale, a fair price, in the estimation of the Officer holding the sale, be not offered for it, and the owner of the property, or some person authorised to act on his behalf,

If fair price be not offered, sale may be postponed to another day, and shall be then completed at whatever price may be offered.

apply to have the sale postponed until the next day, or the next market day if a market be held at the place of sale, the sale shall be postponed until such day, and shall be then completed whatever price may be offered for the property.

CXXXI. The price of every lot shall be paid for in ready money at the time of sale or as soon after as the Officer holding the sale shall think necessary; and in default of such payment the property shall be put up again and sold. When the purchase money has been paid in full, the Officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

CXXXII. From the proceeds of the sale of distrained property the Officer holding the sale shall make a deduction at the rate of One Anna in the Rupee on account of the costs of the sale, and shall transmit the amount to the Collector, in order that it may be credited to Government. He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress and of the issue of the notice and proclamation of sale prescribed in Section CXXIV. to such amount as, after examination of the statement of expenses furnished by the distrainer, he shall think proper to allow. The remainder shall be applied to the discharge of the arrear for which the distraint was made, with interest thereon up to the day of sale, and if there be any overplus it shall be delivered to the person whose property shall have been sold.

CXXXIII. Officers holding sales of property under this Act, and all persons employed by or subordinate to such Officers, are prohibited from purchasing either directly or indirectly any property sold by such Officers.

CXXXIV. Civil Court Ameen and other Officers as aforesaid are required to bring to the notice of Collectors any material irregularities committed by distrainers under colour of this Act; and if in any case, on proceeding to hold a sale of property, the Civil Court Ameen or other Officer shall find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, and the Collector shall direct the issue of another notice and proclamation of sale under Section CXXIV. or pass such other order as he may think proper.

CXXXV. When a Civil Court Ameen or other Officer has proceeded to any place for the purpose of holding a sale and no sale takes place either for the reason stated in the last preceding Section, or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to the Civil Court Ameen or other Officer, the charge of One Anna in the Rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property. If the demand of the distrainer be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion

Officers holding sales prohibited from purchasing.

All irregularities to be reported to the Collector.

Officer not to proceed to sale, if he find that defaulter has not received due notice.

Recovery of expenses if Ameen proceeds to place of sale and no sale takes place.

thereof as may be necessary. In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of the property of the distrainer under the warrant of the Collector. Provided always, that in no case shall a larger amount than Ten Rupees be recoverable under this Section.

CXXXVI. All proceedings under this Act of the

Proceedings of Civil Court Ameen, &c. subject to revision and orders of Collectors.

Civil Court Ameen and other Officers as aforesaid shall be subject to the revision and orders of the Collectors, and the Collectors, with the sanction of the Boards of Revenue, may require the submission of such periodical reports and statements of business performed by the Civil Court Ameen and other Officers as may be thought necessary.

CXXXVII. When a suit has been instituted to contest the demand of a distrainer and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Collector shall issue an order to the Civil Court Ameen or other Officer authorising the sale of the property, and on the application of the distrainer, which shall be made within five days from the receipt of such order by the Civil Court Ameen or other Officer, such Ameen or Officer shall publish a second proclamation in the manner prescribed in Section CXXIV., fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation; and, unless the amount adjudged to be due with the costs of distress be paid intermediately, shall proceed to sell the property in the manner herein before provided.

CXXXVIII. In all suits instituted to contest the demand of a distrainer, the distrainer shall be required to prove the arrear in the same manner as if he had himself brought suit for the amount under the foregoing provisions of this Act. If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favour of the distrainer, and the amount may be recovered by sale of the property as provided in the last preceding Section if the distress has not been withdrawn, and if any balance remain due after such sale by execution of the decree against the person and any other property of the defaulter, or if the property have been released on security by execution of the decree against the person and property of the defaulter and of his surety. If, on the other hand, the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favour of the plaintiff, as the circumstances of the case shall seem to require.

Procedure after institution of suit to contest distrainer's demand.

demand of a distrainer, the distrainer shall be required to prove the arrear in the same manner as if he had himself

brought suit for the amount under the foregoing provisions of this Act. If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favour of the distrainer, and the amount may be recovered by sale of the property as provided in the last preceding Section if the distress has not been withdrawn, and if any balance remain due after such sale by execution of the decree against the person and any other property of the defaulter, or if the property have been released on security by execution of the decree against the person and property of the defaulter and of his surety. If, on the other hand, the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favour of the plaintiff, as the circumstances of the case shall seem to require.

CXXXIX. If any person shall claim, as his own, property which has been

Any person, whose property has been distrained for arrears of rent alleged to be due from another, may institute a suit against the distrainer, &c.

distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer and such other person, to try the right to

the property in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand. When any such suit is instituted, the property may be released upon security being given for the value of the same. If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer. If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may

seem to require. Provided always that no claim to any produce of land, liable to distraint under this Act,

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which at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.

CXL. If in any case in which property has been distrainted for an arrear of rent and a suit has been instituted to contest the demand, the right to distraint for such arrear is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such other person before and up to the time of the commencement of the suit shall be inquired into, and the suit shall be decided according to the result of such inquiry. Provided always, that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court, if instituted within one year from the date of the decision.

CXLI. If any person, whose property has been distrainted for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by Sections CXXIV. and CXXXIX., and his property is in consequence brought to sale, he may nevertheless institute a suit under this Act to recover damages for the illegal distress and sale of his property.

CXLII. If any person empowered to distraint property, or employed for the purpose under a written authority by a person so empowered, shall distraint or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act, or if any distrainted property shall be lost, damaged, or destroyed by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof, or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the property may institute a suit under this Act to recover damages for any injury which he may have thereby sustained.

CXLIII. If any person not empowered to distraint property under Sections CXII. and CXIV. of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distraint or sell, or cause to be sold any property under colour of this Act, the owner of the property may institute a suit under this Act to recover damages from such person for any injury which he may have sustained from the distraint or sale. The said person shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence in addition to any damages which may be awarded against him in such suit.

CXLIV. Provided always, that any suit which may be instituted under any of the last three Sections, shall be commenced within three months from the date of the occurrence of the cause of action.

Time for commencing suits for damages.

CXLV. If any person shall resist a distraint of property duly made under this Act, or shall forcibly or clandestinely remove any distrained property, the Collector, upon complaint being made within fifteen days from the date of such resistance or removal, shall cause the person accused to be arrested, and if the offence be proved and the offender be the owner of the property, shall order him to be imprisoned in the Civil jail for six months, or until the whole arrear due to the distrainer with all expenses and costs shall sooner be paid or levied by distress and sale of the property of the offender under warrant of the Collector. If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding One Hundred Rupees, or in default of payment thereof to imprisonment for a period not exceeding Two Months.

CXLVI. Every process issued by a Collector under this Act shall be under the seal and signature of the Collector, and shall be served or executed by the Nazir or by such other Officer as the Collector may direct at the cost of the party at whose instance it issued. The amount of such cost, and, in the case of summons to a witness, any sum required for the travelling expenses of such witness, shall be deposited in Court before the process is issued. Provided that if in any case the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

CXLVII. Any resistance or opposition to the lawful process of a Collector under this Act may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of Civil justice. When in any such case the offender is not present in Court, the Collector may summon him to answer to the charge, and if after due service of the summons he fail to attend, may issue a warrant for his apprehension. Orders passed by Collectors under this Section shall not be deemed to be orders relating to the trial of suits or to the execution of decrees within the meaning of Section CLII.

CXLVIII. It shall be competent to the Collector to hold a Court in any part of his jurisdiction; provided that every hearing and decision shall be in open Court, and that the parties to the suit or their authorised agents shall have had due notice to attend at such place.

CXLIX. Any person may practise as an agent or mookhtar in a Court held by a Collector under this Act without any formal licence from the Collector. But it shall be competent to the Collector to prohibit any person, who has been convicted by a competent Court of a criminal offence, or who has been found guilty of fraudulent or dishonest conduct in the discharge of his duty as agent or mookhtar, to practise as an agent or mookhtar in his Court. When any agent or mookhtar is charged by the Collector or any other person with fraudulent or dishonest conduct in the discharge of his duty, the Collector shall proceed in the manner prescribed in Section IV. Act XVIII. of 1852, or any other law for the time being in force for the trial of charges against pleaders.

CL. All the powers vested in the Collector by the preceding Sections of this Act may be exercised by any Deputy Collector in cases referred to him by a Collector; and in all cases without such reference, by any Deputy Collector placed in charge of any Subdivision of a District; and all

applications and reports allowed or required by this Act to be made to the Collector may be made to any Deputy Collector having such local jurisdiction.

CLII. In the performance of their duties under this Act, the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners and the Boards of Revenue; and shall be subject to the direction and control of the Collectors to whom they are subordinate. All orders passed by a Collector under this Act, not being judgments in suits or orders passed in the course of suits and relating to the trial thereof, or orders passed after decree and relating to the execution thereof, shall be appealable to the Commissioner; and all such orders passed by a Deputy Collector shall be appealable to the Collector; but no judgment of a Collector or Deputy Collector in any suit, and no order of a Collector or Deputy Collector passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

CLIII. Every appeal against the order of a Collector shall be presented to the Commissioner within thirty days, and every appeal against the order of a Deputy Collector shall be presented to the Collector within fifteen days from the date of the order. Orders passed in appeal by a Commissioner or a Collector shall not be open to any further appeal, but the Board of Revenue or the Commissioner may call for any case, and pass such orders thereon as they may think proper.

CLIV. In suits under Clauses 2, 4, and 7 of Section XXIII. and under Section XXIV. of this Act, tried and decided by a Collector, if the amount sued for or the value of the property claimed does not exceed One Hundred Rupees, the judgment of the Collector shall be final, and not open to revision or appeal except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a ryot or tenant or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in Sections CLX. and CLXI. of this Act.

CLV. In suits in which the judgment of the Collector is final, as provided in the last preceding Section, the Collector may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of, or could not produce at the time of trial.

CLVI. When any such suit as aforesaid, in which, if tried and decided by a Collector, the judgment of the Collector would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Collector.

CLVII. The petition of appeal shall be written on stamp paper of Eight Annas value, and shall be presented to the Collector within fifteen

days from the date of the decree, provided that such time as may be requisite for procuring a copy of the decree appealed against shall not be reckoned as part of the fifteen days.

CLVII. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summonses. If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an agent, the appeal shall be dismissed for default. If the appellant shall appear and the respondent shall not appear in person or by an agent, the appeal shall be heard *ex parte*.

CLVIII. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector for the re-admission of the appeal, and if it shall be proved to the satisfaction of the Collector that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal.

CLIX. After hearing the appeal the Collector shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final.

CLX. In all suits other than those in which, when tried and decided by a Collector, the judgment of the Collector is declared to be final, or when tried and decided by a Deputy Collector an appeal is allowed to the Collector, an appeal from the judgment of the Collector or Deputy Collector shall lie to the Zillah Judge; unless the amount or value in dispute exceed Five thousand Rupees, in which case the appeal shall lie to the Sudder Court.

CLXI. The petition of appeal shall be written on the stamp paper prescribed for appeals from the subordinate Civil Courts with reference to the amount or value of the property involved in the appeal, and the rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the Zillah Judge or Sudder Court under this Act.

CLXII. Suits under this Act shall be preferred in the Revenue Office of the District, or, when a Subdivision of a District has been placed under the jurisdiction of a Deputy Collector, in the Revenue Office of the Subdivision in which the cause of action shall have arisen. Provided always that the Collector may withdraw any suit from any Deputy Collector and try it himself, or refer it to another Deputy Collector. If the lands comprised in any talook, farm, or other tenure, or any lands held under one lease or engagement or at one entire rent in respect of which arrears of rent may be due, are situated in more than one District or Subdivision, the District or Subdivision in which the greater part of such lands is situate shall be held to be the District or Subdivision in which the cause of action has arisen; and if any question shall be raised respecting the District or Subdivision in which the greater part of the lands is situate, the Board of Revenue, or, if all the lands be situate in one District, the Collector of the District, shall decide the question, and such decision shall be conclusive on the point of jurisdiction.

CLXIII. Except as provided in the last preceding Section, no Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the District to which he is appointed, by reason of such lands forming part of an estate, the revenue of which is paid into the Treasury of the said District.

CLXIV. No Deputy Collector appointed under Regulation IX. of 1833 of the Bengal Code shall exercise any judicial powers or other jurisdiction under this Act if entrusted with any Police functions.

CLXV. Assistants to Collectors shall not exercise any powers under this Act, unless invested by Government with the powers of Deputy Collectors, in which case they may exercise the powers hereby assigned to Deputy Collectors.

CLXVI. Nothing contained in this Act shall be held to affect the right vested in proprietors of land under direct engagements with Government, of bringing to sale for arrears of rent Putnee Talooks and other similar tenures under the provisions of Regulation VIII. 1819.

CLXVII. This Act shall commence and have effect from and after the 1st day of August 1859.

CLXVIII. The words "Civil Jail," as used in this Act, shall include the Civil Jail of the Zillah and any place appointed by the Executive Government for the confinement of prisoners by any Court constituted under this Act. The word "Nazir" shall include any Officer of a Court authorised to serve or execute its process. Unless there be something in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

SCHEDULE.

A.

FORM OF SUMMONS TO DEFENDANT.

No. (of suit) dated
In the Court of

A. B., Plaintiff.

[Name, description, and address of plaintiff.]

C. D., Defendant.

[Name, description, and address of defendant.]

Whereas the said A.B. has brought a claim against you in this Court for [here specify particulars of claim as given in the statement,] you are hereby required to appear in person in this Court on the day of [if not specially required to appear in person, state, in person or by an agent who has personal knowledge of the subject or who shall be accompanied by a person who has such knowledge] to answer the above-named plaintiff, and you will bring with you (or send by your agent) [here mention any document, the production of which may be required by the plaintiff] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

B.

FORM OF WARRANT OF ARREST.

No. (of suit) dated
In the Court of

A. B., Plaintiff.
C. D., Defendant.

To the Nazir of the Court of the Collector of—

Whereas the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of
185 .

C.

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.
In the Court of

A. B., Plaintiff.

[Name, description, and address of plaintiff.]

C. D., Defendant.

[Name, description, and address of defendant.]

Whereas the said A. B. has brought a claim against you in this Court for [here specify particulars of claim as given in the statement] and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

D.

FORM OF SECURITY BOND FOR APPEARANCE
OF DEFENDANT.

Whereas A. B. plaintiff has instituted a suit in the Court of the Collector of—against C. D. defendant, and the said C. D. has been required to give security for his appearance at any time when called on while the suit is depending and until execution of the decree, I, E. F., hereby declare myself surety for the said C. D.'s appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said C. D. may be liable under the decree. [If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.]

E.

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.
C. D., Defendant.

To the Nazir of the Court of the Collector of—

Whereas the said C. D. was directed by a decree of this Court, under date the day of 185 , to pay to A. B. the sum of and

for costs of suit, amounting to and whereas the said C. D. has omitted to pay the same, you are hereby commanded to apprehend the said C. D., and to bring him with all convenient speed before this Court to be dealt with according to law.

F.

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.
C. D., Defendant.

To the Nazir of the Court of the Collector of—

Whereas C. D. was directed by a decree of this Court, under date the day of 185 to pay to A. B. the sum of and

for costs of suit, amounting to and whereas the said C. D. has omitted to pay the same, you are hereby commanded to levy the said sum of and the sum of for costs of executing this process by seizure

and sale of such moveable property of the said C. D. as (is described in the list annexed, and) [if no list is furnished, these words to be omitted] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said C. D., on some convenient day not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

G.

FORM OF NOTICE TO OWNER OF DISTRAINED
PROPERTY.

Office of Commissioner for sale
of distrained property.

A. B., Distrainer.

[Name, description, and address of the owner of the property.]

Whereas the said A. B. has applied to have the distrained property, specified below, sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said A. B., or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of
185 .

W. MORGAN,
Clerk of the Council.

Legislative Council of India.

The following Act, passed by the Legislative Council of India, received the assent of the Right Honorable the Governor General on the 4th May 1859, and is hereby promulgated for general information:—

ACT No. XI. OF 1859.

An Act to Improve the Law Relating to Sales of Land for Arrears of Revenue in the Lower Provinces under the Bengal Presidency.

Whereas it is expedient to discontinue the practice

Preamble. of obtaining the previous sanction of the Board of Revenue

to sales of estates for arrears of revenue, or other demands of Government, in the Province of Cuttack: and whereas it is just that a person having a lien upon an estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured; and whereas it is expedient to afford sharers in estates, who duly pay their shares of the Sudder Jumma of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers: and whereas it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents: and whereas it is expedient to provide for the voluntary registration of dependent talooks existing at the time of settlement: and whereas it is expedient to protect the holders of registered under-tenures created since the settlement, and not resumable by the grantors or their representatives, from loss by the avoidance of their tenures on the occasion of a sale of the superior estate for arrears of public revenue when the arrears can be realised by such sale: and to give absolute security to such tenures by special registry, when shown to be held at rents sufficient for the security of the revenue: and it is therefore proper, for the above and other purposes, to improve the law relating to sales of land for arrears of revenue in the Provinces of Bengal, Behar, and Orissa; It is enacted as follows:—

I. Regulation X. 1818 (relating to Collection of the Public Revenue from Proprietors and Farmers of Land in
Laws repealed.

the District of Cuttack, &c.) is hereby repealed; and from the date of the passing of this law, Act I. of 1845 (regarding Sales of Land for Arrears of Revenue), except in so far as it repeals other laws, and except in regard to sales made or advertised, to arrears and other demands realisable, and to suits commenced and acts done, under authority thereof—shall cease to have effect in the Lower Provinces of Bengal.

II. If the whole or a portion of a kist or instalment

What is an arrear of revenue. of any month of the era, according to which the settlement and kistbundee of any mehal have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

III. Upon the promulgation of this Act, the Board

Latest day of payment. of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which by the Regulations and Acts in force are directed to be realised in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder. And the said Board shall give notice of the dates so fixed in the official *Gazette*, and shall direct corresponding publication to be made as far as regards each district in the language of that district, in the office of the Collector or other officer duly authorised to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Moonsiffs, and at every Thannah station of that district; and the dates so fixed shall not be changed except by the said Board by advertisement and notification, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is or dates are to take effect.

IV. Provided that in the district of Sylhet, the

In Sylhet, personal property liable to distress and sale. Collector may be authorised by the Board of Revenue to proceed in the first instance by the distress and sale of the personal property of defaulters, instead of by the sale of their estates.

V. Provided always that no estate, and no share or

Proviso in the case of certain descriptions of arrear. interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below otherwise

than after a notification in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment, according to Section III. of this Act, in the office of the Collector or other officer duly authorised to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Moonsiff's Court and Police Thannah of the division in which the estate or share of an estate to which the notification relates, is situated; or if the estate or share of an estate be situated within the jurisdiction of more than one Moonsiff's Court or Police Thannah, in some one or more of such Courts or Thannahs; and also at the cutcherry of the malgoozar or owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose.

First.—Arrears other than those of the current year, or of the year immediately preceding.

Secondly.—Arrears due on account of estates other than that to be sold.

Thirdly.—Arrears of estates under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

Fourthly.—Arrears due on account of tucavees,

poolbundee, or other demands not being land revenue, but recoverable by the same process as arrears of land revenue.

VI. The Collector or other officer duly authorised

to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in Section III. of this Act, issue notifications in the language of the district, to be affixed in his own Office and in the Court of the Judge of the district, specifying the estates or shares of estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than fifteen or more than thirty clear days from the date of affixing the notification in the Office of the Collector or other officer as aforesaid. And if the Government revenue of any estate or share of an estate to be sold exceed the sum of Five Hundred Rupees, a notification of the sale of such estate or share of an estate shall be published in the official *Gazette*. Except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector or other officer as aforesaid, and shall be sold to the highest bidder. And no payment, or tender of payment, made after sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

VII. Whenever an estate or share of an estate is notified for sale, as provided by Section VI. of this Act, the Collector or other officer as aforesaid shall affix a proclamation in the language of the district in his own Office, and as soon thereafter as may be in the Moonsiff's Courts and Police Thannahs within which the estate or share of an estate, or any part of it, is situated, and also at the cutcherry of the malgoozar or the owner of estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, forbidding the ryots and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

VIII. No claim to abatement or remission of revenue, unless the same shall

Claims against Government held by a defaulter not to invalidate a sale. have been allowed by the authority of Government, and no private demand or cause of action whatever held or supposed to be held by any defaulter against Government, shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hands, bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in Section XV. of this Act, the Collector shall have neglected, or refused, on insufficient grounds, to transfer it on payment of the arrear of revenue due.

IX. The Collector or other Officer as aforesaid

Deposits receivable from persons not proprietors. shall, at any time before sunset of the latest day of payment determined according to Section III. of this Act, receive as a deposit from any person not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate. And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share from which the arrear is due, or any

part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share, or part thereof, subject to the rules in force for taking security in the cases of parties in Civil suits. And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest, as the Court may determine, from the defaulting proprietor. And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate, or share, or part thereof, the amount so credited shall be added to the amount of the original lien.

X. When a recorded sharer of a joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the share held in the estate by the applicant. The Collector shall then cause to be published in his own Office, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Moonsiffs, and in the Police Thannahs in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If within six weeks from the date of the publication of these notices no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

XI. When a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of sudder jumma heretofore paid on account of it. On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding Section. In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

XII. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate that the amount of sudder jumma stated by the applicant to have been heretofore paid on account of such portion of land is not the amount which has been recognised by the other sharers as the jumma thereof, the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

XIII. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due, shall be given in the advertisement of sale prescribed in Section VI. of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jumma assigned thereto.

XIV. If in any case of a sale held according to the provisions of the last preceding Section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall, within ten days, purchase the share in arrear by paying to Government the whole arrear due from such share. If such purchase be completed, the Collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in Sections XXVIII. and XXIX. of this Act, to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in Section VI. of this Act.

XV. If any recorded proprietor or co-partner of an estate shall deposit with the Collector money, or Government securities endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the jumma of the entire estate, and authorising the Collector to apply to the payment of any arrear of revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose, then, in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under Section III. of this Act, the Collector shall apply to the payment of such arrear the said money or securities, or such part thereof, or of any interest due on the said securities as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands, and any interest that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain. And so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of revenue. All monies and securities so deposited shall be exempt from attachment, otherwise than in execution of a decree of a Civil Court.

XVI. It shall be competent to the person making a deposit under the provision of the last preceding Section, or his representative or assignee, at any time to withdraw the deposit, and to revoke the pledge of the same.

XVII. No estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards; and no estate, the sole property of a minor or minors, and descended to him or them by the regular course of inheritance, duly

notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI. 1822, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of eighteen years. And no estate held under attachment by the revenue authorities, otherwise than by order of a judicial authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment or managed by a Revenue Officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management, until after the end of the year in which such arrears accrued.

XVIII. It shall be competent to the Collector, or other Officer as aforesaid, at any time before the sale of an estate or share of an estate

Estates may be specially exempted from sale.

shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption.

Proviso.

Provided, however, and it is hereby enacted, that the Collector or other officer as aforesaid or the Commissioner shall duly record in a proceeding the reason for granting such exemption; and provided also, that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption.

XIX. Sales shall ordinarily be made by the Collector or other officer as aforesaid in the land revenue office at the Sudder Station of the District: provided, however, that it shall be competent to the Board of Revenue to prescribe a place for holding sales other than such office, whenever they shall consider it beneficial to the parties concerned.

XX. In case the Collector or other officer as aforesaid shall be unable, from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid; or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his cutcherry; and so on, from day to day, until he shall be able to commence upon, or to complete the sale; but with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

XXI. On the day of sale fixed according to Section VI. of this Act, sales shall proceed in regular order; the estate to be sold bearing the lowest number on the towjee or register in use in the Collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in Section XXII. of this Act.

XXII. The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid, shall be required to deposit immediately, or as soon after the

Deposit on account of purchase money.

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conclusion of the sale of the estate or share, as the Collector or other officer as aforesaid may think necessary, either in cash, Bank of Bengal Notes, or Post Bills, or Government Securities to be valued at the market rate of the day duly endorsed, twenty-five per cent. on the amount of his bid; and in default of such deposit, the estate or share shall forthwith be put up again and sold.

XXIII. The full amount of purchase money shall be made good by the purchaser before sunset of the thirtieth day from that on

which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth; and in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold. And in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorised for realising an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof.

XXIV. When default is made in the payment of purchase money, a notification of the intended re-sale

Re-sale.

shall be published for the period and in the manner prescribed in Section VI. of this Act; but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred, and if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due, shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding Section shall be applicable to every such re-sale. Provided that, if default of payment of purchase money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realised.

XXV. It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under

Appeals.

this Act, if preferred to him on or before the fifteenth day from the date of sale, reckoning, as in Section XXIII., or, if preferred to the Collector or other Officer as aforesaid for transmission to the Commissioner, on or before the tenth day from the day of sale, and not otherwise; and the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act, which shall appear to him not to have been conducted according to the provisions of this Act, awarding, at the same time, to the purchaser a payment from the proprietor of any moderate compensation for his loss; if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed the interest at the highest rate of the current Government Securities, on the amount of deposit or balance of purchase money during the period of its being retained in the Collector's office; and the order of the Commissioner shall in such cases be final.

XXVI. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to annulment of sale in special cases, suspend the passing of

Annulment of sale in special cases.

of hardship or injustice, to suspend the passing of

final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who, if they see cause, may recommend to the local Government to annul the sale; and the local Government in any such case may annul the sale, and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

XXVII. All sales of which the purchase money has been paid up, as prescribed in Section XXIII. of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale as the first of the said thirty days. And sales against which an appeal may have been preferred, and dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal, if more than thirty days from the day of sale, or, if less, then at noon of the thirtieth day, as above provided.

XXVIII. Immediately upon a sale becoming final and conclusive, the Collector or other Officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act. And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified; and the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the Moonsiffs and Police Thannahs within whose jurisdictions any part of the estate or share sold shall be situated.

XXIX. The Collector or other officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places; and by affixing a copy of the certificate at the Mal cutcherry, or in some conspicuous place of the estate or share of an estate purchased.

XXX. The party certified as the proprietor of an estate or share of an estate by purchase under this Act shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid.

XXXI. The Collector shall apply the purchase money first to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and secondly, to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the District; holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate sold or their heirs or representatives, to be paid to his or their receipt on demand in the manner following: to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or, if not, then as an aggregate sum, to the whole body of proprietors upon their joint receipt. And if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

XXXII. The annulment by a Commissioner or by Government of a sale made under this Act shall be publicly notified by the Collector or other officer as aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by Section XXVIII. of this Act; and the amount of deposit and balance of purchase money shall

be forthwith returned to the purchaser with the interest thereon at the highest rates of the current public securities, which shall be paid by the Government, unless the proprietor shall have become liable for the same under the provisions of Section XXV. or Section XXVI. of this Act.

XXXIII. No sale for arrears of revenue or other demands realisable in the same manner as arrears of revenue are realisable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under Section XXV. of this Act; and no suit to annul a sale made under this Act shall be received by any Court of justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive, as provided in Section XXVII. of this Act; and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase money. Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

XXXIV. If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof; otherwise the party in whose favour such decree was passed shall lose all benefit therefrom. And no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of the current Government Securities. And if such party shall neglect to pay any amount so recoverable, within six months from the date of such final decree, he shall lose all benefit therefrom.

XXXV. In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.

XXXVI. Any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

XXXVII. The purchaser of an entire estate in the permanently settled Districts of Bengal, Behar, and Orissa, sold under this Act, for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement; and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions:—

First.—Istemrree or mokurrree tenures which have been held at a fixed rent from the time of the permanent settlement.

Secondly.—Tenures existing at the time of settlement, which have not been held at a fixed rent. Pro-

vided always, that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly.—Talookdaree and other similar tenures created since the time of settlement, and held immediately of the proprietors of estates; and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

Fourthly.—Leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying-grounds have been made, or wherein mines have been sunk.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years, but not otherwise.

Provided always, that nothing in this Section contained

shall be construed to entitle any such purchaser as aforesaid

to eject any ryot, having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

XXXVIII. The following rules for the registration

of talookdaree and other similar tenures created since the time of settlement, and held immediately of the proprietors of estates and of farms for terms of years so held, shall be observed.

XXXIX. There shall be two sets of registers; one for common registry, and one for special registry. Common registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue except the Government. Special registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue including the Government.

XL. The holder of any talookdaree or other similar tenure, such as is described in Section XXXVIII. of this Act, desirous of registering it, shall apply by petition to the Collector of the District to which the estate belongs. The application shall state which description of registry is desired, and shall contain the following particulars, so far as the same are ascertainable:—

1. The Pergunnah or Pergunnahs in which the tenure is situated.

2. The nature of the tenure.

3. The name or names of the village or villages whereof the land is composed, or wherein it is situated.

4. The area of the land comprised in the tenure, with its boundaries in complete detail.

5. The amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity; and the duties, if any, required to be performed on account of it.

6. The date of the deed constituting the tenure, or the date when the tenure was created.

7. The name of the proprietor who created the tenure.

8. The name of the original holder of the tenure.

9. The name of the present possessor, and if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in the said Section may apply in like manner for registry of the same. The application shall contain such of the foregoing particulars as are applicable to farms.

XLI. When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate

in which the tenure or farm is situated, or the authorised agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice, with a copy of the application annexed, to be affixed in his office, and at the mal-cutcherry of the estate in which the tenure or farm is situated, or in such other place or places as, in the opinion of the Collector, may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application. If within the limited time no objection is made, the Collector shall register the tenure or farm. If within the limited time an objection is made by any recorded proprietor or by any party interested not being a proprietor, the Collector shall examine the person so objecting or his authorised agent; and if it shall appear to him that such person has probable ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court, otherwise he shall grant the application. If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

XLII. When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding Section.

If within the limited time no objection is made, the Collector shall cause any inquiry that he may deem necessary for the security of the Government revenue to be made; and if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application, otherwise the application shall be rejected. If within the limited time, any recorded proprietor or any party interested, not being a proprietor, object to the registry, the Collector shall examine the person so objecting or his authorised agent; and, if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court, otherwise he shall proceed as if no objection had been made. If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

XLIII. Leases of lands of the description specified in the fourth exceptional class in Section XXXVII. may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of Talookdaree and other similar tenures.

XLIV. Tenures of the first and second exceptional classes in Section XXXVII. may be registered, at the option of the holders, and when so registered shall be entered only in the special register. Application for such registry shall contain the particulars specified in Section XL. so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in Section XLI. If within the limited time no objection is made by any recorded proprietor or by any party interested, not being a proprietor, the Collector shall make such inquiries as may be necessary to satisfy him as to the validity of the tenure; and if the result be to satisfy him that the

Registration of leases of certain lands.

Registration of old tenures.

Registration of old tenures.

Registration of old tenures.

tenure is valid, he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register. Otherwise the application for registry shall be rejected. If within the limited time any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting or his authorised agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and refer the parties to the Civil Court, otherwise he shall proceed as if no objection had been made. If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time. Provided always, that nothing contained in this Section shall be understood as rendering registration necessary for the protection of *bond fide* tenures of the description herein referred to.

Proviso.

Time for application for registry of tenures and farms. Application for the registry of tenures created after the passing of this Act must be made within three months from the date of the deed constituting the tenure.

XLV. Application for registry of existing tenures and farms must be made within three years after the passing of this Act.

Application for the registry of tenures created after the passing of this Act must be made within three months from the date of the deed constituting the tenure.

XLVI. The actual expenses of any measurement, survey, or local inquiry made under Sections XLII. and XLIV. of this Act, shall be borne by the party who applies for the registry of his tenure or farm; and such party may be required by the Collector, from time to time, to make such advances on this account as he may consider necessary.

XLVII. No Civil Court shall be competent to order to enter any tenure or farm in the special register. Provided always, that the refusal of the Revenue Authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be.

XLVIII. Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm may file a suit for the cancelment of the registry of a tenure or farm.

XLIX. In the execution of their functions in the registration of tenures and farms under this Act, all subordinate Revenue Authorities shall proceed in accordance with the general instructions which they may receive from the superior Revenue Authorities to whom they are subordinate, and from the local Government; and all orders passed under the Sections aforesaid shall be open to appeal in usual course. The order of a Commissioner for the special registry of a tenure under the provisions of this Act shall be open, at any time within one year from the date of registry, to revision by the Board of Revenue, or the local Government, on the ground of the Government Revenue not having been sufficiently secured, or of the invalidity of the tenure, as the case may be.

L. Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue. Provided that a tenure or farm in the hands of a *bond fide* purchaser for value shall not be avoided by reason of such fraud. But the tenure or farm shall be liable to

such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector.

LI. Tenures and farms of the third exceptional class, described in Section XXXVII. of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the inquiry prescribed in Section XLII. shall, in case of the sale of the parent estate for arrears of revenue, be protected, pending the duration of such inquiry, and shall be protected eventually by registration, if the final award of the Revenue Authorities upon such application be in favour of the claimant.

LII. The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like, settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager, may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying-grounds have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing contained in this Section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the pergunnah, mouzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

LIII. Excepting sharers in estates under butwarrah who may have saved their shares from sale under Sections XXXIII. and XXXIV. Regulation XIX. 1814, and sharers with whom the Collector, under Sections X. and XI. of this Act, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner, or who, by re-purchase or otherwise, may recover possession of the said estate, after it has been sold for arrears under this Act; and likewise

any purchaser of an estate sold for arrears or demands other than those accruing upon itself, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or ryots, which were not possessed by the previous proprietor at the time of the sale of the said estate.

LIV. When a share or shares of an estate may be sold under the provisions of Section XIII. or Section XIV., the purchaser shall

acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

LV. Arrears of rent, which on the latest day of payment may be due to the defaulter from his under-tenants or ryots, shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

LVI. Any Collector or other officer as aforesaid, conducting a sale under this Act, shall be competent to punish any contempt committed in his presence in open cutcherry or office for the time being, by fine to an extent not exceeding Two Hundred Rupees, commutable, if not paid, to imprisonment in the Civil Jail for a period not exceeding one month; and the Magistrate, to whom such an offender may be sent by a Collector or other officer as aforesaid, shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall lie to the Revenue Commissioner, whose decision shall be final.

LVII. A default to make good a bid by making the deposit required by Section XXII. of this Act, shall be held to be a contempt.

LVIII. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on account of the Government for One Rupee; or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other officer as aforesaid may take or purchase the estate on account of the Government at the highest amount bid; in both which cases the Government shall acquire the property subject to the provisions of this Act.

LIX. The Collector on the part of the Government shall be entitled to demand from applicants under Sections X. and XI., Sections XV. and XVI., and Sections XL., XLIII., and XLIV. of this Act, fees not exceeding the rates specified in Schedule B to this Act annexed, which Schedule shall be taken as part of this Act; and applications under the said Sections shall not be received unless the said fees are tendered therewith.

LX. The provisions of Regulation VII. 1822 and Regulation IX. 1825 shall be in force in every estate in any part of which a measurement, survey, or local inquiry may be made under this Act; and in every estate purchased or taken on account of Government under this Act.

LXI. In the construction of this Act the word "Collector" shall include a Deputy Collector, or other officer exercising by the authority of Government the powers of a Collector or Deputy Collector.

LXII. The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal as are or shall be subject to the general regulations of that Presidency.

SCHEDULE A.

I certify that A. B. has purchased, under Act No. XI. of 1859, the mehal (or share of a mehal) specified below, standing in the towjee of the district of and that his purchase took effect on the day of (being the day after that fixed for last day of payment.)

(Signed) D. E.,
Collector.

SPECIFICATION.

(If of an entire Mehal.)

Towjee number
Name of Mehal
Name of the former proprietor
Sudder Jumma

(If of a share of a Mehal.)

Towjee number of the entire Mehal
Name of the entire Mehal
Sudder Jumma of the entire Mehal
Description of the share sold
Subordinate Towjee number of the share sold
Name of the former proprietor of the share sold
Sudder Jumma for which the share sold is separately liable.

SCHEDULE B.

FEES.

For filing an application under Section X. or Section XI. for opening a separate account for a share of an entire estate.

If the annual jumma of the share do not exceed Rs. 250 Rs. 25 0 0

If the annual jumma of the share exceed Rs. 250 and do not exceed Rs. 1,000, at the rate of ten per cent. upon the jumma.

If the annual jumma of the share exceed Rs. 1,000, at the rate of ten per cent. upon Rs. 1,000, and two per cent. upon all above that amount.

For filing an application for a deposit of money or Government Securities under Section XV., half per cent. on the amount deposited.

For any interest on Government Securities so deposited, drawn by the Collector, half per cent. of the amount drawn.

For filing an application for withdrawal of a deposit under Section XVI., half per cent. of the amount withdrawn.

For filing an application under Section XL., XLIII. or XLIV. for the registration of under-tenure or farm.

If the annual rent of the under-tenure do not exceed Rs. 500 Rs. 25 0 0

If the annual rent of the under-tenure exceed Rs. 500 and do not exceed Rs. 1,000, at the rate of five per cent. upon the rent.

If the annual rent of the under-tenure exceed Rs. 1,000, at the above rate up to Rs. 1,000, and at one per cent. upon all above that amount.

W. MORGAN,
Clerk of the Council.

Legislative Council of India.

The following Act, passed by the Legislative Council of India, received the assent of the Right Honorable the Governor General on the 4th May 1859, and is hereby promulgated for general information:—

ACT No. XII. OF 1859.

An Act to make Better Provision for the Trial of Pilots at the Presidency of Fort William in Bengal for Breach of Duty.

Whereas it is expedient to amend the law for the trial of persons employed in the Pilot Service of Government at the Presidency of Fort William in Bengal, when accused of breach of duty, and to extend the same to persons licensed to act as Pilots at the said Presidency; It is enacted as follows:—

Preamble.

I. Act XXIV. of 1845 (for Establishing a Court for the Trial of Officers of the Pilot Service accused of Breach of Duty) and Act I. of 1851 (for the Appropriation of Fines levied under Act XXIV. of 1845) are hereby repealed.

II. When any person employed in the Pilot Service of Government at the Presidency of Fort William in Bengal, or licensed to act as a Pilot at the said Presidency, shall be accused of having committed any breach of duty while engaged in such Service or acting under such license, and it shall appear to the Superintendent of Marine, or to the Lieutenant Governor of Bengal, that such person ought to be brought to trial for such breach of duty, such person shall be brought to trial upon a charge or charges framed by the said Superintendent of Marine, or such other person as the said Lieutenant Governor shall direct, before a Court constituted under the provisions of this Act.

How Pilots accused of breach of duty shall be brought to trial.

III. The Lieutenant Governor of Bengal shall appoint a fit person to be Judge of the said Court.

Appointment of Judge.

IV. The Lieutenant Governor shall appoint such person as he may think proper to conduct the proceedings before the Court as Prosecutor on the part of Government.

Appointment of Prosecutor.

V. Every trial under this Act shall be held before the said Judge and a Jury composed of two Merchants of Calcutta, a Master of a Merchant Ship lying in the Port of Calcutta, and a Pilot of not less than twenty years' service.

Trial to be held before the Judge and Jury.

VI. The Judge shall cause to be prepared and shall keep two separate lists, one containing the names of Merchants, the other containing the names of Pilots, liable to serve on such Jury. The names in each list shall be arranged in alphabetical order, and the place of abode and quality or business of each person named shall be stated.

Lists of Merchants and Pilots liable to serve on the Jury.

VII. When the Judge shall be about to hold a trial under this Act, he shall give notice to the prosecutor and to the party accused of a time and place to be fixed by the Judge for appointing a Jury to serve at such trial.

Notice to prosecutor and accused of time and place for appointing Jury.

VIII. At the time and place mentioned in the notice, the Judge, in the presence of the prosecutor and the person accused, shall read over the names which first occur in each of the said lists of those Merchants and Pilots who, he has reason to believe, are present in Calcutta and capable of attending as Jurors at the trial; and shall also propose the name of a Master of a Merchant Ship lying in the Port of Calcutta, whom he deems qualified to serve on such Jury. If no objection be made and allowed, the persons so nominated shall be the Jury to serve at the trial. If the prosecutor or the party accused shall object to any of the persons named as Jurors, he shall assign the grounds of his objection, and such objection shall forthwith be decided by the Judge. If the objection be allowed, the Judge shall read from the said lists or propose (as the case may be) another name in the place of the one objected to, and the person so nominated shall serve on the Jury, provided no objection to such person be made and allowed as aforesaid.

IX. When a Jury has been appointed under the last preceding Section, the Judge shall fix a day for the trial, and shall summon by writing under his hand the persons so appointed to sit as a Jury. If any such person, when duly summoned, shall, without such excuse as the Judge shall allow to be sufficient, neglect or refuse to attend at the time appointed, or to remain in attendance until the trial shall be completed, it shall be lawful for the said Judge to impose upon any such per-

son a fine not exceeding Two Hundred Rupees for every such default; and such fine, if not paid, shall be levied by distress and sale of the goods and chattels of the defaulter under a warrant to be issued for that purpose by the Judge. Such warrant may be transmitted by the Judge to any Magistrate of Police for the town of Calcutta, and thereupon such Magistrate shall endorse the same, and shall cause it to be executed in the same manner as if the warrant had been issued by such Magistrate.

X. If for any cause any of the persons summoned to attend as Jurors shall not be in attendance at the time fixed for the commencement of the trial, the trial may, with the consent of the prosecutor and the party accused, be held before the Judge and such Jurors as shall be in attendance. If such consent be not given, the place of the absent Juror shall be supplied by some other person selected by the Judge from the same profession or calling as the person originally summoned, and who shall consent to serve, provided no objection to such person be made and allowed in manner aforesaid. If the parties or either of them do not consent that the trial shall be held before the Judge and such Jurors as may be in attendance, and the place of the absent Juror cannot be supplied by a person consenting to serve, the trial shall be postponed to another day, and the Judge shall either re-summon the same Jury or appoint and summon another Jury in the manner hereinbefore provided.

XI. The Judge shall register in a book the names of all Jurors mentioned in either of the said two lists who have attended and served on a trial held under this Act. A Juror who has served shall not be required again to serve, and his name shall be excluded in reading over the Jury lists, until all the persons named in the said lists, who are present in Calcutta and capable of attending as Jurors, shall have served.

XII. Before the commencement of any trial under this Act, the persons summoned and attending as Jurors shall be sworn or affirmed by the Judge of the Court to give a true verdict according to the evidence.

XIII. It shall be lawful for the Judge of the said Court, at the instance of the Prosecutor, or of the party accused, or of his own motion, by writing under his hand, to summon any person to attend as a witness at a time and place to be specified in the summons, for the purpose of being examined at any trial before the said Court; or if such person shall be about to depart from Calcutta, so as to be unable to attend at such trial without serious inconvenience, then to be examined before the Judge of the said Court before the day fixed for the trial: provided always, that due notice of the time and place of such examination shall be given to the accused party; provided also, that such witness may nevertheless be examined at the trial, if he shall be able to attend thereat, in which case his previous examination may also be read at the trial.

XIV. If any person who shall have been duly summoned to attend as a witness shall, without sufficient excuse, neglect or refuse to attend, or, attending, shall refuse to give evidence, or to answer any question which may be lawfully put to him, such person shall forfeit and pay such fine, not exceeding Five Hundred Rupees, as the Judge of the said Court shall order; and such fine, if not paid, shall be levied by distress and sale of the goods and chattels of the person ordered to pay the same, in the manner prescribed in Section IX. of this Act.

Jurors to be sworn.

Judge may summon witnesses to attend at a certain time and place.

Examination of witnesses about to leave Calcutta.

Penalty for witnesses not attending, or refusing to give evidence.

XV. The evidence of every witness examined before the said Court shall be given on oath, according to the rules in force in the Supreme Court.

Witnesses to be examined on oath, according to the rules in force in the Supreme Court.

the said Court shall be given on oath, affirmation, or otherwise, according to the rules in that behalf for the time being in force for the examination of witnesses in Her Majesty's Supreme Court of Judicature.

XVI. Upon the completion of the trial, the Jurors shall give their verdict upon the charge, or, if there be more than one, upon each separate charge. The verdict shall be according to the opinion of the majority of Jurors. If the Jurors are equally divided, the Judge shall declare his opinion, and the verdict shall be according to the opinion of the Judge and the Jurors with whom he concurs.

Verdict of Jurors.

XVII. If, by such verdict, the accused person is found guilty of the charge, or of any one or more of the charges preferred against him, the Judge of the Court shall sentence him to be dismissed from the said Pilot Service, or to have his license withdrawn, or shall award such other punishment, by loss of rank or pay, or by change of a license from a higher to a lower grade, or suspension from employment for a specified period, as to the Judge shall appear fit. The Lieutenant Governor of Bengal, with the sanction of the Governor General in Council, may prepare a Schedule of offences and punishments (such punishments being of the same nature as those hereinbefore mentioned) for the guidance of the said Court; and if such Schedule be prepared and sanctioned, and the charge proved before the said Court is an offence specified in such Schedule, the Judge of the said Court shall award such punishment as is prescribed for such offence in the said Schedule, and no other. If by such verdict as aforesaid the accused person is found not guilty of the charge or charges preferred against him, the Judge shall declare him acquitted of the same.

Sentence of Court if the accused be found guilty.

XVIII. The proceedings of the Court shall be sent by the Judge to the Superintendent of Marine, for submission to the Lieutenant Governor of Bengal; and no sentence of punishment pronounced by the Judge of the said Court shall be final until it has been approved of by the said Lieutenant Governor. The said Lieutenant Governor may remit the whole or any part of such sentence, or may direct the substitution of any mitigated punishment in lieu of the punishment awarded by the said Court, as he shall think fit.

Schedule of offences and punishments to be prepared.

Acquittal.

No sentence to be final till approved by Government.

Government may remit sentence, or mitigate punishment.

XIX. If it shall appear to the Judge of the said Court that the verdict of the Jurors is manifestly contrary to the evidence, or that the trial is otherwise insufficient, the Judge, instead of passing sentence on the accused person, or declaring him acquitted, as the case may be, may certify the same to the Lieutenant Governor of Bengal, and the said Lieutenant Governor may either order a new trial before another Jury or acquit the accused person, as he shall think fit.

If verdict of Jurors be manifestly contrary to evidence, or trial be otherwise insufficient.

XX. It shall be lawful for the Lieutenant Governor of Bengal to make such rules as he shall think proper, not inconsistent with the provisions of this Act, for conducting the proceedings and regulating the practice of the said Court.

Power of Government to make rules of practice.

XXI. Nothing contained in this Act shall be held to restrict the Marine Authorities or the Government from passing orders upon a charge of breach of duty, where a trial is not deemed necessary.

Act not to restrict Marine Authorities or Government from passing orders upon a charge of breach of duty, where a trial is not deemed necessary.

Service, when it shall not be deemed necessary that such person should be brought to trial for such breach of duty under the provisions of this Act.

XXII. If any person licensed to act as a Pilot, when duly charged with breach of duty as aforesaid, shall refuse to submit himself to trial under the provisions of this Act, the license of such person shall be withdrawn, and he shall be incapable of being again licensed to act as a Pilot at the said Presidency.

Withdrawal of license from licensed Pilot.

XXIII. The provisions of this Act shall extend to all persons employed in the Pilot Service at the said Presidency, and borne on the rolls of the Government establishment, whether such persons receive fixed salaries, or are remunerated by a portion of the pilotage charged on the vessels piloted by them, or in any other manner, and to all persons licensed to act as Pilots at the said Presidency.

Act applicable to what persons.

W. MORGAN,
Clerk of the Council.

Legislative Council of India.

The following Act, passed by the Legislative Council of India, received the assent of the Right Honorable the Governor General on the 4th May 1859, and is hereby promulgated for general information:—

ACT No. XIII. OF 1859.

An Act to Provide for the Punishment of Breaches of Contract by Artificers, Workmen, and Labourers in certain cases.

Whereas much loss and inconvenience are sustained by manufacturers, tradesmen, and others in the several Presidency Towns of Calcutta, Madras, and Bombay, and in other places, from fraudulent breach of contract on the part of Artificers, Workmen, and Labourers who have received money in advance on account of work which they have contracted to perform; and whereas the remedy by suit in the Civil Courts for the recovery of damages is wholly insufficient, and it is just and proper that persons guilty of such fraudulent breach of contract should be subject to punishment; It is enacted as follows:—

Preamble.

I. When any Artificer, Workman, or Labourer shall have received from any Master or Employer resident or carrying on business in any Presidency Town, or in any station of the Settlement of Prince of Wales' Island, Singapore, and Malacca, or from any person acting on behalf of such Master or Employer, an advance of money on account of any work which he shall have contracted to perform, or to get performed by any other Artificers, Workmen, or Labourers, if such Artificer, Workman, or Labourer shall wilfully and without lawful or reasonable excuse neglect or refuse to perform or get performed such work according to the terms of his contract, such Master or Employer or any such person as aforesaid may complain to a Magistrate of Police, and the Magistrate shall thereupon issue a summons or a warrant, as he shall think proper, for bringing before him such Artificer, Workman, or Labourer, and shall hear and determine the case.

If workman neglect to perform work on account of which he has received an advance of money, complaint may be made to the Magistrate.

II. If it shall be proved to the satisfaction of the

Magistrate may order repayment of advance or performance of contract.

Magistrate that such Artificer, Workman, or Labourer has received money in advance from the complainant on account of any work, and has wilfully and without lawful or reasonable excuse neglected or refused to perform or get performed the same according to the terms of his contract, the Magistrate shall, at the option of the complainant, either order such Artificer, Workman, or Labourer to repay the money advanced, or such part thereof as may seem to the Magistrate just and proper, or order him to perform or get performed such work, according to the terms of his contract; and if such Artificer, Workman, or Labourer shall fail to comply with the said order, the Magistrate may sentence him to be imprisoned with hard labour for a term not exceeding Three Months, or, if the order be for the repayment of a sum of money, for a term not exceeding Three Months, or until such sum of money shall be sooner repaid; provided that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any Civil remedy by action or otherwise which he might have had but for this Act.

Penalty if workman fail to comply with the order.

Magistrate may require workman to give security for due performance of order.

III. When the Magistrate shall order any Artificer, Workman, or Labourer to perform or get performed any work according to the terms of his contract, he may also, at the request of the complainant, require such Artificer, Workman, or Labourer to enter into a recognisance with sufficient security for the due performance of the order; and, in default of his entering into such recognisance or furnishing such security to the satisfaction of the Magistrate, may sentence him to be imprisoned with hard labour for a period not exceeding Three Months.

IV. The word "contract," as used in this Act, shall

To what contracts the Act extends.

extend to all contracts and agreements whether by deed, or written, or verbal, and whether such contract be for a term certain, or for specified work, or otherwise.

V. This Act may be

Act may be extended by Government.

extended by the Governor General of India in Council, or by the Executive Government of any Presidency or place, to any place within the limits of their respective jurisdictions. In the event of this Act being so extended, the powers hereby vested in a Magistrate of Police shall be exercised by such Officer or Officers as shall be specially appointed by Government to exercise such powers.

W. MORGAN,
Clerk of the Council.

Legislative Council of India.

The following Act, passed by the Legislative Council of India, received the assent of the Right Honorable the Governor General on the 4th May 1859, and is hereby promulgated for general information:—

ACT No. XIV. OF 1859.

An Act to Provide for the Limitation of Suits.

Whereas it is expedient to amend and consolidate the laws relating to the limitation of suits; It is enacted as follows:—

Preamble.

I. No suit shall be

Limitation of suits.

maintained in any Court of Judicature within any part of the British territories in India in which this Act shall be in force, unless the same is instituted within the period of limitation hereinafter made applicable to a suit of that nature, any Law or Regulation to the contrary notwithstanding;

and the periods of limitation, and the suits to which the same respectively shall be applicable, shall be the following, that is to say:—

1. To suits to enforce the right of pre-emption, whether the same is founded on law, or general usage, or on special contract—the period

of one year, to be computed from the time at which the purchaser shall have taken possession under the sale impeached.

Limitation of one year.
Pre-emption suits.

2. To suits for pecuniary penalties or forfeitures for the breach of any Law or Regulation; to suits for damages for injury to the person and personal property,

or to the reputation; to suits for damages for the infringement of copyright, or of any exclusive privilege; to suits to recover the wages of servants, artisans, or labourers; the amount of tavern bills or bills for board and lodging or lodging only; and to summary suits before the Revenue authorities under Regulation V. 1822 of the Madras Code—the period of one year from the time the cause of action arose.

3. To suits to set aside the sale of any property, moveable or immovable, sold under an execution of a decree of any Civil Court not established by Royal Charter when such suit is maintainable; to suits to set aside the sale of any property, moveable or immovable, for arrears of Government Revenue or other demand recoverable in like manner; to suits by a Putnedar or the proprietor of any other intermediate tenure saleable for current arrears of rent, or other person claiming under him; to set aside the sale of any Putnee talook or such other tenure sold for current arrears of rent; to suits to set aside the sale of any property, moveable or immovable, sold in pursuance of any decree or order of a Collector or other Officer of Revenue—the period of one year from the date at which such sale was confirmed, or would otherwise have become final and conclusive if no such suit had been brought.

Limitation of one year.
Suits to set aside sales under decrees, or for arrears of Government Revenue, &c.

Government Revenue or other demand recoverable in like manner; to suits by a Putnedar or the proprietor of any other intermediate tenure saleable for current arrears of rent, or other person claiming under him; to set aside the sale of any Putnee talook or such other tenure sold for current arrears of rent; to suits to set aside the sale of any property, moveable or immovable, sold in pursuance of any decree or order of a Collector or other Officer of Revenue—the period of one year from the date at which such sale was confirmed, or would otherwise have become final and conclusive if no such suit had been brought.

4. To suits to set aside any attachment, lease, or transfer of any land or interest in land by the Revenue Authorities for arrears of Government Revenue; or to recover any money paid under protest in satisfaction of any claim made by the Revenue Authorities on account of arrears of revenue or demands recoverable as arrears of revenue—one year from the date of such attachment, lease, or transfer, or of such payment, as the case may be.

Limitation of one year.
Suits to set aside attachments, &c. by Revenue Authorities for arrears of Government Revenue.

any claim made by the Revenue Authorities on account of arrears of revenue or demands recoverable as arrears of revenue—one year from the date of such attachment, lease, or transfer, or of such payment, as the case may be.

5. To suits to alter or set aside summary decisions and orders of any of the Civil Courts not established by Royal Charter, when such suit is maintainable—the period of one year from the date of the final decision, award, or order in the case.

Limitation of one year.
Suits to set aside summary decisions, &c.

period of one year from the date of the final decision, award, or order in the case.

6. To suits brought by any person to contest the justice of an award which shall have been made under Regulation VII. 1822, Regulation IX. 1825, and Regulation IX. 1833, of the Bengal Code, or to recover any property comprised in such award—the period of three years from the date of the final award or order in the case.

Limitation of three years.
Suits to contest certain awards.

justice of an award which shall have been made under Regulation VII. 1822, Regulation IX. 1825, and Regulation IX. 1833, of the Bengal Code, or to recover any property comprised in such award—the period of three years from the date of the final award or order in the case.

7. To suits by any party bound by any order respecting the possession of property made under Clause 2, Section I. Act XVI. of 1838, or Act IV. of 1840, or any person claiming under such party, for the recovery

Limitation of three years.
Suits to recover property comprised in an order made under Clause 2, Section I. Act XVI. of 1838, or Act IV. of 1840.

property made under Clause 2, Section I. Act XVI. of 1838, or Act IV. of 1840, or any person claiming under such party, for the recovery

of the property comprised in such order—the period of three years from the date of the final order in the case.

8. To suits to recover the hire of animals, vehicles, boats, or household furniture; or the amount of bills for any articles sold by retail; and to all suits for the rents of any buildings or lands (other than summary suits before the Revenue Authorities under Regulation V. 1822 of the Madras Code)—the period of three years from the time the cause of action arose.

9. To suits brought to recover money lent or interest, or for the breach of any contract—the period of three years from the time when the debt became due, or when the breach of contract, in respect of which the suit is brought, first took place, unless there is a written engagement to pay the money lent or interest, or a contract in writing signed by the party to be bound thereby, or by his duly authorised agent.

10. To suits brought to recover money lent or interest, or for the breach of any contract in cases in which there is a written engagement or contract, and in which such engagement or contract could have been registered by virtue of any Law or Regulation in force at the time and place of the execution thereof—the period of three years from the time when the debt became due, or when the breach of contract, in respect of which the action is brought, first took place, unless such engagement or contract shall have been registered within six months from the date thereof.

11. To suits in cases governed by English law upon all debts and obligations of record and specialties; and to suits for the recovery of any legacy—the period of twelve years from the time the cause of action arose.

12. To suits for the recovery of immovable property, or of any interest in immovable property, to which no other provision of this Act applies—the period of twelve years from the time the cause of action arose.

13. To suits to enforce the right to share in any property, moveable or immovable, on the ground that it is joint family property; and to suits for the recovery of maintenance, where the right to receive such maintenance is a charge on the inheritance of any estate—the period of twelve years from the death of the persons from whom the property alleged to be joint is said to have descended, or on whose estate the maintenance is alleged to be a charge; or from the date of the last payment to the plaintiff or any person through whom he claims, by the person in the possession or management of such property or estate on account of such alleged share, or on account of such maintenance, as the case may be.

14. To suits by the proprietor of any land, or by any person claiming under him, for the resumption or assessment of any Lakheraj or rent-free land—the period of twelve years from the time when the title of the person claiming the right to resume and assess such lands, or of some person under whom he claims, first accrued. Provided that, in estates permanently settled, no such suit, although brought within twelve years from the time when the title of such person first accrued, shall be maintained, if it is shown that the

land has been held Lakheraj or rent-free from the period of the permanent settlement.

15. To suits against a depositary, pawnee, or mortgagee of any property, moveable or immovable, for the recovery of the same—a period of thirty years if the property be moveable, and sixty years if it be immovable, from the time of the deposit, pawn, or mortgage; or if, in the meantime, an acknowledgment of the title of the depositor, pawner, or mortgagor, or of his right of redemption shall have been given in writing, signed by the depositary, pawnee, or mortgagee, or some person claiming under him, from the date of such acknowledgment in writing.

16. To all suits for which no other limitation is hereby expressly provided—the period of six years from the time the cause of action arose.

II. No suit against a trustee in his lifetime, and no suits against his representatives for the purpose of following in their hands the specific property which is the subject of the trust, shall be barred by any length of time; but no suit to make good the loss occasioned by a breach of trust out of the general estate of a deceased trustee shall be maintained in any of the said Courts unless the same is instituted within the proper period of limitation, according to the last preceding Section, to be computed from the decease of such trustee; Provided that nothing herein contained shall prevent a co-trustee from enforcing, against the estate of a deceased trustee, any claim for contribution, if he shall institute a suit for that purpose within six years after such right of contribution shall have arisen.

III. When, by any law now or hereafter to be in force, a shorter period of limitation than that prescribed by this Act is specially prescribed for the institution of a particular suit, such shorter limitation shall be applied notwithstanding this Act.

IV. If, in respect of any legacy or debt, the person who, but for the law of limitation, would be liable to pay the same, shall have admitted that such debt or legacy or any part thereof is due by an acknowledgment in writing signed by him, a new period of limitation, according to the nature of the original liability, shall be computed from the date of such admission; Provided that, if more than one person be liable, none of them shall become chargeable by reason only of a written acknowledgment signed by another of them.

V. In suits for the recovery from the purchaser or any person claiming under him of any property purchased *bona fide*, and for valuable consideration from a trustee, depositary, pawnee, or mortgagee, the cause of action shall be deemed to have arisen at the date of the purchase; Provided that, in the case of purchase from a depositary, pawnee, or mortgagee, no such suit shall be maintained unless brought within the time limited by Clause 15 Section I.

VI. In suits in the Courts established by Royal Charter by a mortgagee to recover from the mortgagor the possession of the immovable property mortgaged, the cause of action shall be deemed to have arisen from

land has been held Lakheraj or rent-free from the period of the permanent settlement.

15. To suits against a depositary, pawnee, or mortgagee of any property, moveable or immovable, for the recovery of the same—a period of thirty years if the property be moveable, and sixty years if it be immovable, from the time of the deposit, pawn, or mortgage; or if, in the meantime, an acknowledgment of the title of the depositor, pawner, or mortgagor, or of his right of redemption shall have been given in writing, signed by the depositary, pawnee, or mortgagee, or some person claiming under him, from the date of such acknowledgment in writing.

16. To all suits for which no other limitation is hereby expressly provided—the period of six years from the time the cause of action arose.

II. No suit against a trustee in his lifetime, and no suits against his representatives for the purpose of following in their hands the specific property which is the subject of the trust, shall be barred by any length of time; but no suit to make good the loss occasioned by a breach of trust out of the general estate of a deceased trustee shall be maintained in any of the said Courts unless the same is instituted within the proper period of limitation, according to the last preceding Section, to be computed from the decease of such trustee; Provided that nothing herein contained shall prevent a co-trustee from enforcing, against the estate of a deceased trustee, any claim for contribution, if he shall institute a suit for that purpose within six years after such right of contribution shall have arisen.

III. When, by any law now or hereafter to be in force, a shorter period of limitation than that prescribed by this Act is specially prescribed for the institution of a particular suit, such shorter limitation shall be applied notwithstanding this Act.

IV. If, in respect of any legacy or debt, the person who, but for the law of limitation, would be liable to pay the same, shall have admitted that such debt or legacy or any part thereof is due by an acknowledgment in writing signed by him, a new period of limitation, according to the nature of the original liability, shall be computed from the date of such admission; Provided that, if more than one person be liable, none of them shall become chargeable by reason only of a written acknowledgment signed by another of them.

V. In suits for the recovery from the purchaser or any person claiming under him of any property purchased *bona fide*, and for valuable consideration from a trustee, depositary, pawnee, or mortgagee, the cause of action shall be deemed to have arisen at the date of the purchase; Provided that, in the case of purchase from a depositary, pawnee, or mortgagee, no such suit shall be maintained unless brought within the time limited by Clause 15 Section I.

VI. In suits in the Courts established by Royal Charter by a mortgagee to recover from the mortgagor the possession of the immovable property mortgaged, the cause of action shall be deemed to have arisen from

the latest date at which any portion of principal money or interest was paid on account of such mortgage debt.

VII. In suits to avoid incumbrances or under-tenures in an estate sold for arrears of Government Revenue.

Computation of period of limitation in suits to avoid incumbrances or under-tenures in estates sold for arrears of Government Revenue. or in a Putnee talook or other saleable tenure sold for arrears of rent, which, by virtue of such sale, becomes freed from incumbrances and under-tenures, the cause of action shall be deemed to have arisen at the time when the sale of the estate, talook, or tenure became final and conclusive.

VIII. In suits for balances of accounts current between merchants and traders who have had mutual dealings, the cause of action shall be deemed to have arisen at, and the period of

limitation shall be computed from, the close of the year in the accounts of which there is the last item admitted or proved indicating the continuance of mutual dealings; such year to be reckoned as the same is reckoned in the accounts.

IX. If any person entitled to a right of action shall, by means of fraud, have been kept from the knowledge of his having such right, or of the title upon which it is

Computation of period of limitation in case of concealed fraud. founded; or if any document necessary for establishing such right shall have been fraudulently concealed, the time limited for commencing the action against the person guilty of the fraud or accessory thereto, or against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be reckoned from the time when the fraud first became known to the person injuriously affected by it, or when he first had the means of producing or compelling the production of the concealed document.

X. In suits in which the cause of action is founded on fraud, the cause of action shall be deemed to have first arisen at the time at which such fraud shall have been first known by the party wronged.

XI. If, at the time when the right to bring an action first accrues, the person to whom the right accrues is under a legal disability, the action may be brought by

Computation of period of limitation in case of legal disability. such person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal disability of any person claiming through him.

XII. The following persons shall be deemed to be under legal disability within the meaning of the last preceding Section—married women, in cases to be decided by English law, minors, idiots, and lunatics.

XIII. In computing any period of limitation prescribed by this Act, the time during which the defendant shall have been absent out of the British territories in

Computation of period of limitation in case of absence of defendant. India shall be excluded from such computation, unless service of a summons to appear and answer in the suit can, during the absence of such defendant, be made in any mode prescribed by law.

XIV. In computing any period of limitation prescribed by this Act, the time during which the claimant, or any person under whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same defendant, or some person whom he represents, *bonâ fide* and with due diligence, in any Court of Judicature which, from defect of jurisdiction or other cause, shall have been unable to decide upon it, or shall have passed a decision which, on appeal, shall have been annulled for any such cause, including the time during which such appeal, if any, has been pending, shall be excluded from such computation.

XV. If any person shall, without his consent, have been dispossessed of any immovable property otherwise than by due course of law, such person, or any person claiming through him, shall, in a suit brought to recover possession of such property, be entitled to recover possession thereof, notwithstanding any other title that may be set up in such suit; Provided that the suit be commenced within six months from the time of such dispossession. But nothing in this Section shall bar the person from whom such possession shall have been so recovered, or any other person instituting a suit to establish his title to such property, and to recover possession thereof within the period limited by this Act.

Person unlawfully dispossessed of immovable property may recover possession, notwithstanding any title that may be set up. Suit for dispossession to be brought within six months.

Suit to establish title not to be affected. possession shall have been so recovered, or any other person instituting a suit to establish his title to such property, and to recover possession thereof within the period limited by this Act.

XVI. Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of any Court established by Royal Charter in refusing equitable relief on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act.

Act not to interfere with equitable jurisdiction of Supreme Courts. to interfere with any rule or jurisdiction of any Court established by Royal Charter in refusing equitable relief on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act.

XVII. This Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue or for any public claim whatever, but such suits shall continue to be governed by the laws or rules of limitation now in force.

Act not to extend to public property, nor to suits for the recovery of public claims. public property or right, nor to any suits for the recovery of the public revenue or for any public claim whatever, but such suits shall continue to be governed by the laws or rules of limitation now in force.

XVIII. All suits that may be now pending, or that shall be instituted within the period of two years from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed; but all suits, to which the provisions of this Act are applicable, that shall be instituted after the expiration of the said period, shall be governed by this Act, and no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.

Act not to apply to suits now pending, or to suits instituted within two years. shall be instituted within the period of two years from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed; but all suits, to which the provisions of this Act are applicable, that shall be instituted after the expiration of the said period, shall be governed by this Act, and no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.

Suits afterwards instituted to be governed by this Act. of this Act are applicable, that shall be instituted after the expiration of the said period, shall be governed by this Act, and no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.

XIX. No proceeding shall be taken to enforce any judgment, decree, or order of any Court established by Royal Charter, but within twelve years next after a present right to enforce the same shall have accrued to some persons capable of releasing the same, unless in the meantime such judgment, decree, or order shall have been duly revived, or some part of the principal money secured by such judgment, decree, or order, or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable or his agent,

Proceedings for enforcing judgments, &c. of Supreme Courts to be taken within 12 years. judgment, decree, or order of any Court established by Royal Charter, but within twelve years next after a present right to enforce the same shall have accrued to some persons capable of releasing the same, unless in the meantime such judgment, decree, or order shall have been duly revived, or some part of the principal money secured by such judgment, decree, or order, or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable or his agent,

No proceeding shall be taken to enforce any judgment, decree, or order of any Court established by Royal Charter, but within twelve years next after a present right to enforce the same shall have accrued to some persons capable of releasing the same, unless in the meantime such judgment, decree, or order shall have been duly revived, or some part of the principal money secured by such judgment, decree, or order, or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable or his agent,

to the person entitled thereto or his agent; and in any such case no proceeding shall be brought to enforce the said judgment, decree, or order, but within twelve years after such revivor, payment, or acknowledgment, or the latest of such revivors, payments, or acknowledgments, as the case may be; Provided that, for three years next after the passing of this Act, every judgment, decree, and order, which may be in force at the date of the passing of this Act, shall be governed by the law now in force, anything therein contained notwithstanding.

Proviso as to judgments now in force. or acknowledgments, as the case may be; Provided that, for three years next after the passing of this Act, every judgment, decree, and order, which may be in force at the date of the passing of this Act, shall be governed by the law now in force, anything therein contained notwithstanding.

XX. No process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree, or order, or to keep the same in force within three years next preceding the application for such execution.

XXI. Nothing in the preceding Section shall apply to any judgment, decree, or order in force at the time of the passing of this Act, but process of execution may be issued, either within the time now limited by law for issuing process of execution thereon, or within three years next after the passing of this Act, whichever shall first expire.

XXII. No process of execution shall issue to enforce any summary decision or award of any of the Civil Courts not established by Royal Charter, or of any Revenue authority, unless some proceeding shall have been taken to enforce such decision or award, or to keep the same in force within one year next preceding the application for such execution.

XXIII. Nothing in the preceding Section shall apply to any summary decision or award in force at the time of the passing of this Act, but process of execution may be issued, either within the time now limited by law for issuing process of execution thereon, or within two years next after the passing of this Act, whichever shall first expire.

XXIV. This Act shall take effect throughout the Presidencies of Bengal, Madras, and Bombay, including the Presidency Towns and the Straits' Settlement; but shall not take effect in any non-Regulation Province or place until the same shall be extended thereto by public notification by the Governor General in Council, or by the local Government to which such Province or place is subordinate. Whenever this Act shall be extended to any non-Regulation Province or place by the Governor General in Council, or by the local Government to which such Province or place is subordinate, all suits which, within such Province or place, shall be pending at the date of such notification, or shall be instituted within the period of two years from the date thereof, shall be tried and determined as if this Act had not been passed; but all suits, to which the provisions of this Act are applicable, that shall be instituted within such Province or place after the expiration of the said period, shall be governed by this Act and by no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.

Trial of pending suits, &c. in any non-Regulation Province or place to which the Act is extended.

or by the local Government to which such Province or place is subordinate, all suits which, within such Province or place, shall be pending at the date of such notification, or shall be instituted within the period of two years from the date thereof, shall be tried and determined as if this Act had not been passed; but all suits, to which the provisions of this Act are applicable, that shall be instituted within such Province or place after the expiration of the said period, shall be governed by this Act and by no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding.

W. MORGAN,
Clerk of the Council.

Legislative Council of India.

23rd April 1859.

The following Bill was read a second time in the Legislative Council of India on the 23rd April 1859, and was referred to a Select Committee, who are to report thereon after the 30th of July next:—

A Bill to Empower Magistrates to Decide certain Disputes between Contractors and Workmen engaged in Railway and other Works.

Whereas it is expedient to empower Magistrates to decide disputes concerning wages and certain other disputes between contractors and workmen engaged in Railway and other works; It is enacted as follows:—

Preamble. I. Any person who has contracted, or who may hereafter contract, to construct any portion of a Railway, canal, or other public work, the construction of which is or shall be sanctioned by Parliament, or by the Government of India, shall be deemed a contractor within the meaning of this Act.

II. If any person, being a contractor within the meaning of this Act, shall employ or engage with any artificer, workman, or labourer for the execution of any work connected with or incidental to the performance of his contract (whether such work is to be performed by the person so employed or engaged, or by others to be employed with, by, or under him), and shall not, from time to time, pay all such sums of money and wages as shall be justly due to the person or persons so employed, it shall be lawful for the Magistrate of the Zillah or District where the work is performed to take cognisance of the matter.

III. The Magistrate shall summon such contractor (or in his absence his local manager or agent) to appear at a time and place to be named in the summons; and it shall be lawful for the Magistrate to examine witness upon oath or solemn affirmation, and in a summary way to decide between the parties, which decision shall be final and conclusive to all intents and purposes.

IV. The Magistrate shall order the payment of such sum of money as shall appear to him to be justly due to the person or persons so employed as aforesaid, and in default of payment of such sum, immediately or within such time as the Magistrate shall direct, he shall issue his warrant to levy the same by distress and sale of the goods and chattels of the defaulting contractor.

V. If any question shall arise whether any goods or chattels seized under the warrant of distress belong to the defaulter or are liable to be distrained and sold as aforesaid, the decision and order of the Magistrate shall be final and conclusive with respect thereto.

VI. Any artificer, workman, or labourer employed or engaged by a contractor within the meaning of this Act to execute any work of the nature mentioned in Section I., who shall wilfully, and without lawful or reasonable excuse, neglect or refuse to perform such work, shall be liable, on conviction, before the Magistrate, to a fine not exceeding Rupees. The Magistrate may, at the request of the complainant or of any one authorised to act on his behalf, instead of fining such artificer, workman, or labourer, order him to perform or get performed the work according to the terms of his contract; and if he shall fail to comply with the order, the Magistrate may, upon proof to his satisfaction of such non-compliance, sentence such artificer, workman, or labourer to be imprisoned, with hard labour, for any term not exceeding months.

VII. The word "Magistrate" in this Act shall include any person who may be specially empowered by the Executive Government to exercise the powers vested in a Magistrate by this Act.

Interpretation,
"Magistrate,"

be specially empowered by
the Executive Government

VIII. This Act shall take effect only in those Districts or places to which it shall be extended by order of the Governor General of India in Council, or of the Executive Government of any Presidency or place.

Operation of Act.

shall be extended by order
of the Governor General of India in Council, or of the
Executive Government of any Presidency or place.

W. MORGAN,
Clerk of the Council.

Legislative Council of India.

30th April 1859.

The following Bill, as settled in Committee of the whole Council, was ordered to be published for general information, and to be re-considered after two months:—

A Bill for the Establishment of Courts of Small Causes beyond the Local Limits of the Jurisdiction of the Supreme Courts of Judicature established by Royal Charter.

Whereas, with a view to the more easy recovery of small debts and demands, it is expedient to establish Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter at the several Presidencies of Calcutta, Madras, and Bombay; it is enacted as follows:—

Preamble.

of small debts and demands, it is
expedient to establish Courts
of Small Causes beyond the local limits of the jurisdiction
of the Supreme Courts of Judicature established by
Royal Charter at the several Presidencies of Calcutta,
Madras, and Bombay; it is enacted as follows:—

I. It shall be lawful for the Executive Government of any of the said Presidencies or of any place, with the previous sanction of the Governor General in Council, to constitute Courts of Small Causes, with the required establishment of Officers, at any place within the limits of their respective Governments, for the trial of suits under this Act. Whenever any such Court may be so constituted, the Executive Government shall fix the territorial jurisdiction of such Court, and may, from time to time, alter the same as may appear proper.

Limits of territorial jurisdiction to be fixed.

of any of the said Presidencies
or of any place, with the
previous sanction of the Go-
vernor General in Council, to constitute Courts of Small
Causes, with the required establishment of Officers, at
any place within the limits of their respective Govern-
ments, for the trial of suits under this Act. Whenever
any such Court may be so
constituted, the Executive
Government shall fix the ter-
ritorial jurisdiction of such Court, and may, from time
to time, alter the same as may appear proper.

II. The following are the suits which shall be cognisable by Courts of Small Causes constituted under this Act, namely, claims for money due, whether on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of Five Hundred Rupees. Provided that no action shall lie in any such Court on a balance of partnership account, unless the balance shall have been struck by the parties or their agents; or for a share or part of a share under an intestacy; or for a legacy or part of a legacy under a will; or for any claim for the rent of land or any other claim for which a suit may be brought before a Revenue Officer, if commenced in due time; or for the recovery of damages on account of alleged personal injuries, unless special damage of a pecuniary nature shall have resulted from such injury.

Description of suits cognisable by Small Cause Courts.

the suits which shall be cog-
nisable by Courts of Small
Causes constituted under this
Act, namely, claims for
money due, whether on bond
or other contract, or for rent,
or for personal property,
or for the value of such property,
or for damages, when the debt,
damage, or demand does not
exceed in amount or value the
sum of Five Hundred Rupees.
Provided that no action shall
lie in any such Court on a
balance of partnership account,
unless the balance shall have
been struck by the parties or
their agents; or for a share
or part of a share under an
intestacy; or for a legacy
or part of a legacy under a
will; or for any claim for the
rent of land or any other claim
for which a suit may be
brought before a Revenue
Officer, if commenced in
due time; or for the recovery
of damages on account of
alleged personal injuries,
unless special damage of a
pecuniary nature shall have
resulted from such injury.

Proviso.

any such Court on a balance
of partnership account, unless
the balance shall have been
struck by the parties or their
agents; or for a share or part
of a share under an intestacy;
or for a legacy or part of a
legacy under a will; or for
any claim for the rent of land
or any other claim for which
a suit may be brought before
a Revenue Officer, if com-
menced in due time; or for
the recovery of damages on
account of alleged personal
injuries, unless special
damage of a pecuniary nature
shall have resulted from
such injury.

III. Every Court of Small Causes constituted under this Act, shall have cognisance of all such suits as are mentioned in the last preceding Section, if the cause of action shall have arisen, or the defendant, at the time of the commencement of the suit, shall dwell or personally work for gain within the local limits of the jurisdiction of such Court.

IV. Every Court constituted under this Act shall use a seal, bearing the following inscription in English

Seal of the Court.

and in the language of the Court—"Court of Small Causes of —"; and every such Court shall be subject to the general control and orders of the Judge of the District and of the Sudder Court.

Court to be generally subject to the Zillah Judge and Sudder Court.

V. Whenever a Court of Small Causes is constituted under this Act, all suits cognisable under the provisions of this Act for any amount exceeding Twenty Rupees, which shall arise within the limits of the jurisdiction of such Court, shall be heard and determined in such Court, and shall not be cognisable in any other Court.

VI. Nothing in this Act shall be held to take away the jurisdiction which a Magistrate, or a person exercising the powers of a Magistrate, or a Deputy Magistrate, can debts or other claims of a Civil nature; or the jurisdiction which can be exercised by Village Moonsiffs or Village or District Panchayets in Madras; the provisions of the Madras Code, or by Military Courts of Request, or by Cantonment Joint Magistrates invested with Civil jurisdiction under Act III. of 1859, or by a single Officer duly authorised and appointed under the rules in force in the Presidencies of Port St. George and Bombay respectively, for the trial of small suits in Military Bazars, in Cantonments, and Stations occupied by the troops of those Presidencies respectively, or by Panchayets in regard to suits against Military persons, according to the rules in force under the Presidency of Port St. George.

Saving of jurisdiction of Magistrates, &c.
now exercise in regard to

Of Village Moonsiffs and Village or District Panchayets in Madras;

Of Military Courts of Request;
Of single Officers appointed to try small suits in Madras and Bombay;

in force in the Presidencies of Port St. George and Bombay respectively, for the trial of small suits in Military Bazars, in Cantonments, and Stations occupied by the troops of those Presidencies respectively, or by Panchayets in regard to suits against Military persons, according to the rules in force under the Presidency of Port St. George.

VII. Courts of Small Causes constituted under this Act shall be held at such place or places within the local limits of their respective jurisdictions, as shall, from time to time, be appointed by the local Government to which such Courts are subordinate.

VIII. Whenever any such Court is directed to be held at more places than one within the local limits of its jurisdiction the Judge of such Court, subject to the control of the Judge of the District, shall appoint the time at which the Court shall hold its sittings in every such place. Due notice of the time so appointed shall be given by a proclamation to be fixed up in some conspicuous place in the Court-house or other building in which the sittings of the Court are to be held.

IX. The procedure to be observed in the trial of cases cognisable under this Act shall be that prescribed in Act VIII. of 1859 (for *Simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter*), in so far as the same may be applicable and necessary. Provided that, in all suits under this Act, the summons to the defendant shall be for the final disposal of the suit; and provided also that, at the time of passing a decree under this Act, the Court may, on the verbal application of the party in whose favour the decree is passed, direct immediate execution of the same by the issue of a warrant directed either generally against the personal property of the judgment-debtor wherever it may be found within the local limits of the Court's jurisdiction, or specially against any personal property belonging to the judgment-debtor within the same limits which may be indicated by the judgment-creditor.

Procedure.

in Act VIII. of 1859 (for *Simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter*), in so far as the same may be applicable and necessary. Provided that, in all suits under this Act, the summons to the defendant shall be for the final disposal of the suit; and provided also that, at the time of passing a decree under this Act, the Court may, on the verbal application of the party in whose favour the decree is passed, direct immediate execution of the same by the issue of a warrant directed either generally against the personal property of the judgment-debtor wherever it may be found within the local limits of the Court's jurisdiction, or specially against any personal property belonging to the judgment-debtor within the same limits which may be indicated by the judgment-creditor.

Proviso.

at the time of passing a decree under this Act, the Court may, on the verbal application of the party in whose favour the decree is passed, direct immediate execution of the same by the issue of a warrant directed either generally against the personal property of the judgment-debtor wherever it may be found within the local limits of the Court's jurisdiction, or specially against any personal property belonging to the judgment-debtor within the same limits which may be indicated by the judgment-creditor.

X. In the execution of a decree under this Act, if,

Execution against immovable property, if moveable property not sufficient. after the sale of the moveable property of a judgment-debtor, any portion of a judgment shall remain due, and the holder of such judgment desire to issue execution upon any immovable property belonging to the judgment-debtor, the Court, on the application of such judgment-creditor, shall grant him a copy of the judgment and a certificate of any sum remaining due under it, and, on the presentation of such copy and certificate to any Civil Court having general jurisdiction in which the immovable property of the judgment-debtor is situate, such Court shall proceed to enforce such judgment according to its own rules and mode of procedure in like cases.

XI. In suits tried under this Act, all decisions and orders of the Court shall be final. Provided that it shall be competent to the Court, if it shall think fit, to grant a new trial, if applied for within the period of thirty days from the date of the decision.

Decision in certain suits to be final. Proviso. Court may refer questions of law, &c. to Sudder Court. If, in the trial of any suit under this Act, any question of law, or usage having the force of law, or the construction of a document affecting the merits of the decision shall arise, on which the Court may entertain reasonable doubts, the Court may, either of its own motion, or on the application of any of the parties to the suit, draw up a statement of the case, and submit it, with its own opinion, for the decision of the Sudder Court.

XII. If, in the trial of any suit under this Act, any question of law, or usage having the force of law, or the construction of a document affecting the merits of the decision shall arise, on which the Court may entertain reasonable doubts, the Court may, either of its own motion, or on the application of any of the parties to the suit, draw up a statement of the case, and submit it, with its own opinion, for the decision of the Sudder Court.

Court may refer questions of law, &c. to Sudder Court. XI. The Court may proceed in the case, notwithstanding a reference to the Sudder Court, and may pass a decree contingent upon the opinion of the Sudder Court, pending which execution not to issue. referred; but no execution shall be issued in any case in which a reference may be made to the Sudder Court, until the receipt of the order of that Court.

XIII. The Court may proceed in the case, notwithstanding a reference to the Sudder Court, and may pass a decree contingent upon the opinion of the Sudder Court, pending which execution not to issue. referred; but no execution shall be issued in any case in which a reference may be made to the Sudder Court, until the receipt of the order of that Court.

Court may pass decree contingent upon the opinion of the Sudder Court, pending which execution not to issue. referred; but no execution shall be issued in any case in which a reference may be made to the Sudder Court, until the receipt of the order of that Court.

XIV. Cases referred for the opinion of the Sudder Court shall be dealt with by a full bench of that Court.

Full bench of the Sudder Court to decide cases referred under this Act.

XV. The Sudder Court shall fix an early day for the hearing of the case, and shall notify the same by a proclamation to be fixed up in the Court-house of that Court.

Sudder Court to fix an early day for the hearing of the case. Proclamation thereof.

XVI. The parties to the case may appear and be heard in person or by pleader.

Parties may appear and be heard in person or by pleader.

XVII. The Sudder Court, when it has heard and considered the case, shall transmit a copy of its judgment, under the seal of the Court and the signature of the Register, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case conformably to the decision of the Sudder Court.

Decision of Sudder Court to be transmitted. Court and the signature of the Register, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case conformably to the decision of the Sudder Court.

XVIII. Costs, if any, consequent on the reference of a case for the opinion of the Sudder Court shall be costs in the suit.

Costs of reference to Sudder Court.

XIX. No appeal shall lie from a decree of any existing Court subordinate to a District Court in any suit of the description contained in Section II., when the debt, damage, or demand shall not exceed Twenty Rupees, but every such decree shall be final. Provided that the provisions of Section IX. and the

No appeal from decision of any existing Court subordinate to a District Court in suits below 20 Rupees. exceed Twenty Rupees, but every such decree shall be final. Provided that the provisions of Section IX. and the

proviso in Section XI. shall be applicable to every suit in which the decree is by this Section made final.

XX. No special appeal shall lie from any decision or order passed on regular appeal by the Court subordinate to the Sudder Court in any suit of the nature described in Section II., when the debt, damage, or demand for which the original suit shall be instituted shall not exceed Five Hundred Rupees; but every such order or decision shall be final.

No special appeal from decision of any Court subordinate to the Sudder Court in suits below 500 Rupees.

debt, damage, or demand for which the original suit shall be instituted shall not exceed Five Hundred Rupees; but every such order or decision shall be final.

XXI. In every case in which a decree or decision is, by the two last preceding Sections, made final, the Court passing the final decree or decision shall have the same power to draw up a statement of the case for the opinion of the Sudder Court as is hereby vested in a Court of Small Causes, and all the provisions of this Act, relative to statements drawn up by Courts of Small Causes, shall be applicable to statements drawn up under the provisions of this Section.

Reference of questions to Sudder Court under two last preceding Sections.

the same power to draw up a statement of the case for the opinion of the Sudder Court as is hereby vested in a Court of Small Causes, and all the provisions of this Act, relative to statements drawn up by Courts of Small Causes, shall be applicable to statements drawn up under the provisions of this Section.

W. MORGAN,
Clerk of the Council.

Legislative Council of India.

30th April 1859.

The following Bill was read a first and second time in the Legislative Council of India on the 30th April 1859, and referred to a Select Committee, who are to report thereon within a month:—

A Bill to Provide for the more Speedy Disposal of Appeals in cases Appealable to the Sudder Court, and of Applications for Special Appeals.

Whereas, by reason of the large number of regular appeals preferred in the Sudder Courts of the Presidency of Fort William in Bengal, much delay occurs in the hearing and determination of such Appeals; and it is expedient that measures should be provided for the more speedy disposal of the same: and whereas it is also expedient that in cases of application for special appeal any order passed by a single Judge of either of the said Courts for the admission or the rejection of any such appeal should be final; It is enacted as follows:—

Preamble.

Whereas, by reason of the large number of regular appeals preferred in the Sudder Courts of the Presidency of Fort William in Bengal, much delay occurs in the hearing and determination of such Appeals; and it is expedient that measures should be provided for the more speedy disposal of the same: and whereas it is also expedient that in cases of application for special appeal any order passed by a single Judge of either of the said Courts for the admission or the rejection of any such appeal should be final; It is enacted as follows:—

I. In suits decided by Principal Sudder Ameens in any part of the said Presidency where the amount or value of the suit shall be less than Ten Thousand Rupees, the appeal shall lie to the Zillah Judge, and shall not lie to the Sudder Court, anything in Section IV. Act XXV. of 1837 to the contrary notwithstanding.

Appeals, in suits decided by Principal Sudder Ameens below Rs. 10,000, to lie to Zillah Judge.

the appeal shall lie to the Zillah Judge, and shall not lie to the Sudder Court, anything in Section IV. Act XXV. of 1837 to the contrary notwithstanding.

II. All applications for special appeal which are now pending in either of the said Sudder Courts, or which have been presented in any subordinate Court for transmission to the Sudder Court, and all such applications which may be hereafter presented under the provisions of Act XVI. of 1853, may be heard, and, on hearing, may be either admitted or rejected by a single Judge of the Sudder Court, and the order passed by such Judge either for the admission or the rejection of the appeal shall be final, anything in Clause 4 Section VIII. of Act XVI. of 1853 to the contrary notwithstanding. Provided always that, except under the circumstances and for the purpose described in Clause 1 of the said Section, no case shall be remanded to the Court which passed the decree by the order of a single Judge; but when such Judge shall make an order for remand, the case shall be dealt with in the manner provided in Clauses 4 and 5 of the said Section.

Applications for special appeals to be heard by a single Judge of the Sudder Court.

and all such applications which may be hereafter presented under the provisions of Act XVI. of 1853, may be heard, and, on hearing, may be either admitted or rejected by a single Judge of the Sudder Court, and the order passed by such Judge either for the admission or the rejection of the appeal shall be final, anything in Clause 4 Section VIII. of Act XVI. of 1853 to the contrary notwithstanding. Provided always that, except under the circumstances and for the purpose described in Clause 1 of the said Section, no case shall be remanded to the Court which passed the decree by the order of a single Judge; but when such Judge shall make an order for remand, the case shall be dealt with in the manner provided in Clauses 4 and 5 of the said Section.

Proviso.

Provided always that, except under the circumstances and for the purpose described in Clause 1 of the said Section, no case shall be remanded to the Court which passed the decree by the order of a single Judge; but when such Judge shall make an order for remand, the case shall be dealt with in the manner provided in Clauses 4 and 5 of the said Section.

W. MORGAN,
Clerk of the Council.

Legislative Council of India.

23rd April 1859.

The following Bill was read a second time in the Legislative Council of India, on the 23rd April 1859, and was referred to a Select Committee, who are to report thereon after the 30th of July next:—

A Bill to Amend Act III. of 1857 (Relating to Trespasses by Cattle).

Whereas, under the provisions of Act III. of 1857,

Preamble. fines may be levied from the owners of Cattle found trespassing and doing damage or straying in any public place, and all unclaimed Cattle so found may be sold after sufficient notice; and whereas it is provided in the said Act that the sums received on account of fines, and the unclaimed proceeds of the sale of unclaimed Cattle, shall be applied to the payment of the salaries of pound-keepers and other purposes connected with the execution of the Act; and whereas the amount of the said sums may be larger than is required for the said

purposes, and it is expedient to provide for their legal application to other purposes; It is enacted as follows:—

I. When the amount of the sums received on account of fines and the unclaimed proceeds of the sale of unclaimed Cattle is larger than is required for the payment of the salaries allowed to pound-keepers and the expenses incurred for the construction and maintenance of pounds and other purposes connected with the execution of the said Act, any surplus which may remain, after making full provision for the said salaries and expenses, may be applied, under the direction of the local Government, to the construction and repair of roads and bridges, and other works of a like nature.

Act to be read as part of Act III. of 1857.

This Act shall be read with and taken as part of Act III. of 1857.

W. MORGAN,
Clerk of the Council.