

THE AGRA TENANCY ACT No. III OF 1901

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WITH
SHORT COMMENTARY
AND
CASE-LAW

—: o :—

BY
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THE AGRA TENANCY ACT No. III OF 1901.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL
ON 31ST AUGUST, 1926.

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO
AGRICULTURAL TENANCIES AND CERTAIN OTHER MATTERS IN
AGRA.

WHEREAS it is expedient to consolidate and amend the law relating to agricultural tenancies and certain other matters in Agra; and whereas the Governor-General has given his previous sanction to the passing of this Act as required by sub-section (3) of section 80-A of the Government of India Act; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. 1. (1) This Act may be called the Agra Tenancy Act, 1926.

Local extent. (2) It extends to the province of Agra except the areas specified in the First Schedule:

Provided that the Local Government may, by notification in the Gazette, extend the whole or any part of this Act to all or any of the areas so excepted:

Provided also that no provision of this Act which is inconsistent with the provisions of the pargana of Kaswar Raja Act, 1915,* shall apply to the pargana of Kaswar Raja in the district of Benares; and

Commencement. (3) It shall come into force on such date as the Local Government may, by notification in the Gazette, appoint in this behalf.

The Local Government are pleased to declare September 7, 1926, as the date on which the aforesaid Act shall come into force.

If land outside such province is annexed to the land within such province by fluvial action, the provisions of this Act will begin to apply to that land from the moment of the transfer and *vice versa*. (B. R. 6 of 1904 and 23 All. 282 respectively.)

All proceedings commenced or heard after the 7th of September, 1926, will be governed by this Act. Rent suit decreed *ex parte* before the date, restoration application rejected after the date, and the right and forum of appeal from the order rejecting the application will be governed by this Act. (IX U. D. H. C. 7; 9 L. R. Rev. 18; 1927 R. C. 470.)

* See *infra*.

2. (1) The Agra Tenancy Act, 1901, is hereby repealed.

(2) When this Act or any portion thereof is extended to any of the areas excepted in the First Schedule, so much of any Act or Regulation in force therein as is inconsistent with this Act or the portion thereof so extended, as the case may be, shall be thereby repealed.

Repealing Act does not affect any right or liability acquired or incurred under the repealed Act. (A. I. R. 1929 All. 745.)

The right lost under the repealed Act cannot be revived. (9 L. R. 152.)

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

(1) all words and expressions used to denote the possessor of any right, title or interest in land, whether the same be proprietary or otherwise, shall be deemed to include the predecessors and successors in right, title or interest of such person ;

(2) "land" means land which is let or held for agricultural purposes, or as grove-land or for pasturage. It includes land covered by water used for the purpose of growing *singhara* or other similar produce, but does not include land for the time being occupied by dwelling-houses or manufactories, or appurtenant thereto ;

(3) "rent" means whatever is, in cash or kind, to be paid or delivered by a tenant for land held by him, and in Chapter IX includes "sayar" as defined below.

When used with reference to a thekadar rent means the amount payable by the thekadar to his lessor under the terms of the theka.

A share of the timber or its value deliverable or payable to the landholder by local custom on a sale of trees by a grove-holder is rent.

(4) "sayar" includes whatever is to be paid or delivered to a landholder by a lessee or licensee on account of the right of gathering produce, forest rights, fisheries, tanks not used for agricultural purposes, the use of water for irrigation, whether from natural or artificial sources, or the like ;

(5) "pay" with its grammatical variations and cognate expressions, when used with reference to rent, includes "deliver" with its grammatical variations and cognate expressions ;

(6) "landholder" means the person to whom and "tenant" the person by whom, rent is, or but for a contract, express or implied, would be payable ;

"tenant" includes a grove-holder, but does not include a mortgagee of proprietary rights, a rent-free grantee or, save as otherwise expressly provided by this Act, a thekadar ; and

"landlord" means the proprietor of a mahal or of a share or specific plot therein.

Explanation — Where the word “landholder” is used with reference to a thekadar it means the person to whom the thekadar’s rent is payable.

(7) “sub-tenant” means a tenant who holds land from a tenant thereof other than a permanent tenure-holder or from a rent-free grantee thereof who is liable to have rent fixed under section 187;

(8) “holding” means a parcel of land held under one tenure, or one lease, engagement or grant, and includes the interest of a thekadar;

(9) “agricultural year” means the year commencing on the first day of July and ending on the thirtieth day of June;

(10) “registered” includes attested under the provisions of section 127;

(11) “improvement” means, with reference to a tenant’s holding, any work which adds materially to the letting value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is after execution made directly beneficial to it: and, subject to the foregoing provisions, includes---

(a) the construction of tanks, wells, water channels, and other works, for the storage, supply or distribution of water for agricultural purposes;

(b) the construction of works for the drainage of land, or for the protection of land from floods, or from erosion or other damage by water;

(c) the planting of trees and the reclaiming, clearing, enclosing, levelling, or terracing of land;

(d) the erection of buildings on the holding or in its immediate vicinity, elsewhere than on the village site, required for the convenient or profitable use or occupation of the holding; and

(e) the renewal or reconstruction of any of the foregoing works, or such alterations therein, or additions thereto, as are not of the nature of mere repairs;

but does not include—

(f) such water channels, embankments, levellings, enclosures, temporary wells, or other works as are made by tenants in the ordinary course of cultivation;

(12) “Board,” “Revenue court,” “Revenue officer,” “Settlement officer,” “Assistant settlement officer,” “Assistant collector,” “Tahsildar,” “revenue,” “mahal,” “lambardar,” and “minor” have the same meaning respectively as in the United Provinces Land Revenue Act, 1901;* and “Assistant collector in charge of a subdivision of a district” in the said Act;

(13) “lease” includes *qabuliyat*;

(14) “decree” means any order which, so far as the revenue court is concerned, finally disposes of a suit;

* See *infra*.

(15) "Grove-land" means any specific piece of land in a mahal having trees planted thereon in such numbers that when full grown they will preclude the land or any considerable portion thereof being used primarily for any other purpose, and the trees on such land constitute a grove.

Explanation I.—The word "trees" does not include tea plants, rose bushes, betel plants, plantains and papitas, or any mere shrubs, bushes, plants or climbers.

Explanation II.—The word "trees" includes fruit-bearing trees, such as mango or jack fruit, which occupy the land for a long period, but does not include trees, such as guavas or peaches, which occupy the land for comparatively short periods.

Cf. s. 4 of the old Act.

Sub-section (2). It includes predecessors and successors in interest among the possessors having any right in land. But such interest must be that of a possessor, having privity of estate with the man in possession before or at present. See. 4 Rev. L. J. 32.

Land to which the Act applies :—

- (a) Land let as arable, held as arable or for other purposes. B. R. 10 of 1922.
- (b) Let for other purposes, held as arable. II U. D. 298.
- (c) Let but not used for agricultural purposes. 1926 R. C. 239.
- (d) Grove-land is now land.
- (e) Pasture land is now land ; but old fallow, growing thatching grass though included in the holding where crops grow and paying a lump rate are not land. II U. D. 19.
- (f) Land covered by water, growing *singhara* or other similar produce. B. R. 13 of 1914.
- (g) Where *Pans* are cultivated. 33 I. C. 471.
- (h) Tea plantations. II U. D. 750.
- (i) Plantain-growing land. III U. D. 471.

Land held to be not land :—

- (a) Land let for building a house, the lessee planting a garden on a portion. 8 W. R. 250.
- (b) Let for the erection and maintenance of a school. 9 W. R. 552.
- (c) An appanage to a block of building. 11 W. R. 440.
- (d) Let for factory, sublet for cultivation. B. R. 4 of 1891.
- (e) Land used for growing thatching grass or kitchen vegetables. 27 C. 25.
- (f) Sites of the house in the Abadi.
- (g) Land in the compound of a bungalow not used for agricultural purposes. IV U. D. 111.
- (h) Plot occupied by bamboo clumps. V U. D. 267, III U. D. 471.

Rent now includes sayar ; but sayar does not include rent.

Rent held as such :—

- (a) A share of the fruits or wood of a grove of trees. 15 A. W. N. 320.
- (b) A number of mangoes delivered yearly. 14 W. R. 7.

- (c) Periodical payment on account of groves and pastures. 15 I. C. 27.
- (d) The rent reserved in a lease for cutting grass and grazing cattle. 12 A. L. J. 36.

Not rent :—

- (a) Rendition of service.
- (b) Payment for occupation of Abadi land.
- (c) Customary dues sanctioned by *Wajib-ul-arz.* 34 All. 358.
- (d) Money payable by non-agriculturists in festivals. 11 I. C. 217.
- (e) Profits of a *mela.* 35 C. 82 F. B.
- (f) Dues from a profit-sharing partner payable to the tenant. 1926 R. C. 236.
- (g) Share in the produce of a tank. 23. A. L. J. 36.

Sayar.—Is rent only for the purposes of chapter X :—

Cl. (6). Payment of rent is not sine quo non of the accrual of a tenancy (9 Cal. 304, 18 All. 290). In India contrary to the practice obtained in England, a person, by mere occupation of land, can acquire tenancy rights in land. 11 A. L. J. 29, 25 Cal. 324, 33 I. C. 203.

But in the following cases, the persons in occupation of land do not create tenancy and were held to be trespassers.

- (a) Persons not acting in good faith cannot impose himself upon a third person as his tenant. 8 C. W. N. 315.
- (b) Persons obtaining possession in good faith from a person having no title to the land. 8 C. W. N. 320.
- (c) Persons who get into and continue in possession by fraud. 9 W. R. 449.
- (d) Persons put into possession by *karindas* without authority to do so. 9 L. R. Rev. 235.
- (e) Holders of perpetual leases from Hindu widows without legal necessity. 1927 R. C. 157.
- (f) A tenant holding over after the termination of his lease. 6 Rev. and Cr. L. J. 108.
- (g) A person allowed to hold by sufferance. III U. D. 465.

Acceptance of rent is recognition of the payer as a tenant.—11 Rev. and Cri. L. J. 63. *E.g.*, where Khudkasht land of A is on partition allotted to B. B becomes entitled to it, unless he by agreeing to take rent from A constitutes him his tenant. B. R. 19 of 1910.

Tenancy also arises by operation of law and by contracts, express or implied, e. g.—Succession leases or in cases of occupation with the tacit consent of the land-holder.

The following persons were held to be land-holders :—

- (a) An usufructuary mortgagee who sublets and receives rent B. R. 4 of 1901 ; but a mortgagee not in actual possession inasmuch as he cannot eject the cultivator nor sue him for rent was held to be not a land-holder B. R. 2 of 1897, nor a mortgagee in possession by cultivating the land so mortgaged, acquire the status of a tenant against the mortgagor. B. R. 1 of 1892.
- (b) A Thekedar in possession as against the actual cultivator. B. R. 9 of 1892.

- (c) A perpetual lessee of proprietary rights to whom is assigned the right to collect rent of a holder of fixed rates land and of non-agricultural land. 3 Rev., Cri. L. J. 213.
- (d) A Lambardar. B. R. 21 of 188.
- (e) An ex-proprietor who having dedicated his property to charitable or religious usages, has constituted himself the manager. 3 L. R. 14.

Mortgagee of proprietary rights is not a tenant.—Since he possesses the land for the money advanced by him, although he has bound himself to pay the Govt. revenue; but where he has to make annual payments to the mortgagor or has to remain in possession for a certain number of years in compliance with the condition of the mortgage-deed, he is virtually a lease-holder and is therefore a tenant on a Zarpeshgi lease.

Nor the mortgagor is a tenant.—Who has been, under the terms of the mortgage, empowered to cultivate the land mortgaged on condition of annual payment; 1926 R. C. 147, VI U. D. 140, 2 L. R. Rev. 190, V U. D. 251, but these cases were contradicted by IV U. D. 395, 19 All. 496, 17 A. W. N. 128.

But a mortgagor installed on the land by a lease quite independent of the mortgage-deed has been held to be a tenant. 23 All. 338, 24 A. W. N. 273. The mortgagor can also acquire occupancy rights and become an occupancy tenant.

For a discussion in the definition of 'landlord' see 1926 R. C. 523.

Inference of sub-tenancy.—(1) Sub-tenancy is created by express contracts but where no such contract is provable, a contract can be inferred from the circumstances. 10 Cri. and Rev. L. J. 59. (2) An entry in the Patwari papers unless disproved is sufficient for such inference, VI U. D. 221; but where the cultivator allows his relation to cultivate, no such inference can be made; 4 L. R. Rev. 65.

Tenant holding from a rent-free grantee is now a sub-tenant.

Rent-free grantee.—A "nonkar" holder is not a rent-free grantee, P. R. 17 of 1884; nor a rent-free grantee from a fixed-rate tenant; he is only a sub-tenant, IV U. D. 86.

Holding.—Includes the interest of a thekedar.

This definition is new and overrides the decision in 39 All. 675 and favours 39 All. 263.

Agricultural years.—Fasli year in a lease means an agricultural year. IV U. D. 463.

Improvements.—A structure built upon a plot of land within the "abadi" is not an improvement. 10 I. C. 284.

For the definitions of the terms mentioned in sub-section (12), refer to U. P. Land Revenue Act.

Qabuliat—being included in the "lease" puts a stop to conflicting cases on the point. Executed by one of the members of a joint family; his ejection puts an end to the interests of other members also. 1926 R. C. 461.

Lease.—Granted by one of the co-sharers without consent or authority is not binding upon the other co-sharers. 18 A. L. J. 129.

Orders not decrees :—

- (1) Orders in execution proceedings.
- (2) Orders made on applications preferred during the pendency of a suit or orders of remand.
- (3) Orders mentioned in s. 104 and Order 43 rule (1) of C. P. Code.
- (4) Orders falling under s. 47 C. P. Code.

Cl. (15) **Specific piece of land.**—This phrase suggests that trees scattered over several plots of land cannot constitute a grove. **Number of trees.**—It depends upon the kinds of trees and the area of land. 20 or 30 trees on an acre may constitute a grove. II U. D. 339. **Planted.**—Suggests the exclusion of self-sown trees such as “Nim”, “Babool” and Shisham.

Primarily.—Land used primarily for agriculture is not grove. 1 U. D. 123. **Occasional use for growing fodder** is not forbidden. 1 U. D. 144.

Definition of sir. 4. “Sir” means—

- (a) land recorded as *sir* of a landholder or of a permanent tenure-holder in the last record-of-rights framed before the first day of January, 1902, and continuously so recorded since, or which but for error or omission would have been so continuously recorded ;
- (b) land cultivated continuously for twelve years before the first day of January, 1902, by the landlord or by the permanent tenure-holder himself with his own stock, or by his servants, or by hired labour ;
- (c) land recognized by village custom as the special holding of a co-sharer, and treated as such in the distribution of profits or charges among the co-sharers ;
- (d) land which at the commencement of this Act was being cultivated by the landlord or permanent tenure-holder himself with his own stock, or by his servants, or by hired labour, and which was recorded as the *khudkash* of the landlord or permanent tenure-holder in the agricultural year immediately preceding the agricultural year in which this Act came into force ;
- (e) land which has been continuously cultivated by the landlord or permanent tenure holder himself with his own stock, or by his servants, or by hired labour for a period of ten years, commencing at any time after the commencement of this Act, and has, on the application of the landlord or permanent tenure holder, as the case may be, been declared and demarcated as the applicant's *sir* by the collector :

Provided, first, that the area of *sir* which may be acquired by a landlord or permanent tenure-holder under sub-clause (e) when added to the area which is already the *sir* of the landlord or permanent tenure holder under sub-clauses (a), (b), (c) and (d) shall not exceed in the aggregate the following scale :—

If the cultivated area in the mahal owned by the landlord or held by the permanent tenure holder is not more than thirty acres.

Fifty per cent. of such area.

If such area is more than thirty but not more than six hundred acres.

As above on thirty acres and fifteen per cent. on the balance.

If such area is more than six hundred acres.

As above on six hundred acres and ten per cent. on the balance.

Where the landlords of a mahal do not own specific areas in severalty, the cultivated area owned by each landlord in the mahal shall, for the purposes of the scale, be deemed to be such portion of the total cultivated area of the mahal as is proportionate to the extent of his proprietary right in the mahal.

Provided, secondly, that a landlord or permanent tenure-holder who exchanges *sir* for tenants, or other land, whether voluntarily or under the order of a court, shall acquire the same right in the land which he receives as he had in the land which he gives in exchange.

“*Sir* right” means the sum of all the special rights conferred on *sir* holders by this Act and by the United Provinces Land Revenue Act of 1901,* and includes the right to exclusive possession of the *sir* against co-sharers of the *sir* holder in the proprietary right, subject to a liability to account for profits

Cf. the definition of *sir* in the Oudh rent (amendment) Act of 1921.

This section gives a wide latitude to the land-holder to acquire *sir* rights in land which could not be acquired before the commencement of this Act.

Record-of-rights.—Means records prepared at a settlement. IV U. D. 216. Lands not recorded for a considerable time cease to be *sir*. 7 All., 586.

Cl. (b) This excludes cultivation as a tenant prior to the acquisition of proprietary rights. VI U. D. 354; 1925 R. C. 50.

Cl. (c) All lands held by a co-sharer is not his *sir*. Only so much of it is his *sir*, as has been recognized by village custom as his special holding and treated as such in the distribution of profits. The rest may be his *khud-kasht* and not *sir*.

Special rights conferred on *sir*-holders under the Land Revenue Act are as follows.—See ss. 263-320 *ibid.*

(a) Some concessions in rent.

(b) ex-proprietary rights when the *sir*-holder zamindar does not accept a settlement offered.

(c) exclusive possession of *sir*-land on partition except in cases of exchange or incompleteness of the partition.

Under the present Act, they are as follows:—

(a) Rights conferred by sections 4, 5, 6, 7, 14, 15, 16, 17, 27, 112 and 115.

(b) Rights mentioned in the definition itself.

* See *infra*.

5. On the death of a *sir* holder his *sir* right shall devolve on the Succession to person who succeeds to his proprietary interest in "sir" right. the *sir*.

Explanation.—For the purposes of this section the words "proprietary interest" shall be deemed to include the interest of a permanent tenure-holder.

In this section the legislature has made a subtle distinction between the *sir*-rights and proprietary interest in *sir*.

Succession to *sir* rights is governed by the personal law. V U. D. 446.

Transfer of "sir" right. 6. *Sir* right is not transferable except—

- (a) by gift of the *sir* to a person to whom the proprietary interest in the *sir* is gifted, or
- (b) by exchange of *sir* between co-sharers in the mahal.

A perpetual lease of *sir* amounts to transfer and in such a case, the *sir* character is lost. I U. D. 251.

Extinction of *sir* right. 7. *Sir* shall cease to be *sir*—

- (a) when it becomes the subject of an ex-proprietary tenancy,
- (b) when a right of occupancy is conferred therein under section 17 :

Provided, first, that if an ex-proprietary tenant regains his proprietary right in the land held by him as ex-proprietary tenant, such land shall again become his *sir*.

Provided, secondly, that if the right of occupancy conferred in *sir* under section 17 is extinguished, and the landlord or permanent tenure-holder has not in the meantime transferred his right in the land, such land shall again become his *sir* or the *sir* of his heir, as the case may be.

This section is also new. See the provisos to the definition of *sir* in the Oudh Rent (amendment) Act of 1921 and section 4 (12) of the U. P. Land Revenue Act.

Loss of *sir* rights on account of :—

- (1) Proprietor's not claiming ex-proprietary rights. II U. D. 108.
- (2) Vendee's cultivating land as *khudkasht*. 10 Rev. and Cri. L. J. 326.

Cases in which *sir* rights will not revive :—

- (1) Transferee's holding *sir*-land otherwise than as a sub-tenant or licensee of the transferor for more than six months after the transfer.
- (2) Ex-proprietor's relinquishing, abandoning or being ejected from the holding.

For the revival of *sir* rights.—See. V U. D. 351.

8. (1) Every agreement which purports, or would operate, to restrict a tenant from enforcing or exercising any right conferred on or secured to him by this Act is void to that extent.

Restrictions on leases and agreements relating to tenancies.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), an agreement between a land-holder and a tenant is void if and in so far as it purports—

- (a) to prevent the tenant from acquiring a right of occupancy in land in accordance with the provisions of this Act;
- (b) to take away or limit the right of the tenant to make improvements and to claim compensation for the same in accordance with the provisions of this Act;
- (c) to entitle the land-holder to eject the tenant or enhance his rent otherwise than in accordance with the provisions of this Act;
- (d) to take away the right of the tenant to sub-let in accordance with the provisions of this Act;
- (e) to empower the landholder to distrain otherwise than in accordance with the provisions of this Act.

(3) Where land not previously cultivated has been or is hereafter let by a land-holder to a tenant either after being reclaimed by or at the expense of the landholder, or for the purpose of being reclaimed by the tenant, nothing in this section shall be construed to affect the conditions of any contract relating to that land until fourteen years have elapsed from the date on which the land was first brought under cultivation:

Provided that where land has remained uncultivated during a period of seven years, it shall for the purposes of this sub section be deemed to have not been previously cultivated.

Sub-section (3) is new and is the same as s. 4 (3) and s. 4 (4) of the Oudh Rent Act 1886.

An agreement not to claim compensation for improvement is void, 10 I. C. 465.

9. Save as otherwise expressly provided by this Act, and save as otherwise provided by the Code of Civil Procedure, 1908, in the case of proceedings governed by that Code, anything which is by this Act required or permitted to be done by a landholder, may be done by an agent of the landholder authorized by him in this behalf; and process served on, or notice given to, such agent shall be as effectual for all purposes as if the same had been served on, or given to, the land-holder in person; and all the provisions of this Act relating to the service of process on, or the giving of notice to, a party shall be applicable to the service of process on, or the giving of notice to, such agent.

Cf. s. 5 of the repealed Act.

As otherwise provided by this Act.—Refers to the provisions of Chap. X of this Act.

As otherwise provided by C. P. C.—See list II to the second schedule.

CHAPTER II.

CLASSES OF TENANTS.

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

- (a) permanent tenure-holders,
- (b) fixed-rate tenants,
- (c) ex-proprietary tenants,
- (d) occupancy tenants,
- (e) statutory tenants,
- (f) heirs of statutory tenants,
- (g) non-occupancy tenants.

Cf. s. 6 of the repealed Act. Clauses (e) and (f) have been added.

Shall.—Indicates that tenants other than those mentioned in clauses (a) to (f) must be included among the non-occupancy tenants.

Permanent tenure-holders and fixed-rate tenants.

11. (1) When any permanent and transferable interest in land in a district or portion of a district which is permanently settled has been held, otherwise than under a terminable lease, by any person intermediate between the landlord and the occupants, from the time of the permanent settlement, at the same rate of rent, such person shall have a right to hold such interest at that rate.

(2) Such person shall be called a permanent tenure-holder.

See s. 7 of the repealed Act. Here the landholder has been used for "proprietor" in the old section.

The Permanent Settlement was held in September, 1789.

A person holding from the permanent tenure-holder is a tenant-in-chief.

12. (1) When any land in a district or portion of a district which is permanently settled has been held by a tenant from the time of the permanent settlement at the same rate of rent, such tenant shall have a right of occupancy at that rate.

(2) Such tenant shall be called a fixed-rate tenant.

Fixed-rate tenancy cannot be created by contract. 28 All. 747. But such tenancy once recognized acts as a estoppel. 29 I. C. 677. When a proportion is fixed, variation in quantity does not amount to variation in rent. I. All. 301 F. B. Fixed-rate tenancy may be acquired in *sir* land. I. W. R. 356. Purchase of the fixed rate tenancy by a fixed-rate tenant makes him a tenant-in-chief. IV U. D. 650.

13. (1) In those districts or portions of districts in which a revision of records has taken place since the first day of January, 1875, every entry made in the revision recording a person as a permanent tenure-holder, or a fixed-rate tenant, or otherwise, shall, in the absent of a judicial decision to the contrary in proceedings instituted before the first day of January, 1902, be, as between landlord and tenant, conclusive proof that such person was at the date of such revision a permanent tenure-holder, or a fixed-rate tenant, or not, as the case may be.

(2) In those districts or portions of districts in which no revision of records has taken place since the first day of January, 1875, if in any suit or proceeding an issue arises whether a person is a permanent tenure-holder or fixed-rate tenant and it is proved that he has held any land at the same rate of rent for twenty years next before the institution of the suit or proceeding, it shall be presumed, unless the contrary is proved, that he has held such land at the same rate of rent since the permanent settlement ;

Provided that if hereafter a revision of records takes place in any such district or portion of a district, the provisions of this subsection shall cease to operate, and those of sub-section (1) shall become operative therein.

The entry is a conclusive proof of the nature of tenancy, but not of the title to tenancy. 9 A. L. J. 238, 34 All. 285 (F. B.)

A person recorded as the fixed-rate tenant cannot claim the entire holding to the exclusion of other members of the family. S. D. 2 of 1909 ; 11 U. D. 667 (H. C.).

Ex-proprietary tenants.

14. (1) Every landlord whose proprietary rights in a mahal or in any portion thereof, whether in any share therein, or in any specific area thereof, are transferred either by foreclosure or sale in execution of a decree or order of a civil or revenue court, or by voluntary alienation otherwise than (a) by gift or (b) by exchange between co-sharers in the mahal,

shall become a tenant with a right of occupancy in his *sir*, and in the land which he has cultivated continuously for ten years at the date of the transfer, and shall be entitled to hold the same at a rent which shall, subject to the provisions of section 49, be two annas in the rupee less than the rate prescribed for occupancy tenants in section 59.

(2) If a part only of the share of a landlord in a mahal or in any portion thereof is so transferred, such landlord shall become a tenant with a right of occupancy in so much of his *sir* and of the land which he has cultivated continuously for ten years at the date of the transfer, as appertains or corresponds to such part of his share.

(3) Where there are two or more co-sharers in *sir* and one of them becomes an ex-proprietary tenant in it under this section, his previous share in it shall be divided off by the officer empowered to fix the rent of the holding under section 36 of the United Provinces Land Revenue Act, 1901,* and his interest as ex-proprietary tenant shall be limited to such share.

(4) Every such tenant, and every tenant who is at the commencement of this Act an ex-proprietary tenant under the provisions of the Agra Tenancy Act, 1901, or is or becomes an ex-proprietary tenant under any other enactment for the time being in force, shall be called an ex-proprietary tenant, and, save as otherwise expressly provided, shall have all the rights and be subject to all the liabilities conferred and imposed upon occupancy tenants by the Act.

(5) A mortgage shall be deemed to be a transfer within the meaning of this section when it has the effect of transferring proprietary

* See *infra*.

possession of the mortgaged property from the mortgagor, but not otherwise. In the former case the right conferred by this section shall come into existence from the date on which possession is transferred.

(6) Nothing in this section shall confer a right of occupancy in any land transferred for any public or private purpose inconsistent with the existence of a right of cultivation therein.

(7) For the purposes of this section permanent tenure-holders shall be considered to have proprietary rights.

(8) For the purposes of sub-section (1) the use of land as grove-land shall not be deemed cultivation.

Transfers which give rise to exproprietary tenancy :—

(1) transfers by foreclosure or by sale by order or under the decree of Courts or by voluntary alienations.

The inclusion of "foreclosure" has put a stop to the controversy ; B. R. 11 of 1920. Ex-proprietary rights can be claimed after redemption ; B. R. 13 of 1913.

(2) *Private partition.*—In private partition, *sir* land falling in the share of another, ex-proprietary right can be claimed ; 4 All. 505.

(3) *Grant by way of dower or Khala.*

(4) Usufructuary mortgages.

(5) Sale of proprietary rights in any share or in any specific area, containing *sir*-land or land continuously cultivated for 10 years at the date of sale.

Continuously :—Possession during the period by a female for maintenance will be counted as the possession of the proprietor. 3 L. R. 16. But possession during the period by a mortgagee or licensee will constitute a break in the period. 21 A. L. J. 331.

Ten years :—Ten calendar or agricultural years and not cultivating years. VI U. D. 171.

Transfers which will not give rise to ex-proprietary rights :—

(1) *Exchange or gift of sir-land among co-sharers.*

(2) *Perfect partition or exchange in private partition.*

(3) Transfers by lease or simple mortgages.

Shall.—The transferor must necessarily become entitled to ex-proprietary rights, no matter whether he exerts his right or not. 6 All. 54. He shall be entitled to hold the same at a rent which shall, subject to the provisions of s. 49, be two annas in the rupee less than the rent prescribed for occupancy tenants. But if he covenants to pay a rent before the transfer, he will be bound to pay the same unless it is inequitable. 2 I. C. 51.

Cl. (2) Confirms the rulings of the High Court cited in 22 All. 205 and 20 A. W. N. 10.

Cl. (3) Ex-proprietary rights arise at the date of the transfer and not at the date when an order is made under s. 36 of the U. P. Land Revenue Act. IV U. D. 508. The rent fixed becomes payable from the date when the ex-proprietary tenancy arose. 15 O. C. 45.

Cl. (5) Does not apply to an usufructuary mortgage executed before 1902. Hence no ex-proprietary rights arise on such a mortgage. 31 All. 368, 6 A. L. J. 437.

15. (1) Except as provided in sub-sections (2), (3) and (4), no sale of *sir* or agreement, relinquishment or other transaction having the effect of a surrender or relinquishment of ex-proprietary rights, executed or carried out within six months immediately preceding or succeeding a transfer of proprietary rights, shall affect or detract from the rights created by section 14.

(2) Where a landlord or permanent tenure-holder who under the provisions of section 14 has become or would become on a transfer a tenant with a right of occupancy in his *sir* or in the land which he has cultivated continuously for ten years at the date of the transfer desires within six months immediately preceding or succeeding such a transfer, to enter into a transaction having the effect of a surrender or relinquishment of ex-proprietary rights, he shall apply to the assistant collector in charge of the sub-division, and, if such assistant collector is satisfied that the applicant does not wholly or mainly depend on agriculture for his livelihood, or that the land transferred is self-acquired or has been acquired within the twenty years last preceding, he shall sanction such application.

(3) If the assistant collector in charge of the sub-division is not so satisfied, he shall inquire whether there are other reasonable grounds for sanctioning the transaction, and if he finds that such grounds exist, he may sanction the application.

(4) An appeal shall lie against an order rejecting an application under sub-sections (2) and (3) to the collector.

(5) Where the court sanctions an application under the provisions of sub-sections (2), (3) or (4), the applicant shall not become or shall cease to be an ex-proprietary tenant, as the case may be, in the *sir* or other land in respect of which the application is sanctioned, and the order sanctioning the application shall not be questioned in any civil court.

Notwithstanding anything in this section, where the property transferred by means of a mortgage of the kind specified in sub-section (5) of section 14 consists wholly of a specific area of *sir*, the mortgagor may by simultaneous agreement in writing waive his ex-proprietary rights, and in that case the mortgaged land shall, if the mortgagor regains within twelve years of the date of the transfer possession thereof on redemption of the mortgage resume the character of *sir*. In such land statutory rights shall not accrue for twelve years from the date of the transfer.

This section is new and has been enacted to safe-guard the interests of an ex-proprietor in his *sir* land and *khudkasht* against the clever machinations and ingenious devices of the purchasers of his property.

The last paragraph provides an exception to the general rule mentioned in sub-section 1 of this section whereby a mortgagor may waive his ex-proprietary rights by an agreement executed simultaneously with the deed of mortgage of the kind mentioned in sub-section 5 of s. 14.

Occupancy tenants.

16. Every tenant, who at the commencement of this Act has acquired a right of occupancy under the Agra Tenancy Act, 1901, or under any previous Act, and

every person whom a right of occupancy is conferred in accordance with the provisions of section 17 of this Act, and

every person (except in Bundelkhand) who is at or after the commencement of this Act a tenant of government estates other than nazul land,

shall be called an occupancy tenant and shall have all the rights and be subject to all the liabilities conferred and imposed on occupancy tenants by this Act.

Occupancy rights will now be conferred under the provisions of this Act in the same way as they can be conferred under the provisions of the Oudh Rent (amendment) Act of 1921.

17. (1) The following persons shall be competent to confer a right of occupancy —

- (a) a landlord or a permanent tenure-holder ;
- (b) a lambardar, with the written concurrence of all the co-sharers whom he represents, and, if any co-sharer is a minor or otherwise unable to act, with the sanction of the district judge obtained on the application of the natural or certificated guardian of such co-sharer ;
- (c) a mortgagee in possession, with the written concurrence of the mortgagor ;
- (d) a mortgagor in possession, with the written concurrence of the mortgagee, or with the sanction of the district judge ;
- (e) a person whose proprietary interest is the subject of litigation in a court of law, with the authority of the court ;
- (f) the natural or certificated guardian of a minor proprietor, or the manager of a lunatic's estate, with the sanction of the district judge ;
- (g) the manager of a joint Hindu family with the written consent of the members of the family who have attained majority and, where any of the members of the family is a minor, with the sanction of the district judge :

Provided that, if the minor has a father or a brother as his natural guardian, the written consent of the natural guardian shall be deemed sufficient.

- (h) a thekadar in accordance with the provisions of section 201 (2) ;
- (i) the court of wards in land under its superintendence ;
- (j) a Hindu woman having a limited estate, with the written consent of the nearest reversioner or the sanction of the district judge.

(2) A right of occupancy may be conferred—

- (a) upon a tenant in his holding or in any part thereof,

(b) upon any person in land in which no tenancy subsists,

(c) upon any person in land in which a tenancy exists, with effect from the date of the extinction of the tenancy.

(3) Notwithstanding anything in the foregoing sub-sections, a right of occupancy shall not be conferred in grove-land or pasture-land, or upon a corporation, math or other artificial person.

(4) A right of occupancy may be conferred for valuable consideration or gifted, provided that such a right shall not be conferred in land under the superintendence of the court of wards except for valuable consideration, and that the court of wards shall not delegate its powers to confer such rights.

(5) A right of occupancy shall be conferred by registered instrument only.

(6) Notwithstanding the provisions of section 50, the initial rent payable by a tenant upon conferment on him of a right of occupancy shall be the rent which is agreed upon between him and his landlord.

Cl. (3) The exception in the case of **pasture-land** or **grove-land** gives effect to I U. D. 140, and in the case of a **corporation, math** or other **artificial person** follows S. D. 5 of 1922 and II U. D. 344. A Hindu joint family can acquire occupancy rights under a lease ; 1930 All. 315.

The sub-section (4) indicates that the Court of Wards cannot make a gift of occupancy rights but allows other persons to make a gift of occupancy rights by overruling the decision in II U. D. 74.

Occupancy rights, being rights of substantial benefits, must be conferred by means of a registered deed.

S. 50 relates to the methods of enhancement or abatement in rent.

18. (1) A person on whom a right of occupancy has been conferred **Recording of** under the provisions of section 17 may present an **a right of** application to be recorded as an occupancy tenant to **occupancy.** the court of the assistant collector in charge of the sub-division, and shall verify such application in presence of the court.

(2) Subject to the provisions of sub-sections (3) and (4), the court, after giving notice to the person who is alleged to have conferred the right of occupancy and satisfying itself that such a right has been conferred in accordance with the provisions of section 17, shall cause the applicant to be recorded as an occupancy tenant in the annual registers maintained under section 33 of the United Provinces Land Revenue Act,* 1901. If the court is not satisfied as aforesaid it shall, subject to the provisions of sub-sections (3) and (4) reject the application.

(3) When in proceedings under this section a question arises whether the person purporting to have conferred the right of occupancy was competent to do so, the court shall, if a question of proprietary right is in dispute and has not already been determined by a court of

* See *infra*.

competent jurisdiction, require by an order in writing the party whose name is not recorded as proprietor of the land in the annual registers maintained under section 33 of the United Provinces Land Revenue Act, 1901, to institute within two months a suit in the civil court for the determination of such question of proprietary right. Where the names of all parties to the dispute about the question of proprietary right are recorded in the aforesaid registers, the court shall frame an issue on the question of proprietary right and submit the record to the competent civil court for the decision of that issue only. The civil court, after re-framing the issue, if necessary, shall decide that issue only and return the record together with its finding on that issue to the court of the assistant collector in charge of the sub-division who shall accept the finding of the civil court on the issue referred to it.

(4) Where an order has been passed under sub-section (3), if the party whose name is not recorded in the aforesaid annual registers fails to comply with it, the court of the assistant collector in charge of the sub-division shall decide such question of proprietary right against him. If such party institutes a suit in compliance with the order, the court of the assistant collector in charge of the sub-division shall dispose of the application pending before it under sub-section (2) in accordance with the final decision of the civil court of first instance or appeal, as the case may be, upon such question of proprietary right.

(5) Where the court of the assistant collector in charge of the sub-division rejects an application under this section, it may (after taking into consideration the decision of the civil court, if any) award to the applicant such damages (including the return of the consideration, if any, paid by the applicant to the person purporting to have conferred the right of occupancy) as it may deem just.

(6) The court of the assistant collector in charge of the sub-division or the civil court may, either of its own motion or on the application of any person, direct that any person be made a party to the proceedings, but nothing in this section shall debar a person who has not been a party to such proceedings from establishing any right in any civil or revenue court.

(7) An appeal against an order of the court of the assistant collector in charge of the sub-division under this section shall lie to the commissioner, provided that if a question of proprietary right has been in issue between parties claiming such right in the court of first instance and is in issue in the appeal, the appeal shall lie to the court which has jurisdiction to hear appeals from the court in which the question of proprietary right was decided.

(8) Notwithstanding anything in section 14, where a landlord or permanent tenure-holder has conferred a right of occupancy under section 17 in land which is his *sic* the following consequences shall ensue if the right of occupancy is still subsisting at the time of a transfer which under the provisions of section 14 would ordinarily cause the accrual of ex-proprietary rights :—

(a) If the transfer is by mortgage, ex-proprietary rights shall not accrue unless and until the right of occupancy is extinguished.

- (b) If the transfer is by foreclosure or sale no ex-proprietary rights shall accrue.

This section is new and lays down the procedure which a court must follow in cases where an application has been preferred to the court by a person who wants to be recorded as an occupancy tenant.

Statutory tenants and their heirs.

Statutory tenants. 19. Subject to the provisions of sub-section (3) of section 8, every person who—

- (a) is at the commencement of this Act a tenant of land other than *sir*, grove-land, pasture-land or land covered by water and used for the purpose of growing *singhara* or other similar produce, not being a permanent tenure-holder or a tenant with a right of occupancy or a tenant holding from a permanent tenure-holder, or
- (b) is after the commencement of this Act admitted as tenant without a right of occupancy to land other than *sir*, grove-land, pasture-land or land covered by water and used for the purpose of growing *singhara* or other similar produce, or
- (c) is after the commencement of this Act admitted by a permanent tenure-holder to the cultivation of land in his holding other than grove-land, pasture-land or land covered by water and used for the purposes of growing *singhara* or other similar produce,

shall be called a statutory tenant and, subject to the provisions of this Act, shall be entitled to a life-tenancy of his holding :

Provided, first, that no statutory rights shall accrue in favour of a sub-tenant and that no sub-tenant shall be deemed a statutory tenant :

Provided, secondly, that no statutory rights shall accrue in any land acquired or held for a public purpose or a work of public utility, and in particular, and without prejudice to the generality of this proviso, statutory rights shall not accrue in :—

- (a) lands at present or which may hereafter be set apart for military encamping grounds ;
- (b) lands situated within the limits of any cantonment ;
- (c) lands included within railway boundaries ;
- (d) lands acquired by a town improvement trust, in accordance with a scheme sanctioned under section 42 of the United Provinces Town Improvement Act,* 1919.
- (e) lands within the boundaries of any government forest ;
- (f) lands appurtenant to any jail ;
- (g) municipal trenching grounds :

Provided, thirdly, that no statutory rights shall accrue in—

- (a) lands notified by Government in the gazette as tea gardens before the commencement of this Act ;

* See *infra*.

(b) lands used for casual or occasional cultivation in the bed of a river.

Statutory rights shall not accrue in 'nautor' lands referred to in sub-section 3 of section 8 until fourteen years have elapsed.

The clause (a) refers to a person who was a tenant on the 7th September, 1926, 1930 All. 304, 1930 A. L. J. 637. If such person is dispossessed, he will be restored to possession as a statutory tenant under s. 99 of this Act. IX U. D. 18.

Admitted.—Admission should be made by a person entitled to admit. It need not be express or in writing. It may be inferred from the conduct of the person making admission. A mortgagee, if authorised, can create a statutory tenancy which will be binding on the mortgagor even on redemption. 1930 All. 413.

Life-tenancy.—In the case of statutory tenants life-tenancy is recognised. So the mention of number of years in the leases, they hold, is immaterial and they will hold the land till their death in spite of the termination of their leases.

The clause (b) refers to land lying on other side of a river, (e.g., melon beds). Statutory rights shall not accrue in such land. But if the river changes its course and its bed allows for permanent cultivation, then there is nothing to show that statutory rights will not accrue in such land.

20. (1) The heir of a statutory tenant is the person entitled to Heirs of statutory tenants. succeed to the tenancy under the provisions of section 24 or 25.

(2) Such heir or in the event of his death successive heirs under section 24 or section 25 shall be entitled to retain possession of the holding of the deceased statutory tenant for a period of five years from the latter's death or if the deceased tenant held a lease at the time of his death of which the unexpired portion is longer than five years, until the expiry of the period of the lease :

Provided that (1) if (a) he has been admitted in writing by his landholder as a statutory tenant, or (b) no proceedings have been taken by his landholder to eject him within three years after the expiry of the period specified in sub-section (2), he shall be considered to have been admitted to the holding within the meaning of section 19 (b) and shall be deemed to be a statutory tenant ;

(2) where there are two or more co-tenants of a statutory tenancy the heir of a deceased co-tenant shall be entitled to continue in possession of the land or interest of the deceased co-tenant till five years have expired from the death of the last surviving co-tenant ;

(3) when there are two or more co-tenants of a statutory tenancy, the period of three years specified in proviso (1) (b) shall not be deemed to have expired for the heir of any co-tenant till it has expired for the heir of the last surviving co-tenant.

Non-occupancy tenants.

21. All tenants other than permanent tenure-holders, fixed-rate Non-occupancy tenants, ex-proprietary tenants, occupancy tenants, tenants. statutory tenants or heirs of a statutory tenant are non-occupancy tenants.

Thekedars, groveholders, sub-tenants, etc., are non-occupancy tenants. 1927 R. C. 281.

CHAPTER III.

DEVOLUTION, TRANSFER AND EXTINCTION OF TENANCIES AND DIVISION OF TENANCIES.

Succession to, and transfer of tenancies.

22. The interest of a permanent tenure-holder and of a fixed-rate tenant is both heritable and transferable.
Rights of permanent tenure-holders and fixed-rate tenants.

Heritable and transferable.—According to their personal law. 6 All. 234. If a fixed-rate tenant dies without an heir, his tenancy does not escheat to the Government, but reverts to the Zemindar. 33 All. 111.

23. (1) The interest of an ex-proprietary tenant, of an occupancy tenant, of a non-occupancy tenant, and of a statutory tenant to the extent provided by section 20, is heritable, but is not transferable either in execution of a decree of a civil or revenue court or otherwise except in accordance with the provisions of this Act.
Rights of other tenants.

(2) Nothing in the foregoing provision of this section shall render it illegal for a tenant—

(a) to transfer to Government his interest in any land which is required for a public purpose ;

(b) to release or transfer his interest in favour of a co-tenant :

Provided that no person shall be deemed to be a co-tenant, notwithstanding that he may have shared in the cultivation of the holding, unless he was a co-tenant from the commencement of the tenancy or has become such by succession or has been specifically recognized as such in writing by the landholder ;

(c) to sub-let his holding as hereinafter provided.

Usufructuary mortgage of occupancy holding by an occupancy tenant has been declared null and void. 29 All. 327, 4 A. L. J. 306, and cannot be validated by the landholder's consent, 1 R. C. 59 ; 3 U. D. 52 ; 19 A. L. J. 473 (F. B.)

Consequently mortgages of occupancy holding being against public policy will not be recognised even collaterally under T. P. Act s. 68. See 1928 All. 552 ; 126 I. C. 831.

Transactions which are not transfers within the meaning of this section.—(a) a will (b) mere hypothecation (c) entry of names as co-sharers (d) and appointment of a receiver in execution of a decree are not transfers. See 103 I. C. 287 ; 5 All. 121 ; B. R. 3 of 1913 and 46 A. 924 respectively.

Transactions which are transfers.—(1) Causing mutation of names (2) exchange (3) gift (4) usufructuary mortgage and (5) lease. See 1926 R. C. 163 ; 13 A. L. J. 783 ; 5 All. 121 respectively.

Transfer under a decree is also a transfer within the meaning of this section.—Hence the purchaser of the interest, of the tenants named in the section, sold in the execution of a decree will get nothing. 41 All. 346. In a decree for foreclosure or otherwise possession cannot be given in its execution, nor the decree for sale or foreclosure on a mortgage be passed. 7 All. 851. If the decree be passed, it cannot be executed by sale or delivery of possession of the holding. 43 All. 547. Even if it be executed, the purchaser or mortgagee or the decree-holder will get nothing. 2 A. L. J. 358 and 16 All. 308.

For mortgage transactions before Act II of 1901, see 7 A. L. J. 755 and 37 All. 278.

24. (1) When a male ex-proprietary tenant, occupancy tenant, Succession of statutory tenant or non-occupancy tenant dies, his male tenant. interest in the holding shall devolve in accordance with the order of succession given below—

Order of succession.

Class I.—Male lineal descendants in the male line of descent.

Class II.—Widow till her death or re-marriage.

Class III.—Father.

Class IV.—Mother, being a widow.

Class V.—Brother, being a son of the same father as the deceased.

Class VI.—Daughter's son.

Class VII.—The nearest collateral male relative in the male line of descent ;

Provided that no such daughter's son or collateral relative shall be entitled to inherit, who did not share in the cultivation of the holding at the time of the tenant's death.

Sections 24 and 25 correspond to s. 22 of the repealed Act with this change that " father " and " mother " of the deceased have also been included in the list of his heirs. See classes 3 and 4.

Tenancy held by a member of the joint Hindu family.—Succession is to be governed by s. 26 of this Act.

Successions to which this section will not apply.—When a tenant dies while Act II of 1901 was in force and his heir died after the commencement of this Act, then unless cl. (1) of s. 25 of this Act might be made applicable, succession will be governed by the Act II of 1901 ; as this section is not retrospective in effect. But if the tenant died before the commencement of Act II of 1901 and his widow (heir) died when that Act was in force, then according to the view of the High Court succession would be governed by the personal law to which the tenant was subject. 37 All. 658 and 38 All. 197. But the Board of Revenue held that succession would be governed by s. 22 of Act II of 1901 ; S. D. 2 of 1918, S. D. 8 of 1919, I U. D. 312, VI U. D. 186.

His interest in holding.—Where the tenant has lost his interest, his heirs cannot succeed. II U. D. 249.

Shall devolve.—His heirs inherit, in spite of a will. 103 I. C. 237.

Cl. (I) **Persons who shall succeed.**—Legitimate son ; 8 A. L. J. 731 ; an illegitimates on of a *sudra* by his permanent concubine in the absence of a legitimate son ; 5 A. L. J. 629 ; illegitimate sons, if they succeed to their father in the community to which they belong, 9 Rev. and Cri L. J. 160 ; an adopted son of a Hindu, 34 All. 658, but must prove it, B. R. File No. 903 of 1888 ; a posthumous son ; IV U. D. 268.

Persons who cannot succeed.—

(1) A step-son cannot succeed to his step-mother's holding. 2 R. C. 48.

(2) A *Chela* cannot succeed to the occupancy holding of his *Garu*. II U. D. 341.

Cl. (II) A widow who succeeded before 1901, does not by remarriage after that forfeit the holding. III U. D. 575, S. D. 6 of 1920.

Want of *chastity* will not deprive widow of her husband's assets already vested in her. I U. D. 102.

Cl. (5) A cousin, though recorded as an occupancy tenant along with the real brother, cannot succeed, if real brother is alive. III U. D. 235.

Cl. (7) **A collateral.**—Will succeed only, if he shared in the cultivation at the tenant's death, B. R. 1 of 1907. But a nearer collateral will succeed in preference to a collateral more remote ; even though he did not take part in cultivation. V U. D. 489 ; S. D. 1 of 1918.

Collateral includes.—An uncle ; I U. D. 89 ; a grand uncle ; II U. D. 503 ; a nephew, 28 I. C. 23 ; a grandfather's brother's son, IV U. D. 593 ; a cousin, 1925 R. C. 52.

Collaterals in female line and all female heirs are excluded :—(a) sister, 3 A. L. J. 513 ; (b) sister's son.

Held to be no sharing in cultivation as of co-lessees, 1 S. D. A. 379 ; of a guardian of a minor tenant, who looked after the minor's cultivation, 32 I. C. 916 ; of a guardian's sharing in the profits and loss with his ward 2 R. C. 351 ; when the holding is wholly sublet ; III U. D. 536 ; co-sharing through an agent, V U. D. 277 ; a child of tender years, II U. D. 52 ; a lunatic or blind, IV U. D. 248 ; 54 I. C. 285 ; III U. D. 680 ; co-sharing must not be with the widow but with the last male owner, V U. D. 463 ; S. D. 3 of 1905.

It is not confined to cultivation by two or more persons. I U. D. 188. *Sharing in cultivation* of a part of the holding amounts to sharing in the whole. I U. D. 211.

25. (1) When a female ex-proprietary, occupancy or non-occupancy tenant who has inherited an interest in a female tenants holding under section 24, or the female heir of a statutory tenant dies or surrenders or abandons such interest or, in the case of a widow of class II in section 24, re-marries, such interest shall, notwithstanding anything contained in section 35, devolve upon the nearest surviving heir of the last male tenant, such heir being ascertained in accordance with section 24.

(2) When any female ex-proprietary, occupancy or non-occupancy tenant other than one subject to the provisions of sub-section (1) dies, her interest in the holding shall devolve—

(a) on her male lineal descendants in the male line ;

(b) if there are no such descendants, on her husband ;

(c) if there are no such heirs as above mentioned, on her daughter's son, provided that he was sharing in the cultivation of the holding at the time of the tenant's death.

(3) When a female statutory tenant dies her interest in the holding, subject to the limitation of section 20, shall devolve as in subsection (2) of this section.

A female's interest depends on the nature of her holding ; V U. D. 29.

Cl. (2) indicates that a widow can acquire occupancy right herself in the holding and thus get the absolute interest which will devolve on her heirs according to clause (2). S. D. 5 of 1912.

26. No person shall be deemed to have an interest in an ex-proprietary, occupancy, statutory or non-occupancy tenancy merely by reason of being joint in estate with any person with whom a contract of tenancy has been made, or who has succeeded to the interest of a tenant, or who has become a tenant by operation of law or otherwise ; and except in the case of widows or of a co-tenant who dies leaving no heir entitled to succeed under section 24, no interest in any ex-proprietary, occupancy, statutory or non-occupancy tenancy shall pass by survivorship. Where the persons possessing such interest or joint in estate, they shall be deemed for purposes of succession to be tenants in common.

This confirms the Board's view expressed in S. D. 13 of 1912 and S. D. 5 of 1925, that if one of the two joint tenants dies, his interest will pass on to his heir and not to the other tenant by law of survivorship.

Sub-leases.

27. No tenant other than a permanent tenure-holder or fixed-rate tenant shall sub-let the whole or any portion of his holding in consideration of a sum of money paid in advance or of a debt or other obligation, whether reserving or not reserving rent to be paid periodically:

Provided that nothing in this section shall be held to bar a stipulation that the sub-tenant shall pay (a) to a tenant with a right of occupancy, not more than two years' rent in advance, (b) to any other tenant, not more than one year's rent in advance.

A transferee from a tenant who has paid every thing beforehand was held not to be a sub-lessee. 1927 R. C. 234.

28. Subject to the provisions of section 27, a tenant may sub-let the whole or any portion of his holding under the restrictions imposed by this Act :

Provided that no such sub-letting shall in any way relieve the tenant of any of his liabilities to his landholder save with the landholder's written consent.

29. (1) No ex-proprietary or occupancy tenant shall, except with the written consent of the landholder, sub-let the whole or any portion of his holding for a term exceeding five years or within five years of any portion of such holding being held by a sub-tenant.

(2) A statutory tenant shall not, except with the written consent of the landholder, sub-let the whole or any portion of his holding for a term exceeding three years or within three years of any portion of such holding being held by a sub-tenant.

(3) The heir of a statutory tenant shall have the same right to sub-let as a statutory tenant :

Provided that the period of a sub-lease given by an heir of a statutory tenant shall not extend beyond the termination of the period for which such heir is entitled to hold as tenant.

(4) A sub-lease for a term exceeding one year, or from year to year, shall be made by registered instrument only.

(5) No non occupancy tenant shall, except with the written consent of the landholder, sub-let the whole or any portion of his holding for a term exceeding one year or within a year of any portion of such holding being held by a sub-tenant.

(6) A female, a minor, a lunatic, an idiot, a person incapable by reason of blindness of practising agriculture, or a person in the military service of Government otherwise than as a reservist shall not be subject to the restrictions laid down in sub-sections (1), (2) and (5) :

Provided that this sub-section shall not apply in the case of a joint tenancy unless all the joint tenants are of one or more of the descriptions specified.

(7) A sub-lease which would be invalid but for the provisions of sub-section (6) shall not remain in force for more than five years after the lessor either dies or ceases to come within any of the descriptions given therein.

(8) All sub-leases shall terminate with the term of settlement.

That even if an occupancy tenant sub-lets for one year only, he shall have to wait for a full interval of five years before he can sub-let again. S. D. 5 of 1910.

Right to sub-let is a statutory right.—The tenant can sublet in contravention of any covenant in his lease or Qabuliat. III U. D. 427.

Clause (4) confirms the ruling in S. D. 5 of 1910.

Cl. (5) Gives effect to S. D. 3 of 1919.

Sub-leases by sub-tenants. 30. No sub-tenant shall sub-let otherwise than with the written consent of his landholder.

Cf. s. 26 of the repealed Act.

31. When a tenant has sub-let, the successor in interest of such tenant shall be bound by the terms of the sub-lease, in so far as they are consistent with the conditions of his tenancy and the provisions of this Act.

Successor to sub-lessor bound by sub-lease.

Cf. s. 27 of the repealed Act.

32 (1) Except as otherwise provided in sub-sections (2) and (3) the extinction of the interest of a tenant whose interest is not transferable shall operate to extinguish the interest of any tenant holding under him :

Rights of sub-tenants on extinction of tenant's interest.

Provided that the landholder may at his option allow the interest of the sub-tenant to continue, and all covenants previously binding and

enforceable as between the tenant and the sub-tenant shall thereupon be binding and enforceable as between the landholder and the sub-tenant.

(2) Where, at the time of the extinction by surrender or abandonment of the interest in a holding of a tenant whose interest is not transferable, there is in existence a valid sub-lease or mortgage of the whole or of a portion of the holding executed before the first day of January, 1902, all covenants binding and enforceable as between the tenant and the sub-tenant or mortgagee, as the case may be, shall, subject to sub-section (4), be binding and enforceable as between the tenant's landholder and the sub-tenant or mortgagee for the remainder of the term of the sub-lease or mortgage, or for the lifetime of the tenant, or for ten years, whichever period may be the shortest.

(3) Where, at the time of the extinction by surrender or abandonment, or by death without any heir entitled to inherit such interest, of the interest in a holding of a tenant whose interest is not transferable, there is in existence a valid sub-lease of the whole or of a portion of the holding, executed on or after the first day of January, 1902, all covenants, binding and enforceable as between the tenant and the sub-tenant shall, subject to sub-section (4), be binding and enforceable as between the tenant's landholder and the sub-tenant for the remainder of the term of the sub-lease or for five years, whichever period may be the shorter.

(4) In the cases referred to in sub-sections (1) to (3), if the rent payable by the sub-tenant, is less than that hitherto payable by the tenant, the sub-tenant shall have the option of vacating the holding, but shall, if he continues in possession, be liable to pay rent at the rate hitherto payable by the tenant.

(5) Nothing in this section shall have the effect of limiting the right of the landholder to have the rent of any holding enhanced under the provisions of Chapter V of this Act or to set aside any sub-lease voidable under the provisions of sub-section (2) of section 34.

All covenants, etc.—This sub-section has terminated the serious conflict which existed between the rulings of the High Court and those of the Board.—See 18 All. 354, 24 All. 538 (H. C.) and V U. D. 230, IV U. D. 311 (Board.)

33. When the interest of a sub-tenant is extinguished with the extinction of extinction of the interest of the tenant from whom he sub-leases. holds, or by the expiry of the term of settlement, he shall vacate his holding accordingly, but shall have in respect of the removal of standing crops and other products of the earth, the same rights as the tenant would have upon ejectment in accordance with the provisions of this Act.

Remedies against illegal sub-leases and other transfers.

34. (1) Every transfer, other than a sub-lease, made by a tenant in contravention of the provisions of this Act, and every sub-lease made by a tenant in contravention of the provisions of section 27, shall be void.

(2) Every sub-lease made by a tenant in contravention of the provisions of this Act, other than a sub-lease which is void under sub-section (1), shall be voidable at the option of the landholder.

Corresponds to section 31 of the old Act.

In sub-section (1) sub-leases refer to sub-leases for a premium.

Mortgages by occupancy tenants of their holdings are held invalid as against the landlord. A. I. R. 1929 Oudh 116.

Extinction of tenancies.

Extinction of tenancies. 35. (1) The interest of a tenant shall be extinguished—

- (a) when he dies leaving no heir entitled to inherit it ;
- (b) in land from which he has been ejected in execution of a decree or order of a court unless such decree or order is subsequently reversed in appeal or otherwise ;
- (c) by surrender under section 103 or abandonment under section 107 ;
- (d) in land which has been acquired by Government for a public purpose, or a work of public utility ;
- (e) by merger, as provided in section 36 ;
- (f) where the tenant has been deprived of possession and his right to recover possession is barred by limitation.

(2) Subject to the provisions of section 16 of the Land Acquisition Act, 1894, the extinction of the interest of a tenant having a transferable interest shall not of itself affect the rights of any transferee from such tenant under a valid transfer, but after the transfer all covenants binding and enforceable as between the landlord and the tenant shall be binding and enforceable as between the landlord and the transferee.

See section 18 of the repealed Act.

No outsider recognised by the landlord as the heir of the tenant will be entitled to redeem the mortgage. 10. Rev. and Cri. L. J. 284.

Execution of a decree of ejectment alone can extinguish his right. II. U. D. 402.

DI. (2) It gives effect to rulings under the repealed Act cited in 21 All. 204 and IV U. D. 458.

36. Where a tenant acquires or succeeds to the entire proprietary right in his holding, the tenancy is extinguished :

Merger. Provided that if the transaction by which the proprietary right was acquired is afterwards set aside by order of a competent court, or if such a right is lost in consequence of the exercise of a right of pre-emption, the tenancy shall revive.

This section is new and recognises a general rule of law that two alternative rights (superior and subordinate) cannot be simultaneously held by one and the same person in respect of a holding. IV U. D. 134.

Division of tenancies.

37. A division of a holding or distribution of the rent payable in respect of a holding or any portion thereof, or such division and distribution shall be effected only (a) by agreement between the co-tenants, or (b) by the decree in a suit instituted under this section by one or more of the co-tenants against the others :

Provided that such division or distribution shall not be binding on the landholder unless he agrees thereto in writing.

This section provides for division of tenancies and thus contravenes the provisions of s. 32 of the repealed Act under which such suit was prohibited. There is no bar to the division of a holding if the zamindar does not agree.

Holding.—The term holding in this section refers to the engagement under which land is taken and so, if, subsequently part of the land originally taken for agriculture, has been converted into Abadi, with or without the consent of the landlord, there is no interference with the original engagement and a suit for division will, consequently, lie in a Revenue Court. A. I. R. 1930 All. 303.

Suit for partition of grove holding lies in the Revenue Court. 1930 All. 789.

CHAPTER IV.

EXCHANGE AND ACQUISITION OF LAND.

38. A tenant who has a right of occupancy in any land shall have a right of occupancy in any other land which he may receive from the landlord or permanent tenureholder in exchange therefor and shall thereupon cease to have a right of occupancy in the land so given by him in exchange :

Right of occupancy in land exchanged with landlord or permanent tenureholder.

Provided that, notwithstanding anything in this section, a right of occupancy shall not accrue in land in which a right of occupancy could not be conferred under section 17 (3).

See s. 17 of the old Act.

39. (1) If two tenants of the same class other than tenants of *sir* or sub-tenants agree to exchange land owned by the same landlord with his written consent or owned by different landlords with the written consent of the latter, the tenants may apply to the court to give effect to the exchange.

Exchange of land between tenants.

(2) On exchange the tenants shall have the same rights in the land received in exchange as they had in the land given in exchange.

40. (1) A landlord may apply to the collector to acquire for him land held by an ex-proprietary or occupancy tenant for the purpose of farming on improved lines ; and the collector shall, if he is satisfied that reasonable grounds exist, order the acquisition of the land applied for, or part thereof, and shall at the same time award the tenant the compensation to which he is entitled under sub-section (2) of this section, and shall thereupon order the ejection of the tenant from the land acquired.

Acquisition of land by landlord from his ex-proprietary or occupancy tenant.

(2) The collector before passing an order of ejection under sub-section (1) of this section shall award to the tenant land with similar advantages in the same village, or, with the consent of the tenant, in another village ; but to such extent as such land is not available, the collector shall award monetary compensation amounting to six times the annual rental value of the land acquired, calculated at

the rates prescribed for statutory tenants in sub-section (3) (b) or sub-section (4) of section 59. Such compensation shall be in addition to the amount of compensation, if any, due for improvements.

This section is similar to s. 30-A of the Oudh Rent (Amendment) Act of 1921.

The collector cannot delegate his power under this section, 9 L. R. Rev. 229 ; but he can refer it to his subordinates for enquiry.

If suitable land is not available for compensation in the village, the Zemindar's *khudkasht* in a neighbouring village can be given. 9 L. R. Rev. 166.

41. (1) A landlord or a permanent tenure-holder may apply to the collector to acquire for him land held by a statutory tenant or the heir of a statutory tenant for any of the following purposes, namely, —

Acquisition of land by landlord or permanent tenure-holder from his statutory tenant or heir of a statutory tenant.

- (a) for agricultural development including farming on improved lines, dairy farms, poultry farms, stock-breeding, horticulture or any similar purpose ;
- (b) for his own cultivation ;
- (c) for groves ;
- (d) for planting trees ;
- (e) for building houses, out-houses for the landlord or other buildings necessary for the management or development of the estate ;
- (f) for the erection of houses for tenants and labourers ;
- (g) for sites for hamlets or markets ;
- (h) for opening or working a limestone, brick-earth, kan-kar, or other mineral quarry, or a clay, sand or gravel-pit, or for the construction of any works or buildings used in connexion therewith ;
- (i) for mills or factories for industrial purposes ;
- (j) for making any water-course, reservoir or canal ;
- (k) for making any road, railway or tramway ;
- (l) for any educational, religious or charitable purpose.

(2) The collector shall, if he is satisfied that reasonable grounds exist, order the acquisition of the land applied for or part thereof, and shall at the same time award to the tenant the compensation to which he is entitled under sub-section (3) of this section, and shall thereupon order the ejection of the tenant from the land acquired :

Provided that acquisition shall not be ordered for the purposes specified in (c) or (d) of sub-section (1) of this section, when suitable land not included in any holding is available.

(3) The collector, before passing an order of ejection under sub-section, (2) of this section, shall award to the tenant monetary compensation which shall not exceed four times the annual rental value of the land acquired, estimated at the rates prescribed for statutory tenants in sub-section (3) (b) or sub-section (4) of section 59. Such

compensation shall be in addition to the amount of compensation, if any, due for improvements.

For rules of Procedure relating to applications under s. 40 and 41 refer to notification no. 4976 1 A—455, 1927 dated 15-12-27, 1927 Gazette Part F, Page 1571.

Rights of a tenant whose land has been acquired under section 40 or section 41.

42. (1) When a tenant has been ejected under section 40 or section 41, he shall be entitled —

- (a) to a reduction of rent to be determined by the collector proportionate to the rental value of the land acquired,
 - (b) to retain the remainder of the holding, if any, with the same right as before,
 - (c) to be reinstated in the land acquired in the circumstances and on the conditions specified in sub-sections (2) and (3) of this section.
- (2) If the person for whom the land was acquired—
- (a) does not within two years from the date of ejection of the tenant use it for the purpose for which it was acquired, or
 - (b) within the said period of two years uses it for any other purpose, or
 - (c) in the case of land acquired for any of the purposes specified in (a), (b), (c) or (d) of sub-section (1) of section 41, lets the land to another person within six years of the date of the ejection of the tenant,

the dispossessed tenant may apply to the collector—

- in case (a) of this sub section, on the expiry of the period of two years,
- in case (b) of this sub-section, as soon as the land is used for any other purpose,
- in case (c) of this sub-section, as soon as the land is let to another person,

to reinstate him in the land from which he was dispossessed :

Provided that he has not been admitted by the person for whom the land was acquired to the occupation of other land under any written agreement, whereby he has waived his right under this sub-section.

(3) The collector on receiving an application under sub-section (2) of this section shall, if the conditions specified in (a), (b) or (c) of sub-section (2) of this section are fulfilled, reinstate the dispossessed tenant in the land acquired with the same rights and at the same rate of rent as at the date of his dispossession, on condition that such tenant restores to the person for whom the land was acquired the land or money or both awarded to him by way of compensation :

Provided that, so far as such compensation was money, the tenant shall be entitled to deduct by way of compensation for dispossession such amount as the collector may determine :

Provided, further, that the amount so deducted shall not exceed the annual rent payable on the land acquired for each year of the period of dispossession.

For procedure relating to application made under this section refer to the notification referred to in the note on s. 41.

CHAPTER V.

DETERMINATION, ENHANCEMENT AND ABATEMENT OF RENT.

General.

43. A tenant on being admitted to the occupation of land is liable to pay such rent as may be agreed upon between him and his landholder.

Corresponds to s. 33 of the old Act.

44. A person taking or retaining possession of a plot or plots of land without the consent of the landholder and in contravention of the provisions of this Act shall be liable to ejection on the suit of the landholder and also to pay damages which may extend to four times the annual rental value at the rates applicable to statutory tenants under section 59.

This section is an improvement upon s. 34 of the old Act. Under the repealed Act, the remedy given was the agreement and rent; while in this Act, the land-holder is entitled to eject the tenant and receive damages from him. Now the land-holder can claim damages even for an act of trespass, though the trespasser has not cultivated the land. IV U. D. 617.

Taking possession.—Include cases of encroachments made by tenant. II U. D. 420.

Retaining possession.—Cover cases of possession by tenants after the expiry of their leases and by sub-tenants whose interests have been extinguished with the extinction of the interest of their tenants-in-chief. II U. D. 53.

The land-holder may treat the trespasser as his tenant and sue him as such. 9 A. L. J. 776.

Consent will not be presumed.—From the knowledge of the land-holder for any period, however, long; B. R. 15 of 1919; from the length of possession by the trespasser. VI U. D. 48.

Jurisdiction.—Under this section Civil and Revenue Courts have got concurrent jurisdiction. When only tenant's rights are involved, the Revenue Court has got exclusive jurisdiction. 2 Rev. and Cri. L. J. 105. And where there is a question of *bona fide* title, the Civil Courts have got exclusive jurisdiction. II U. D. 696.

45. Whenever any person has been admitted to the occupation of land, or permitted to retain possession of land, by any one having a right to admit or permit him with the intention that a contract of tenancy should thereby be effected, but without any rent being fixed, either he or the person so admitting or permitting him may at any time during the period of his occupation or within three years after the expiry of such period sue to have rent fixed thereon.

This section is new and makes provision for the fixation of rent by a Court which could not be done under the provisions of s. 95 of the old Act.

46. In a suit under section 45 the rent shall be decreed at the rate payable in the previous year, or if no rent was payable in the previous year, at the appropriate rate specified in section 59.

Method of fixing rent in suit under section 45.

Rent recorded under s. 43 of the Land Revenue Act shall be presumed to be the rent payable in the previous year; II U. D. 63.

47. The rent or rate of rent payable by a tenant shall be presumed to be the rent or rate of rent previously payable to rent. by him until a registered agreement, or a decree or order of a court, is proved varying the same.

Presumption as to rent.

In B. R. 6 of 1919 it was held that any variation of rent, though paid is ineffective, unless it is done by a registered instrument or by a decree or order of a court embodying the variation. 22 A. L. J. 213; 46 All. 316.

48. A tenant from whom any sum or produce is exacted by his landholder in excess of the amount recoverable from him as an arrear of rent under this Act, or any other enactment for the time being in force, shall be entitled to recover from the landholder such compensation not exceeding double the amount, or double the value of the produce, so exacted, as the court thinks fit to decree, in addition to the amount or value of the produce so exacted.

Compensation for rent exacted in excess.

49. When a court has to determine the rent of a tenant, if it is proved that by local custom or practice—

Consideration of caste and class of tenant in fixing rent.

- (a) caste is taken into account in determining the rent payable by tenants, or
- (b) any class of persons hold land on favourable rates of rent,

the rent shall be fixed with reference to such custom or practice but in no case at an amount less than the revenue payable in respect of his holding, with an addition of twenty per cent. thereon.

The tenant should prove the custom. 2 L. R. 72.

The fact that some of the landholder's relative hold the land at favourable rates will be no ground to entitle a cultivator to the same privilege, though he may be related to him in the same degree. 3 Agra 203.

The fact of his belonging to the privileged class must be claimed in the written statement. III U. D. 454.

Enhancement and abatement of rent.

50. (1) The rent of a fixed-rate tenant, an ex proprietary tenant, an occupancy tenant, a statutory tenant or an heir of a statutory tenant may be enhanced or abated only—

Method of enhancement or abatement.

- (a) by registered agreement, or
- (b) by decree or order of a revenue court.

(2) The rent of such tenant shall not be enhanced by more than one-fourth of his existing rent subject to the condition that the rent fixed shall in no case be less than half the annual rental value at the circle or village rates which are applicable under clause 59 to that class of tenant.

This sub-section shall not apply to decrees or orders of a revenue court for enhancement of rent on account of an increase in area.

Unregistered agreement will not be enforced. IV U. D. 817.

Grounds of enhancement and abatement.

51. The rent of a fixed-rate tenant shall be liable to enhancement only on the ground that the area of the land in such tenant's holding has been increased by alluvion or by the tenant's encroachment.

52. The rent of a fixed-rate tenant shall be liable to abatement only on the ground that the area of the land in his holding has been diminished by diluvion or by the taking up of land for a public purpose or for a work of public utility.

In a suit for rent, the fixed-rate tenant cannot plead that his rent has abated by diluvion according to local custom. 13 A. W. N. 99.

The tenant acquires the same right over the accreted land as he had over the original holding. II U. D. 523.

Encroachments on land of a third person will make the tenant liable for the enhanced rent, 10 Cal. 820; and on the land of the land-holder should be with the knowledge of the landholder to establish the plea of adverse possession; 13 C. W. N. 136.

Alluvial.—Gradual accretion by river action. 12 I. A. 136; S. D. 11 of 1918.

53. Except as otherwise provided in the Northern India Canal and Drainage Act,* 1873, or any other enactment for the time being in force, the rent of an ex-proprietary, occupancy or statutory tenant or heir of a statutory tenant shall be liable to enhancement on one or more of the following grounds and on no others:—

- (a) that the rent paid by such tenant, if an ex-proprietary tenant, is at a rate more than two annas in the rupee below the fair and equitable rate payable by occupancy tenants for land of the same class or classes of soil; if an occupancy tenant, is less than the fair and equitable rate payable by occupancy tenants for land of the same class or classes of soil; or if a statutory tenant or an heir of a statutory tenant, is less than the fair and equitable rate payable by statutory tenants for land of the same class or classes of soil; the fair and equitable rates referred to above shall be the rates specified in section 59;
- (b) that the productive powers of the land held by the tenant have been increased by fluvial action or by an improvement effected during the currency of the present rent otherwise than by the agency or at the expense of the tenant;
- (c) that the area of the tenant's holding has been increased by alluvion or by the tenant's encroachments; or

* See *infra*.

- (d) that there has been a rise in the average local prices of staple food crops during the currency of the present rent.

54. Except as otherwise provided in the Northern India Canal and Grounds of Drainage Act,* 1873, or any other enactment for the time being in force, the rent of an ex-proprietary, occupancy or statutory tenant or of an heir of a statutory tenant shall be liable to abatement on one or more of the following grounds and no others:—

- (a) that there has been a fall in the average local prices of staple food crops during the currency of the present rent ;
- (b) that the productive powers of the land held by the tenant have been decreased by any cause beyond his control during the currency of the present rent ; or
- (c) that the area of his holding has been decreased by dilution or by the taking up of land for a public purpose or for a work of public utility.

One or more grounds.—Under the repealed Act, the suit could be brought only on one ground, but now the landholder is allowed to sue on one or more grounds. But if he elects to sue on one ground alone, he will not be allowed to base his claim on other grounds. 14 W. R. 60.

(a) **Land of the same class or classes of soil.**—Have been used for “land of similar quality.”

The exemplars should be chosen by the court and not by the patwari. II U. D. 419.

Fair and equitable rate.—See s. 59 and rulings cited in 21 Cal. 986 and 9 W. R. 83.

(b) **Increases in productive power.**—

(1) If due to the agency and expenses of the tenant will be no ground for enhancement of rent, 4 N. W. P. 138.

The tenant will be entitled for compensation for improvement. III U. D. 150.

(2) Should be of permanent character, due to the natural agencies or to the improvement made by the Government or the landholder and must exist at the date of the suit. 7 W. R. 235, 22 W. R. 350, Marsh 998, 1 N. W. P. respectively 178.

Decrease in productive power.—Should not be due to the negligence of the tenant himself. 11 W. R. 291.

Prices of abnormal years should not be counted for purposes of alteration in rent, VII U. D. 24.

Rules framed under s. 203 of the Act of 1901 for the guidance of courts in cases of enhancement claimed on the ground of rise in prices are to be found in U. P. Gazette Part I P. 1329 date 9th December, 1922.

Fixing of roster years.

55. A roster year is an agricultural year fixed by the local Government in respect of any district or other local area for the determination of fair and equitable rates of rent

* See *infra*.

for the purpose of suits for enhancement and abatement of the rents of fixed rate tenants, ex-proprietary tenants, occupancy tenants, statutory tenants and heirs of statutory tenants.

56. (1) The local Government shall, as soon as may be after the commencement of this Act, fix by notification in the **Fixing of roster years.** **gazette** a roster year for every district or other local area to which this Act applies :

Provided that the local Government may, in its discretion, fix different roster years for different portions of a district.

(2) In every local area in which the settlement of the revenue is liable to periodical revision the local Government shall, as soon as may be after each revision of the settlement, fix by notification in the **gazette** a fresh roster year.

(3) Every roster year fixed under sub-section (1) and sub-section (2) for an area in which the settlement of the revenue is liable to periodical revision shall be so fixed that the last roster year during the term of the settlement shall coincide, as nearly as conveniently may be, with the last year of such term.

(4) The interval between two roster years in the same tract shall be twenty years.

Fixing of rent-rates and their effect.

57. (1) In every roster year the local Government shall appoint **Procedure of one or more officers with powers not less than those special officer in of an assistant collector of the first class as special fixing rent-rates.** **officer or officers to propose fair and equitable standard rates for occupancy tenants and, if necessary, fair and equitable circle rates for statutory tenants also :**

Provided that for any cogent reason, such as a calamity seriously affecting a local area, or an insufficiency of officers qualified for the purpose, the local Government may postpone the appointment of a special officer until the year next following the roster year :

Provided also that if a local area is under settlement, the settlement officer or assistant settlement officer shall perform the duties of the special officer appointed under this sub-section :

Provided also that the special officer or officers may be empowered by the local Government to decide suits for enhancement, abatement or commutation of rent.

(2) If the local area has been divided into circles by a settlement officer or an assistant settlement officer, the special officer shall propose such rates for each such circle and for each separate class of soil demarcated by the settlement officer or the assistant settlement officer, unless with the previous sanction of the Board the circle and classification of soils are revised.

Explanation.—Every circle and soil-classification made before the commencement of this Act with the approval of the Board by the assistant collector in respect of any local area in the Benares district shall be deemed for the purpose of sub-section (2) to have been made by a settlement officer.

(3) If no soil-classification has previously been made by a settlement officer or an assistant settlement officer, the special officer shall make circles and classify the soils in the manner prescribed for settlement officers by rules made under the United Provinces Land Revenue Act,* 1901, and shall propose rates for each class of soil in each circle; and the circles and classification of soil so made shall, when confirmed or as modified under section 58, be thereafter deemed for the purposes of this Act to have been made by a settlement officer.

(4) The rates proposed by the special officer for statutory tenants shall be based on genuine, adequate and stable rents which are paid by substantial tenants who depend for their livelihood on the produce of their holdings and can be paid without hardship over a series of years, due regard being had to movements in prices and rents and the letting value of land.

(5) In proposing rates for occupancy tenants the special officer shall have regard not only to the movements in prices and rents and the letting value of land but also to the existing level of occupancy rents, distinguishing between holdings of old and those of recent standing.

(6) The special officer shall record with reference to section 49 the extent to which caste is taken into account in determining the rent payable by tenants and the extent to which any class of persons holds on favourable rates of rent, whether for the local area as a whole or for particular villages or mahals comprised in it.

(7) The special officer shall also record for each village whether the fair and equitable rates proposed by him are applicable without modification, or to what extent they require modification either for the village as a whole or for a specified area or class of soil within it.

58. (1) The special officer shall publish, in such manner as may be prescribed, the proposals and records made by him under section 57 and shall receive and consider any objections which may be made to them.

Publication of proposals and records prepared under section 57 and submission to Board for confirmation.

(2) When such objections, if any, have been considered and disposed of according to the prescribed procedure, the special officer shall submit the proposals and records made by him after such modification, if any, as he may think fit to the Board or, if the local Government so directs in the case of a specified district or other local area, to the commissioner, who after such further inquiry, if any, as may be directed under sub-section (3) shall either confirm or modify the new or revised circles and soil-classification, if any, and the proposed rates and other matters recorded under section 57.

(3) On receipt of the proposals and records submitted by a special officer under sub-section (2) the Board or the commissioner may direct further inquiry into any of the matters contained therein.

59. (1) The rates and records confirmed or modified under section 58 shall be deemed to be sanctioned rates and records until the next roster year or until the local area is brought under settlement and rent-rates selected by

Provision regarding sanctioned rates.

* See *infra*.

the settlement officer have been sanctioned by the Board under section 63 of the United Provinces Land Revenue Act,* 1901.

(2) The rent-rates for occupancy tenants sanctioned by the Board either before or after the commencement of this Act under section 63 of the United Provinces Land Revenue Act,* 1901, for the purposes of a settlement in a local area shall be deemed to be sanctioned rates for the purposes of this Act until the commencement of the first roster year occurring after the settlement came or comes into force :

Provided that, if the settlement came into force before the commencement of this Act, such rates shall not be deemed to be sanctioned rates for the purposes of any suit instituted more than ten years after the settlement came into force.

Explanation.—The sanction of the rent-rates referred to in this sub-section shall be deemed to include sanction of the findings and the recorded opinions, if any, of the settlement officer or assistant settlement officer, in respect of any of the matters referred to in clauses (6) and (7) of section 57, subject to any modification made by the Board or the commissioner.

(3) (a) If the rent-rates referred to in sub-section (2) do not distinguish between occupancy and non-occupancy or statutory tenants, such rates shall be deemed to have been sanctioned for occupancy tenants.

(b) If the rent-rates referred to in sub-section (2) distinguish between occupancy and non-occupancy or statutory tenants, the rates sanctioned for either non-occupancy or statutory tenants shall be deemed to have been sanctioned for statutory tenants and for the heirs of statutory tenants.

(4) In every suit or proceeding in which a court has to determine the fair and equitable rate of rent payable by a tenant, and there are no rent-rates which shall be deemed to be the sanctioned rates under sub-sections (1) to (3) of this section, the court shall determine such rate after local inspection at the rate generally payable by tenants of the same class for land of the same class or classes of soil.

Suits for enhancement, abatement or commutation of rent.

60. An occupancy tenant or an ex-proprietary tenant or a statutory tenant or the heir of a statutory tenant whose rent has heretofore been paid in kind, or on the estimated value of a portion of the crop, or by rates varying with the crop, or partly in one of such ways and partly in another or other of such ways, or the landholder of such tenant may sue for the commutation of such rent to a fixed money rent.

The suit is triable by the Assistant Collector in charge of a division and is appealable to the Commissioner.

61. (1) Any suit for enhancement, abatement or commutation of rent may be instituted in any year not earlier than the first day of July nor later than the thirtieth day of September.

* See *infra*.

(2) Notwithstanding anything in this section, while a local area is under settlement, no suits for enhancement, abatement or commutation of rent shall be maintainable under this Act until the time for making applications to the settlement officer under section 87 of the United Provinces Land Revenue Act,* 1901, has passed.

(3) If a special officer has been appointed to a district or local area for the determination of fair and equitable rates and has been empowered under section 57 to decide suits for enhancement, abatement or commutation of rent, such suits may be instituted in his court within such period as may be fixed by him with the sanction of the Board.

For procedure.—Refer to Gazette of 19th April, 1902 P. 252.

62 (1) A suit for enhancement, abatement or commutation of rent may be instituted against or by any number of jointers of tenants in suits relating to enhancement, etc. ex-proprietary, occupancy or statutory tenants or heirs of statutory tenants collectively:

Provided that all such tenants or tenants of the same landholder, and all the holdings in respect of which the suit is instituted are situated in the same mahal and village.

(2) No decree shall be passed in any such suit affecting the interests of any person, unless the court is satisfied that he has had an opportunity of appearing and being heard.

(3) The decree shall specify the extent to which each of the tenants is affected thereby.

In an undivided mahal, all the co-sharers should sue or be sued, in the absence of local custom allowing any one to sue in his own right. 1 N. W. P. 244.

The owner of one of the estates formerly incorporated in one entire estate can sue for enhancement without joining others. 26 Cal. 832.

63. In decreeing an enhancement of the rent of an ex-proprietary, Progressive en- occupancy or statutory tenant or heir of a statutory habement. tenant, if the enhancement is not less than one-fourth of the rent, and if the court considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the tenant, the court may direct that the enhancement shall take effect by yearly increments extending over any number of years not exceeding three.

Progressive enhancement not prescribed in a decree of enhancement, the injured can file a revision in Board. B. R. 4 of 1907.

64. (1) In all suits for enhancement or commutation of rent the court shall determine the rents in accordance with Matters to be considered in suits for enhancement or commutation. the sanctioned rates and records, unless for special reasons to be recorded the court sees reason to depart from them.

(2) In suits for commutation of rent the court shall also consider any plea to the effect that commutation is undesirable in view of the exceptional liability of the holding to damage by wild animals, flooding or like cause, or exceptional fluctuations in the portion of the

* See *infra*.

holding, actually cultivated or its produce, and may dismiss the suit on such ground.

65. In suits for abatement of rent on the grounds mentioned in section 54 (b) and (c), the court shall ordinarily decree the abatement with reference to the existing rent and the extent of the decrease in the productive powers or the area of the holding :

Provided that, notwithstanding anything in the section, the rent so fixed by abatement shall not be less than the valuation of the holding made at assessment of the revenue for the purpose of calculating the assets.

66. (1) Every decree or registered agreement for enhancement of rent shall take effect from the commencement of the agricultural year next following that in which the suit was instituted or the agreement was registered :

Provided that where under the provisions of this Act such rent is not liable to enhancement till the end of a period which expires subsequently to the commencement of such next following agricultural year, the decree or agreement, shall take effect from the commencement of the agricultural year in which the rent will be liable to enhancement.

(2) Every decree or registered agreement for abatement of rent shall take effect from the commencement of the agricultural year in which the suit was instituted or the agreement made, unless in the case of a decree the court for some reason to be recorded directs, or unless in the case of a registered agreement the agreement provides that it shall take effect from some later date.

Decree modified by a court of appeal.—Enhancement will take effect from the 1st July following the order of the appellate court. IV U. D. 468.

67. (1) Except as otherwise provided in the Northern India Canal and Drainage Act,* 1873, when the rent of a tenant of the classes mentioned in sub-section (1) of section 50 has been agreed upon, fixed, enhanced or abated under this Act or the Agra Tenancy Act, 1901, or the United Provinces Land Revenue Act,* 1901, it shall not be liable to enhancement or abatement until or unless—

- (a) a period of twenty years, or such longer period as may have been agreed on, decreed or ordered has elapsed ; or
- (b) the period of the settlement of the local area in which the mahal is situated has come to an end ; or
- (c) the area of the tenant's holding has been increased by alluvion or encroachment or diminished by diluvion or encroachment or by the taking up of land for a public purpose during the currency of the present rent ; or
- (d) the productive powers of the land held by the tenant have been increased by an improvement effected otherwise than by the agency or at the expense of the tenant

* See *infra*.

or diminished by any cause beyond his control, as the case may be, during the currency of the present rent.

(2) Where the rent has been varied merely on the ground of an increase or decrease in area, such variation shall not be considered in computing the periods mentioned in sub-clause (1) (a) of this clause.

68. An ex-proprietary, occupancy or statutory tenant or heir of a statutory tenant who is sued for enhancement of rent may plead that he has constructed an improvement which continues to benefit his holding. In such case, if the improvement is one which the tenant was entitled to make, the court shall, in fixing the rent, make such deduction from the enhancement claimed as fairly represents in its opinion the increase in letting value due to the improvement.

Provided that in no case shall such deduction be made if the improvement was completed more than thirty years before the commencement of the suit.

Gives effect to III U. D. 150.

Non-occupancy tenants.

69. The rent of a non-occupancy tenant, not being a tenant of *str* or a sub-tenant, may be enhanced by agreement between such tenant and his landholder on the following conditions :—

- (a) the agreement for the payment of enhanced rent shall be by registered instrument or by a compromise filed in adjustment of a suit or proceeding under this Act and recorded by the court under rule 3 of Order XXIII of the Code of Civil Procedure, 1908, and
- (b) the tenant shall be entitled to hold the land at the enhanced rent for a term of not less than five years from the beginning of the year in which such enhancement takes effect.

This section reproduced s. 47 of the repealed Act with the addition of the following words: "By a compromise filed...C. P. Code." The effect of the addition of these words to the old section is to overrule the decision in 14 A. L. J. 57.

From clause (b) it follows that the tenant will not be ejected for the same period. B. R. 1 of 1905.

70. Notwithstanding anything contained in clause (b) of section 69, a suit shall lie—

Enhancement and abatement of rent of non-occupancy tenant by suit.

(a) for the enhancement of the rent of a non-occupancy tenant—

- (i) on any of the grounds specified in clauses (b) and (c) of section 53 in respect of the enhancement of the rent of an occupancy tenant, or
- (ii) as provided in section 12 of the Northern India Canal and Drainage Act,* 1873, and

* See *infra*.

- (b) for the abatement of the rent of a non-occupancy tenant—
- (i) on a ground specified in clause (b) of section 54 for the abatement of the rent of an occupancy tenant, or
 - (ii) as provided in section 11 of the Northern India Canal and Drainage Act,* 1873.

Exceptional provisions.

71. Notwithstanding anything hereinbefore contained, any lease granted or engagement entered into by any landlord fixing the rent of land for any period exceeding the term for which his revenue has been settled shall be voidable on the expiry of the settlement —

Variation of rent under lease for period exceeding term of landlord's engagement.

- (a) at the option of the landlord when the revenue payable in respect of such land is enhanced, unless the tenant agrees to pay such rent as the court may, at the suit of the landlord, decree in proportion to the enhanced revenue, and
- (b) at the option of the tenant when such revenue is reduced, unless the landlord agrees to accept such rent as the court may, at the suit of the tenant decree in proportion to the reduced revenue.

This section reproduces s. 49 of the repealed Act.

This section applies to all *qabuliats* including those fixing rent in perpetuity; III U. D. 116; but does not apply to Revenue free mahals. B. R. 2 of 1925.

The court may pass a decree for enhancement of rent which, though equitable, may not be in proportion to the enhanced rent. II U. D. 189.

72. (1) Notwithstanding anything hereinbefore contained, if it appears to a court making a decree in a suit for arrears of rent that the area of the holding was so decreased by diluvion or otherwise, or that the produce thereof was so diminished by drought, hail, deposit of sand or other like calamity during the period for which the arrears is claimed that the full amount of rent payable by the tenant for that period cannot be equitably decreed, the court may, with the sanction of the collector, allow such remission from the rent payable by the tenant for that period as may appear to it to be just.

Remission of rent by court decreeing arrears.

(2) An order of the collector under sub-section (1), giving or refusing sanction to a remission of rent, shall not be questioned in any civil or revenue court.

(3) Nothing in this section shall be deemed to authorize any remission in the rent payable by a permanent tenure-holder, fixed-rate tenant, or thekadar.

(4) No remission made under the provisions of this section shall be deemed to vary the rent payable by the tenant otherwise than for the period in respect of which such remission was made.

(5) When remission of rent in accordance with the provisions of this section is granted, the revenue authorities shall on the report

* See *infra*.

of the court grant a remission of revenue in proportion to the rent remitted for the corresponding area belonging to the same landlord :

Provided that nothing in this sub-section shall affect tracts assessable to quinquennial land revenue.

(6) The provisions of this section shall not apply to remissions of rent claimed in alluvial tracts under any local custom providing for such remissions in holdings, the culturable area of which has been decreased by diluvion, deposit of sand, or the like causes.

Remission of rent of a tenant of Revenue free village cannot be questioned in any Civil or Revenue Court. S. A. 102 of 1911.

73. (1) When for any cause the local Government, or any authority empowered by it in this behalf, remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, whether such revenue is payable to an assignee or to the Government, a collector, or, if so empowered by the local Government, an assistant collector of the first class, may order that the rents of the tenants holding such land or any portion thereof, mediately or immediately from the landlord, shall be remitted or suspended for the period of such remission or suspension of payment of revenue, to an amount which shall bear the same proportion to the whole of the rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land.

(2) Remission or suspension of the rent of land, the revenue whereof has either wholly or in part been released, compounded for, or redeemed, may be ordered by such authority and in accordance with such scale as the local Government may by rule direct.

(3) In this section the word "tenant" includes a thekadar.

Sub-section (3) destroys the effect of the rulings cited in 1 I. C. 529 and 2 I. C. 629.

Finality of order under the preceding section.

74. (1) An order passed under sub-section (1) or sub-section (2) of section 73 shall not be questioned in any civil or revenue court.

(2) A suit shall not lie for the recovery of any rent of which the payment has been remitted in accordance with the provisions of section 73, or, during the period of suspension, of any rent of which the payment has been suspended in accordance with the provisions of section 73.

Period of suspension to be excluded in computing period of limitation.

75. When the payment of rent has been suspended in accordance with the provisions of section 73, the period during which the suspension has continued shall be excluded in the computation of the period of limitation prescribed for a suit for the recovery of the rent.

76. If a landlord or other landholder collects any rent of which the payment has been remitted in accordance with the provisions of section 73, or before the expiration of the period of suspension collects any rent of which the payment has been suspended in accordance with the provisions of section 73, the whole of the revenue or rent, as the

Penalty for collecting rent remitted or suspended under section 73.

case may be, remitted or suspended in his favour, shall become immediately payable by him.

This section does not prohibit a landholder from receiving rent, if tendered or realising it by lawful means. The only effect is to deprive him of his right to bring a suit for the same. 13 A. L. J. 619.

CHAPTER VI.

EJECTMENT, SURRENDER AND ABANDONMENT.

Ejectment.

General restrictions on ejectment

Ejectment to be according to law. 77. No tenant shall be ejected otherwise than in accordance with the provisions of this Act.

The provisions of this chapter are applicable only to those cases where tenancy exists. 2. A. L. J. 160.

Improvements. 78. (1) No decree or order for the ejectment of a tenant shall be passed or enforced until any claim duly made by him on account of improvements has been investigated, and the court has recorded a finding as to the amount of compensation (if any) payable to the tenant on that account.

(2) If the compensation exceeds the amount recoverable from the tenant as arrears of rent, whether decreed or not, on account of the holding, together with costs (if any), the decree or order for ejectment shall be conditional on the payment by the landholder of the balance due to the tenant within such time as the court may direct.

(3) If the compensation does not exceed the amount recoverable from the tenant as above specified, the suit or application for ejectment shall be decided irrespective of such compensation, but the tenant shall be entitled to set off the compensation found to be due to him against any claim for arrears of rent, including costs (if any), made against him by the landholder.

(4) If the court to which a claim under sub-section (1) is made is the court of an assistant collector of the second class, he shall forward the proceedings to the assistant collector in charge of the sub-division who shall dispose of the case as if it had been instituted before himself.

(5) In this section the word "tenant" includes a thekadar.

Clause (2). Ejectment order will be cancelled in case of default in payment. III U. D. 166.

A trespasser cannot claim compensation under this section. IV U. D. 302.

Ejectment for arrears of rent.

Ejectment under a decree for arrears of rent. 79. A decree for arrears of rent against a tenant other than a permanent tenure-holder or fixed-rate tenant may, in addition to any other mode of execution, be executed by the ejectment of the tenant from the holding in respect of which the decree was passed.

Arrears of rent are no ground for ejectment, 45 A. 5; there must be a decree for arrears. B. R. 6 of 1921.

Canal dues do not constitute decree for arrears of rent. 8 R. and Cri. L. J. 17.

80. (1) On an application being made for the ejection of a tenant under section 79, the court shall issue notice to the tenant stating the amount for which he is liable to ejection, and requiring him to pay the amount into court within fifteen days of the service of the notice or to show cause why he should not be ejected from his holding :

Provided that notwithstanding anything contained in section 264 no such notice shall be served through the post.

(2) Unless within fifteen days of the service of the notice or such further time as may be allowed under sub-section (3) either—

(a) the tenant pays the amount or payment thereof is certified to the Court in accordance with rule 2 of Order XXI of the Code of Civil Procedure, 1908, or

(b) the tenant establishes that he is not liable to ejection, the court shall order his ejection.

(3) The court may for reasons to be recorded extend the time for payment :

Provided that except with the consent of the landholder (a) not more than three such extensions shall be allowed, and (b) the total period allowed for payment shall not exceed six months from the date of service of the notice.

Notice.—Must be clear and explicit, II U. D. 72. (2) must state that 15 days are to run from the date of the service of the notice. 1 U. D. 85.

Service by affixation.—(1) If made without due diligence will not be treated sufficient, III U. D. 322, 1 U. D. 42. (2) when the person was absent from the village and his whereabouts could not be known for years, was held sufficient. V U. D. 346.

Cl. (2).—**Payment.**—If not certified, was held invalid, S. D. 3 of 1923.

Cl. (3).—**Extension of time.**—Will not be made after the order of ejection has been passed. VI U. D. 301 ; was made on ground of illness. II U. D. 268.

81. (1) A landholder may apply to the tahsildar for the issue of a notice to his tenant other than a permanent tenure holder or a fixed-rate tenant for payment of arrears of rent and for his ejection in case of default ; and the tahsildar shall then issue such notice.

(2) The notice shall be filed in triplicate and specify the name of the village and mahal, the number of the holding, the rent and the amount of the arrear, and shall require the tenant either to pay the arrear into the court of the tahsildar within thirty days of the date of service of the notice or to contest the claim in the same court.

(3) If the tenant does not contest the claim the tahsildar shall, subject to the provisions of sub-section (4), order his ejection.

(4) If the tenant applies to the tahsildar to extend the time for payment, he may do so for reasons to be recorded :

Provided that, except with the consent of the landholder,—

(a) not more than three such extensions shall be allowed, and

(b) the total period allowed for payment shall not exceed six months from the date of service of the notice.

(5) If the tenant contests the claim, the application for issue of notice shall be deemed to be a suit for arrears of rent on payment of the proper court-fee. If the arrear claimed does not exceed Rs. 200, the tahsildar shall, subject to the provisions of section 78 (4), decide the suit; if the arrear claimed exceeds Rs 200, the tahsildar shall forward the suit to the court of the assistant collector in charge of the sub-division who shall decide it.

For rules of procedure relating to applications under this section see Notification No. 205 Judl. 384 B. dated 14th Feb. 1928.

Ejectment by suit.

82. (1) If a tenant (a) transfers his holding or any portion thereof of contrary to sub-section (1) of section 34, or (b) makes ejectment for a sub-lease of his holding or of any portion thereof illegal transfer. which is voidable under sub-section (2) of section 34, both he and any person who may have obtained possession of the whole or any portion of the holding in pursuance of any such attempted illegal transfer, or under any such voidable sub-lease, shall be liable to ejectment at the suit of the landholder :

Provided that no order for ejectment shall be passed in case (b) unless the sub-tenant is in possession at the time the suit is brought.

(2) To every suit under this section both the tenant and the sub-tenant or the person in whose favour the illegal transfer purports to have been made shall be made parties :

Provided that in the case of a voidable sub-lease the landholder shall not be bound to claim any relief against the sub-tenant.

Sub-tenant's tenant.—In a suit for ejecting a tenant sub-tenant should be impleaded. 30 I. C. 795.

Proforma Defendants.—If found interested in the land may be ejected. 31 I. C. 864.

The section is not retrospective and so the time-barred cases of the old Act cannot be revived under the section unless a fresh cause of action arises in this Act. R. C. 1927, 402.

83. In a suit for ejectment under section 82 if the plaintiff succeeds **Decree in suit** the court may in its discretion pass a decree for the **under section 82.** ejectment of the tenant from the entire holding or such portion of it as is actually transferred or sub-let at the date of the institution of the suit, notwithstanding that the plaintiff may have sued for his ejectment from the entire holding :

Provided that, in the case of a voidable sub-lease, for special reasons, which must be recorded in writing, the court may pass a decree permitting the tenant (not being a sub-tenant) to apply in the same proceeding within a time not exceeding one month from the date of the decree, for the ejectment of the person in whose favour the voidable sub-lease has been made, and directing that if the tenant so applies and if he ejects such person and resumes occupation of the land within such further time as the court, either in its decree or by means of a subsequent order, may fix, the decree shall not be executed against the tenant except in respect of costs. In such case the decree shall direct that if the tenant either fails to apply for the ejectment of such person

within the time fixed in this behalf, or fails to resume occupation of the land within the further time allowed by the court for that purpose, the tenant shall be ejected either from the entire holding or from such portion as the court may direct, as the case may be.

Where the landholder seeks to eject a tenant from the entire holding which is subject to an unauthorized lease or illegal transfer, the court has no discretion to confine its decree to a part only. II U. D. 446.

If the transferee or sub-lessee does not exist at the date of suit, this section will not apply. II U. D. 596.

The tenant who has once received the benefit under s. 83, will not be entitled to the benefit a second time on his immediately subletting the holding again. V U. D. 121.

Ejectment for detrimental act or breach of condition of tenure.

84. (1) A tenant, not being a permanent tenureholder or a fixed-rate tenant, shall be liable to ejectment from his holding on the suit of the landholder—

- (a) on the ground of any act or omission detrimental to the land in that holding, or inconsistent with the purpose for which it was let;
- (b) on the ground that he or any person holding from him has broken a condition, not inconsistent with the provisions of this Act, on breach of which he is by special contract with his landholder liable to be ejected:

Provided that the use of a holding for the purpose of grazing or of raising stock (including horses) or the construction of enclosures suitable for stock raising shall not constitute a ground for ejectment under clause (a).

(2) In any suit for ejectment under this section any person claiming through the tenant may be joined as a party, and where the plaintiff's cause of action is based wholly or partly on any act or omission or breach of condition by a sub-lessee or other transferee such sub-lessee or other transferee shall be joined as a party.

Detrimental Act.—An act detrimental to the land or inconsistent with the purpose for which it was let, depends upon the circumstances of the case. 34 Cal. 718 P. C.

Acts of Waste.—(1) Turning arable land into a brick-field, 13 A. L. J. 302 (2) Planting of trees or converting agricultural land into an orchard, 24 Cal. 160, (3) Hut for agricultural purpose, converted into a pucca mosque. 8 I. C. 732, 4. Cutting down trees. 7 A. W. N. 30.

Not Acts of Waste.—(1) change of crops cultivated (2) use of water of a well on a holding for irrigation of other lands of the tenant. VI U. D. H. C. 429.

Building on a small portion, ejectment from that portion only. S. D. 4 of 1914; II U. D. 527, IV U. D. 591. But the Allahabad High Court held in 13 A. L. J. 302 that the tenant should be ejected from the whole portion of the holding.

Breach of Condition.—Which would secure advantage to the Zemindar even in form of rent is not within cl. b) of this section. 3 A. L. J. 319.

85. (1) A decree for ejectment under section 84 may direct the Decree in suit ejectment of the tenant either from the holding or under section 84. from such portion thereof as the court, having regard to all the circumstances of the case, may direct.

(2) Such decree may further direct that if the tenant repairs the damage, or pays such compensation as the court thinks fit within one month from the date of the decree, or such further time as the court may, for reasons to be recorded, allow, the decree shall not be executed except in respect of costs.

(3) Notwithstanding anything contained in this section, a landholder may, in addition to, or in lieu of suing for ejection, sue—

(a) for compensation, or

(b) for an injunction with or without compensation, or

(c) for the repair of the damage or waste, with or without compensation.

This section corresponds to s. 65 of the repealed Act except that under this section, a court may also order the ejection from such portion of the holding as the circumstances of the case require. IX U. D. 3.

Ejection by notice on application to the court.

86. (1) A non-occupancy tenant holding from year to year or under a lease, or for a period which has expired, or will expire, at or before the end of the current agricultural year, shall be liable to ejection on the application of the landholder.

(2) An heir of a statutory tenant shall, subject to the provisions of section 20 (2) on the expiry of five years from the death of the statutory tenant whom he succeeded under clause 24 or 25, be liable to ejection on the application of the landholder.

Persons who cannot be ejected.—(1) no person who is not a non-occupancy tenant can be ejected, *e.g.*, sub-tenants, cultivator from occupancy, ex-proprietary or fixed rate tenant so long as the tenancy in chief exists. (2) A person who is not a tenant cannot be ejected. B. R. 10 of 1885. (3) A landholder taking possession of his holding by wrongfully ejecting his tenant. B. R. 6 of 1912. (4) Non-occupancy tenant from land encroached upon by him. (5) Sub-tenants of a non-occupancy tenant. B. R. 8 of 1884.

Persons entitled to eject.—(1) The proprietor and not the Thekedar, whom no power is given under the Theka, can eject. II U. D. 393. But in giving notice for ejection the Thekedar must join. IV U. D. 258. (2) After the confirmation of partition by court, if it is done before, the 1st October, the co-sharer, to whom a certain land has been allotted can alone sue for ejection of its tenants. B. R. 10 of 1910. But he cannot do so before the confirmation of partition or during partition proceedings IV U. D. 379. (3) Persons to whom rent is paid can eject. II U. D. 589.

Lease.—Want of lease raises a pre-sumption of an yearly lease. Agra F. B. 15.

Agreements and orders recognized as leases under the Act.—(a) Agreement for enhancement of rent, a lease of 5 years. (b) Order under s. 74 or s. 75, a lease for seven years. (c). A decree, fixing rent of a Revenue free grantee of less than 12 years, a lease of 7 years.

The tenant will not be ejected for the period mentioned above. B. R. 1 of 1905.

For procedure : see Notification 1077, 384 Judl. B. dated 20th Dec. 1927.

87. (1) An application for the ejectment of a tenant under section 86 shall be made in the months of July, August or September accompanied by a notice in triplicate, and, except as provided below, by a certified copy of the latest *khatauni* filed in the tahsil.

Proviso I.—Provided that if the application is made within the prescribed period the court may allow the names of other persons having an interest in the tenancy, or who are for any other reason necessary parties to the proceedings, to be added after such period has expired, and the notice shall be as effectual in respect of all persons so added as if it had been filed within the prescribed period.

Proviso II.—Provided also that where the tenant has been admitted to the occupation of the holding after the period to which the *khatauni* last filed in the tahsil relates, no copy of such *khatauni* need be filed by the landholder.

Proviso III.—Provided also that the local Government may by a rule made after previous publication extend, either generally or in respect of any local area, the time within which applications under this section may be filed.

(2) Every notice under sub-section (1) shall contain the following particulars:—

- (a) the name, description and place of residence of the landholder;
- (b) the name, description and of residence of the tenant;
- (c) a description of the holding, specifying the name of the village or mahal and of the pargana or other local division in which the holding is situated, the rent of the holding, and unless the holding can be otherwise adequately described, the number of each field according to the government survey;
- (d) the ground on which ejectment is applied for;

It shall also inform the tenant—

- (e) that if he desires to dispute the ejectment he must contest the notice within thirty days of its being served on him; and
- (f) that if within thirty days of the service of the notice he appears and admits his liability to ejectment he will not be liable for any costs

The term for the making of an application under this section cannot be extended; for the section is imperative. IV U. D. 44.

Holding.—(a) Notice as to a part of the holding is bad, I U. D. 331. (b) But if the part is separately assessed to rent, it is good. B. R. 3 of 1887. (c) Non-occupancy part must be demarcated; II U. D. 482. (d) Holding belonging to three mahals jointly, the owner of one mahal cannot eject without demarcation. II U. D. 558. But if they sue simultaneously for ejectment from the entire holding, the demarcation is not necessary. B. R. 15 of 1925.

Bad notices held valid.—(1) Wrong entry of rent, not prejudicing the tenant, will not invalidate the notice. IV U. D. 333. (2) A trifling irregularity, e. g., an error in name, signature of parties, mis-statement of area, otherwise sufficiently defined, omission to state the area or entry of other

lands not held by the tenants will not invalidate the notice. 14 W. R. 474.

Joinder of names.—Proviso first gives effect to II U. D. 511, IV U. D. 44 and V U. D. 272.

Tenant is a necessary party in suit for ejection of a sub-tenant. I U. D. 21.

A person in possession of the holding under the decree of a civil court, from which an appeal has been filed, must be impleaded. II. U. D. 466.

Joinder of holdings.—A suit for different holdings or holdings contained in different mahals is bad. VI U. D. H. C. 111.

88. On an application being made in accordance with section 87, **Service of no-** one copy of the notice accompanying such application **tee.** shall on payment of the prescribed fee, be served on the tenant in the same manner as a summons issued by the court to which application is made :

Provided that notwithstanding anything contained in section 264 no such notice shall be served through the post.

In case of several co-tenants notice must be served upon all. IV U. D. 410.

89. (1) If any tenant to whom a notice is issued under section 88 appears within thirty days of the service of such **Effect of admis-** notice and admits his liability to ejection, the court **sion of liability** shall pass an order for his ejection ; but he shall **and of non-ap-** not be liable for any costs incurred by the landholder **pearance.** either under the two preceding sections or under section 90.

(2) If on the expiry of thirty days from the service of such notice the tenant has not appeared, the court shall pass an order for his ejection.

90. (1) Every application for execution of an order passed under **Execution of or-** section 89 shall be made within one month after the **der under sec-** passing of such order, or after the expiry of a period **tion 89.** of thirty days from the service of the notice under section 88, whichever date is the later.

(2) Where the order was passed under sub-section (1) of section 89 it may be executed without any further notice to the tenant.

(3) Where the order was passed under sub-section (2) of section 89 the court shall issue to the tenant the duplicate copy of the notice filed by the landholder under section 87 with an order endorsed thereon informing the tenant that if he desires to show cause why possession should not be delivered to the landholder he must do so within thirty days. If the tenant does not appear within thirty days of the service of the notice so endorsed, or having appeared fails to show cause why execution should not issue, the order of ejection shall be executed as hereinafter provided.

It gives a chance to the defaulting tenant to contest *ex parte* orders passed under s. 89 (2).

91. (1) If **Tenant showing** within thirty days of service of a notice under sub- **cause against** section (3) of section 90 the tenant appears and **execution.** alleges—

- (a) that he is not liable to ejectment, and
 (b) that the notice under section 88 was not served on him,

the court shall forward the record to the assistant collector in charge of the sub division.

(2) The court to which the proceedings are forwarded or any court to which they may be subsequently transferred under the provisions of this Act shall proceed to inquire whether the notice under section 88 was duly served. If it finds that the notice was duly served, it shall, subject to the provisions of section 78, return the record to the assistant collector of the second class, who shall cause the order of ejectment to be executed according to law. If it finds that the notice was not duly served it shall set aside the order of ejectment and proceed as provided in section 92.

92. (1) If within thirty days of service of a notice under section 88 the tenant appears and contests his liability to ejectment, the court shall forward the proceedings for disposal to the assistant collector in charge of the sub-division.

Procedure where tenant contests notice.

(2) In such case and also where the assistant collector sets aside an order of ejectment under the provisions of section 91, the application under section 86 shall be deemed to be a plaint and the case shall proceed as a suit. The landholder shall, within a time to be fixed by the court, deposit the balance of court-fees due from him, failing which the suit shall be dismissed.

Enforcement of ejectment.

93. (1) Every decree or order for ejectment shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, relating to the execution of decrees for delivery of immovable property :

Mode of execution of decree or order.

Provided that before an order of ejectment passed under section 81 (3) is executed, the court shall, if the tenant has not appeared, issue to the tenant the duplicate copy of the notice filed by the landholder under section 81 (2) with an order endorsed thereon informing the tenant that if he desires to show cause why possession should not be delivered to the landholder he must do so within fifteen days. If the tenant appears and admits the claim, or does not appear within fifteen days of the service of the notice so endorsed, no time shall be allowed under section 81 (4) except with the consent of the landholder, and the order of ejectment shall be executed as hereinbefore provided. If the tenant appears and contests the claim, the procedure shall be as provided in section 81 (5).

(2) Every sub-lessee or transferee of the person to be ejected whose interest is extinguished on the ejectment taking place shall for the purpose of execution of the decree or order for ejectment, be deemed to be a judgment-debtor, but unless he offers resistance or obstruction to delivery of possession, he shall not be liable for costs.

Its provisions are similar to s. 89 (2) 9 L. R. Rev. 295.

For provisions relating to the execution of decrees for delivery of immovable property.—See Or. XXI, rs. 35 and 36 C. P. C. 1908.

94. (1) Delivery of possession in execution of a decree or order for ejectment shall not be made before the first day of April or such later date as the local Government may by rule prescribe in respect of any local area, or after the thirtieth day of June in any year except when the order for delivery of possession is passed after the first day of June in respect of an application for execution made before the first day of April preceding.

(2) Nothing in this section shall affect any right the tenant may have in respect of standing crops under section 97 or shall apply to any order passed under the provisions of section 79.

The rule under sub-section (1) regarding the time of delivery of possession is imperative. III U. D. 354, 676.

Where possession was not given on account of unavoidable delay, opportunity to show cause should be given to the tenant on a subsequent application. III U. D. 348.

Under the old Act the ejectment was to take effect after the 30th June, but now the delivery of possession should be given between the 1st day of April and the 30th day of June.

95. (1) Any person against whom a decree or order of ejectment from a holding or any portion thereof has been executed under the provisions of this Act, who re-enters or attempts to re-enter into occupation of the same without the written consent of the person for the time being entitled to occupy the same shall be presumed to have done so with intent to intimidate or annoy the person in possession, within the meaning of section 441 of the Indian Penal Code.

(2) Where a person is convicted of an offence of criminal trespass in the circumstances stated in sub-section (1), and it appears to the court convicting him that any person has by reason of anything done in the course of committing the offence been dispossessed of any land, the court may, if it thinks fit, order the dispossessed person to be restored to the possession of the same.

96. A tenant against whom a decree or order for ejectment has been passed shall not sell, cut or remove any tree upon his holding unless there is a contract or local custom entitling him to do so.

Trees partake of the character of the holding; hence the cutting of trees has been forbidden. IV U. D. 147.

97. (1) (a) If on the date of actual delivery of possession to the landholder there are ungathered crops or other products sown or planted by the tenant either before the date of the order for execution of the decree or order for ejectment, or after such date with the permission in writing of the landholder, the landholder shall have the option of purchasing the same, and upon his forthwith tendering to the tenant the price of the same the right of the tenant to such crops or other products and to use the land for the purpose of tending, gathering and removing the same, shall cease.

(b) If the landholder does not elect to purchase the same, the tenant shall be entitled to use the land as aforesaid for a further period

until such crops or other products have been gathered and removed, paying a fair rent therefor.

(2) If on the date of the actual delivery of possession to the landholder there are upon the land ungathered crops or other products sown or planted by the tenant after the date of the order for execution of the decree or order for ejectment without the permission in writing of the landholder, the tenant shall have no right in such crops and the title to them shall pass to the landholder with the land.

Other products.—include Jessamine and Bela plants, 6 I. C. 74. But guava trees and fruit and other trees are not included. 1 N. W. P. 108 and 10. A. W. N. 145.

Sub-section (1) cl. (b).—The tenant entering to tend and cut the crop is not guilty of theft. 11 A. L. J. 270. But he is bound to vacate; the refusal will make him guilty for trespass. III U. D. 180.

98. (1) All claims relating to the price of crops or other products of which the landholder has elected to purchase under settlement or dispute as to clause (a) of sub-section (1) of section 97 or to the price of crops: rent payable by the tenant for the use of the land under clause (b) of the same sub-section, shall be determined by the court executing the decree or order:

Provided that no claim on account of the price of such crops or other products shall be entertained unless it is made within fifteen days of the date of delivery of possession.

(2) Any sum payable by the landholder or by the tenant respectively under this section may be set off against any sum payable to him by the other either under this section or under the decree or order.

This section corresponds to s. 76 and 77 of the repealed Act, with this difference that under the new Act, the dispute relating to prices and rents shall be determined by the execution court, while under the repealed Act, such claims were to be decided by a suit.

Remedies for wrongful ejectment.

99. (1) Any tenant or rent-free grantee ejected from, or prevented from obtaining possession of, his holding or any part thereof, otherwise than in accordance with the provisions of this Act, by—

- (a) his landholder or any person claiming as landholder to have a right to eject him, or
- (b) any person claiming through such landholder or person, whether as tenant or otherwise,

may sue the person so ejecting him or keeping him out of possession—

- (i) for possession of the holding ;
- (ii) for compensation for wrongful dispossession ; and
- (iii) for compensation for any improvement he may have made :

Provided that no decree for possession shall be passed where the tenant, at the time of the passing of the decree, is liable to ejectment in accordance with the provisions of this Act within the current agricultural year.

(2) If the decree is for possession, no compensation for an improvement shall be awarded.

(3) When a decree is given for compensation for wrongful dispossession but not for possession, the compensation awarded shall be for the whole period during which the tenant was entitled to remain in possession.

(4) A tenant who has sued for possession only shall not be entitled to institute a separate suit for compensation for wrongful dispossession, or for an improvement, in respect of the same cause of action.

This section corresponds to s. 79 of the repealed Act, with following difference. (1) A rent-free grantee also can sue. This overrules, the decision cited in VI U. D. 335. (2) The person prevented from obtaining possession can also sue. IV U. D. 335. (3) A suit can be brought against any person claiming through such landholder or person whether as a tenant or otherwise.

Dispossessions.—To which the section applies :—

(1) Entering on the holding without tenant's consent in accordance with a condition in the lease. 7 I. C. 486.

(2) dispossession caused by acting in compliance with a term in the *Wajib-ul-arz*. B. R. 12 of 1890.

(3) putting another person in possession. 19 A. 34.

(4) giving possession of the occupancy holding to a tenant other than the heir of the tenant. 27 A. 372.

(5) ouster of the reversionary heir. 12 A. L. J. 29.

(6) illegal entry by the landholder. B. R. 6 of 1925.

Sub-section (4).—Is in accordance with the provisions of or. II r. 2 of the C. P. Code 1908.

The onus of dispossession lies on the person dispossessed. VI U. D. 220.

100. When a court of appeal or revision reverses a decree or order for the ejection of a tenant and the tenant is liable to ejection in accordance with the provisions of this Act within the current agricultural year; the decree or order of the court of appeal or revision shall not be for possession but, subject to the provisions of section 116, for costs only.

101. When a tenant or rent-free grantee of a holding sues under section 99 for possession, he may join, as a defendant in the suit, every person in possession claiming through his landholder or through the person who has ejected him, as the case may be, and if he sues under section 99 (1) (b) he shall join his landholder as a defendant in the suit.

102. The provisions of section 93 shall apply, *mutatis mutandis*, to the execution of a decree for the reinstatement of a tenant in his holding.

Surrender.

103. (1) A tenant, not bound by a lease or other agreement for a fixed period to continue to occupy the land in the following year, may, at the end of any agricultural year, surrender his holding, whether it is or is not

sub-let or mortgaged, but he shall not be entitled to surrender a portion only of his holding.

(2) Notwithstanding such surrender, unless the tenant, before the first day of April, gives to the landholder notice in writing of his intention to surrender, he shall be liable to the landholder for the rent of the holding for the agricultural year next following the date of the surrender :

Provided that the tenant shall not be so liable in respect of any period during which the holding is let to another tenant, or is taken into his own cultivation, or use, by the landholder.

(3) Nothing in this section shall affect any arrangement by which a tenant and his landholder may agree to the surrender, of the whole or any portion of a holding.

Valid Surrender.—(1) A surrender for consideration, if given effect to by a minor is valid. U. D. 391. (2) Surrender made by the father of joint Hindu family in respect of an ancestral holding is valid. 11 O. C. 292. (3) Surrender by a Hindu widow was held to have extinguished the interest of her heirs. V U. D. 199. (4) Surrender must be in respect of the entire holding.

Not Valid.—Surrender is not valid if an ex-proprietary tenant remains in possession, V U. D. 90 ; IV U. D. 235. An agreement to surrender without actual evacuation does not terminate tenancy, S. D. 9 of 1913, but terminates tenancy in case of an usufructuary mortgage, mortgagee being in possession. 1925 R. C. 481.

104. Notwithstanding anything in the last preceding section, when a decree or order for the enhancement of the rent of any holding is passed, and the tenant thereof within fifteen days of the date of such decree or order gives to the landholder notice in writing of his desire to surrender such holding at the commencement of the period in respect of which such enhancement takes effect, and surrenders such holding accordingly, he shall not be liable for the rent payable for such holding in respect of any period subsequent to such surrender.

105. (1) Any tenant, instead of or in addition to himself giving notice in writing to the landholder under section 103 or section 104, may, before the expiration of the period limited for giving such notice, make an application to the tahsildar, who shall thereupon cause the notice to be served on such landholder, the tenant paying the cost of the service.

(2) Every such notice shall be deemed to have been received at the time it was first tendered.

The decision contained in 2 A. L. J. 665 is no longer good law.

106. (1) When any such notice has been received by or served on a landholder, he may institute a suit to have such notice declared invalid, and the court shall thereupon determine the question between the parties.

(2) If the landholder does not institute such suit, he shall be deemed to have accepted the surrender.

Abandonment.

107. (1) Subject to the provisions of sub-sections (2) and (3), a tenant who ceases to cultivate his holding without arranging for the payment of his rent as it falls due and giving written notice to the landholder of such arrangement shall be presumed to have abandoned his holding.

Explanation.—A tenant does not cease to cultivate his holding if he leaves a member of his household or a hired servant in charge of it.

(2) A tenant who ceases to cultivate his holding and without executing a written sub-lease leaves in charge of his holding any person on whom, in the event of the tenant's death, the tenant's interest would devolve shall, if he does not resume cultivation within five years, lose his interest in the holding, and the person left in charge thereof shall succeed to the holding,

(a) if the holding is held with a right of occupancy, as a tenant with a right of occupancy,

(b) if the holding is held with statutory rights, as heir of the statutory tenant,

(c) if the holding is held with neither a right of occupancy nor statutory rights, as a non-occupancy tenant.

(3) A tenant who ceases to cultivate his holding and without executing a written sub-lease leaves in charge of the holding a person other than one of the persons mentioned in sub-section (2) under an arrangement to which the landholder has not agreed in writing shall be presumed after the expiry of the period for which the tenant could have sub-let to have abandoned the holding.

(4) Where a tenant is presumed to have abandoned his holding the landholder may file a notice in the office of the tahsildar for service on the tenant or publication stating that he wishes to treat the holding as abandoned and is about to enter on it accordingly and the tahsildar shall cause a notice to be served or to be published in such manner as the Board by rule direct. After filing the notice the landholder may, in any year between the fifteenth day of May and the thirtieth day of June, enter on the holding and let it to another tenant or take it under his own cultivation.

(5) Where a tenant sues under section 99 for recovery of possession of a holding on which the landholder has entered under the provisions of sub-section (4), and the tenant satisfies the court that he has not in fact abandoned his holding the tenant shall be entitled, subject to the provisions of sub-section (1) of section 99, to reinstatement on such terms as the court may think fit.

Explanation to sub-s. (1)—confirms the rulings, in III U. D. 132, 1927 R. C. 207.

Sub-s. (2)—requires sub-lease to be in writing. 32 I. C. 586.

Sub-s. (3)—applies to persons other than heirs, presumptuous or reversioners, e. g. (1) A mortgagee left in occupation VI U. D. 370 (2) Transferee under valid transfer and in occupation. 33 Cal. 1219.

Non-payment of rent and non-occupation.—Unless accompanied with circumstances indicating intention to abandon are not abandonment; 7 Mad. H. C. 98.

Sub-s. (4) leases in which notice is not necessary.—(1) where the landholder sues for possession on the ground of abandonment, 3 C. W. N. 46, (2) where the landholder sues to eject him on account of his transferring the holding without permission. 4 C. W. N. 93.

108. Notwithstanding anything contained in sections 103 and 107, **Right of suit of any person claiming to be entitled under sub-section successor to (1) of section 25 to succeed to a holding which has holding.** been surrendered or abandoned may bring a suit for the possession of such holding.

CHAPTER VII.

IMPROVEMENTS.

Improvements by permanent tenure-holder or fixed-rate tenant. **109.** A permanent tenure-holder or a fixed-rate tenant may make any improvement.

Improvements by ex-proprietary or occupancy tenant. **110.** An ex-proprietary or occupancy tenant may make any-improvement except that he may not plant trees, make a tank, or erect buildings of a permanent character unless there is a local custom entitling him to do so or he has obtained the written consent of his landholder.

A well is not a *tank* and so a tenant can construct one without proving any local custom. 1929 All. 544.

111. A statutory tenant may construct, maintain and repair a well **Improvements for the irrigation of his holding, with all works incidental thereto, and a temporary building for the tenant.** purpose mentioned in section 3 (11) (a), but may not, except with the written consent of his landholder or the permission of the court obtained under section 114, make any other improvement.

Zemindar's standing as a security for a Taqavi advance amounts to written consent. 9 L. R. Rev. 142.

112. (1) No other tenant shall make any improvement except **Improvements with the written consent of the landholder.** by any other (2) No sub-tenant shall make any improvement **tenant or sub-tenant.** unless—

(a) It is an improvement which his landholder could himself have made, and

(b) he has obtained the written consent of his landholder.

Effect of improvement without consent.—(1) tenants will not be entitled to any compensation, II U. D. 282, (2) no order can be passed for the removal of materials used for purposes of improvement. IV U. D. 230.

113. Nothing in this chapter shall entitle a tenant to make, except **Restriction on improvement which may injure other land.** with the written consent of the landlord, any improvement which may substantially diminish the value of other land belonging to the landlord.

The use of the word landlord is significant and excludes landholders who are permanent tenure-holders, fixed-rate tenants or hold the holding under some cultivatory rights.

114. (1) If a tenant applies for the written consent of his landholder to the making of an improvement which he may not make without such consent and the landholder omits or refuses to grant it, the tenant may apply to the collector or the assistant collector in charge of the sub-division for permission to make the improvement.

(2) When an application is made to the collector or an assistant collector under sub-section (1) he shall take into consideration any objection which the landholder may have to urge on either of the following grounds, namely,—

- (a) that the work proposed is not an improvement as defined in section 3 (11) of this Act, or is too costly, or
- (b) that the landholder is himself prepared to make the improvement,

and shall then either grant the permission on such conditions as he considers fair and equitable, or refuse the application.

115. (1) A landlord may make an improvement on or affecting the holding of a tenant not having a right of occupancy with or without the consent of the tenant.

(2) A landlord may make an improvement on or affecting the holding of a tenant having a right of occupancy with the written consent of the tenant, or if the tenant refuses his consent, with the permission of the collector or of the assistant collector in charge of the sub-division :—

Provided that, notwithstanding anything in this sub-section, a landlord may construct a well on or affecting the holding of a tenant having a right of occupancy without the consent of the tenant.

(3) A landlord making an improvement on or affecting the holding of any tenant shall be liable to compensate the tenant for any loss which he may cause to the tenant when making it.

(4) If the effect of an improvement made by a landlord is to impair the productive powers of any land held by any tenant from such landlord, such tenant shall, in addition to any compensation which may be awarded to him under sub-section (3), be entitled to such abatement of his rent as the court considers just

116. A tenant who has made an improvement which he is entitled to make shall be entitled to compensation for such improvement in the following cases :—

- (a) when a decree or order for his ejection is passed ; and
- (b) when he has been wrongfully dispossessed by his landholder and has not recovered possession of his holding :

Provided, first, that compensation shall not be payable for any improvement made thirty years or more before the date on which the ejection is to take effect :

Provided, secondly, that a tenant ejected in execution of a decree passed in a suit for ejection, or in pursuance of a notice of ejection shall not be entitled to compensation for any improvement begun by him after the service of the summons in the suit, or service of the notice, which resulted in his ejection.

No compensation will be decreed for improvement made without any right to do so. B. R. 4 of 1904.

Proviso second gives effect to the ruling cited in IV U. D. 302.

117. In estimating the amount of compensation due to a tenant Valuation of for an improvement made by him, the court shall have compensation. regard—

- (a) to the amount by which the letting value or the produce of the holding or the value of that produce is increased by the improvement;
- (b) to the condition of the improvement and the probable duration of its effects;
- (c) to the labour and capital required for the making of such an improvement, allowing for—
 - (i) any reduction or remission of rent or any other advantage allowed to the tenant by the landholder in consideration of the improvement;
 - (ii) any assistance given to the tenant by the landholder in money, material or labour; and
 - (iii) in the case of a reclamation or of the conversion of unirrigated to irrigated land, the length of time during which the tenant has had the benefit of the improvement.

The rules prescribed for estimating the amount of compensation for improvements are consistent with the findings of the Board in cases cited in B. R. 12 of 1885 and B. R. 3 of 1886.

Beneficial lease for a few years given to a tenant for breaking up a new land, may be taken into consideration in estimating the compensation. 1 L. R. 15.

118. (1) When the improvement benefits both the land from which the tenant is to be ejected and other land in the occupation of the same tenant the compensation payable to the tenant shall be estimated with reference to the extent to which the land from which the tenant is to be ejected has benefited by such improvement.

(2) If the improvement has been executed on the land from which the tenant is to be ejected, the landholder, on payment of the compensation awarded to the tenant, shall become the owner of the improvement, but the tenant shall be entitled to the benefit of the improvement in respect of the land remaining in his occupation, to the same extent and in the same manner as that land has hitherto benefited by the improvement.

(3) If the improvement has been executed on land which remains in the occupation of the tenant, the landholder, on payment of the compensation awarded to the tenant, shall be entitled to the benefit of the improvement in respect of the land from which the tenant is ejected to the same extent and in the same manner as that land has hitherto benefited by it.

Furnishes one more rule for estimating the compensation, IV U. D. 382.

These sub-sections provide for the ownership and use of improvement. II U. D. 261.

119. (1) When compensation is found to be payable to the tenant under section 78, the landholder may apply to the court to be allowed to give, in lieu of the sum payable or in lieu of part thereof, a beneficial lease of the holding, or of some other holding or to make compensation in some other manner.

(2) If the tenant agrees to accept such beneficial lease or other form of compensation, the decree or order under section 78 shall be modified accordingly.

(3) If the tenant refuses to accept a beneficial lease, and if the court, after examining the tenant and making such further inquiry as it may deem necessary, is of opinion that the lease is suited to the circumstances of the tenant, and will adequately compensate the tenant for the improvement in respect of the whole or part of the compensation decreed as the court may determine, and that the tenant has no valid reason for refusing to accept the lease, the court shall allow the tenant one month within which to come to terms with the landholder, and if within that time or within such further time (if any) as the court may think fit to allow, the tenant accepts the lease, and such acceptance is certified by him to the court, the court shall proceed as provided in sub-section (2) ;

and if the tenant does not accept the lease within such time, he shall forfeit his right to so much of the compensation payable as would have been covered by the beneficial lease.

(4) No compensation other than a beneficial lease shall be decreed or ordered in lieu of money, except with the consent of the tenant.

(5) Every application under sub-section (1) shall be made within one month from the date of the decree or order under section 78.

120. (1) If a question arises between a tenant and his landholder—
Disputes as to right to make improvements, etc.

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement, or

(c) as to the amount of compensation or abatement of rent due under sub-section (3) or sub-section (4) of section 115, the assistant collector in charge of the sub-division shall, on the application of either party, decide the question.

(2) The decision of the assistant collector on questions arising under clauses (a) and (b) of sub-section (1) shall be final.

In questions arising under clause (c) an appeal shall lie from his decision to the collector.

CHAPTER VIII.

MISCELLANEOUS PROVISIONS REGARDING TENANCIES.

121. (1) At any time during the continuance of a tenancy the tenant of a holding may sue the landholder, or any person claiming to hold through the landholder, whether as tenant or rent-free grantee or otherwise, for a declaration of his right as tenant.

(2) In any such suit against the landholder any person claiming to hold through the landholder may be joined as a party, and in any such suit against a person claiming to hold through the landholder, shall be joined as a party.

In a suit against any other person than a landholder, the landholder is a necessary party. 1929 A. L. J. 849 ; 51 All. 853 (S. B.). At suit for declaration of joint tenancy and possession with the defendants lies in a Revenue Court. 1929 All. 57 ; 1929 A. L. J. 849 (F. B.).

122. In case of doubt or dispute as to who is the tenant of a holding the landholder may sue the persons as to whose right such doubt exists or between whom such dispute has arisen, to have it declared which of such persons is the tenant.

Suit by landholder for declaration as to who is tenant.

Persons who can sue under this section.—(1) The tenant must sue during the continuance of his tenancy, V U. D. 325 ; (2) The tenant must not hold himself out to be the proprietor of the holding ; (3) The heir of a deceased tenant whose right is denied by the Zemindar, 36 All. 48 ; (4) The tenant of a portion of an area included in the ancestral holding of the parties, 26 A. L. J. 431 ; (5) The adopted son of a deceased tenant not recognized by the Zemindar, V U. D. 18 ; (6) Rival claimants to a holding, 1926 R. C. 403.

The sub-section (2) relates to the joinder of defendants and affirms the rulings cited in B. R. 4 of 1922, 1929 A. L. J. 849, 51 All. 845, 1929 All. 571 (S. B.).

123. At any time during the continuance of a tenancy either the landholder or the tenant may sue for a declaration of class as to any of the following matters, namely,—

- (a) the class to which the tenant belongs ;
- (b) the situation, area, numbered plots or boundaries of the holding ;
- (c) the rent payable in respect of the holding and whether payable in cash or kind ;
- (d) the time, place and manner of appraisalment, division or delivery of crops for rent ;
- (e) the dates on which, and the instalments in which, the rent is payable ; and
- (f) any other condition of the tenure required to be specified under section 55(d) of the United Provinces Land Revenue Act,* 1901.

This section corresponds to the rest of s. 95 of the repealed Act with the addition of clause (f) for which see 55 (d) L. R. Act.

The suit referring to any matter within this section is under the exclusive jurisdiction of the Revenue Court, 6 All. 110. The tenant must be in possession of the holding in order to sue under this section. B. R. 5 of 1885.

Cl. (c) No new rent can be fixed. 37 All. 12. A suit to get the decree declared invalid lies in a Revenue Court under this section, 37 A. 254.

* See *infra*.

124 Whenever a tenant is ejected from a part only of his holding under a decree or order of a court, either he or his landholder may in lieu of bringing a suit under section 123, apply to the court that ordered ejection, within six months thereof, to have it determined what portion of the rent previously payable for the entire holding is payable in respect of the part of the holding from which ejection has not taken place.

This section does not apply to a case where the tenants gave up the plots to a person whose *khudkashi* was subsequently entered under the orders of the Record Officer. 14 R. D. 680.

125. (1) Any tenant is entitled to receive a written lease from his landholder, and a landholder, upon delivering or tendering to a tenant a lease consistent with the provisions of this Act, is entitled to receive from him a counterpart thereof.

(2) It shall be sufficient if such lease or counterpart contains, in addition to the name and description of the tenant, the particulars specified in section 123.

(3) Such lease or counterpart may be in the form given in the Third Schedule.

(4) No omission in any such lease of any covenants or conditions, not inconsistent with any of the particulars above specified, shall prevent either of the parties thereto from claiming the benefit of such covenants or conditions.

This section corresponds to sec. 96 of the repealed Act.

A Thekedar.—Can not sue under this section, 1923 R. C. 416.

126. A lease for a period exceeding five years shall be made by an instrument in writing.

A lease.—For less than five years needs no registration, 12 A. L. J. 792.

127. (1) When under the provisions of this Act, or the Indian Registration Act, 1908, or any other enactment for the time being in force, any lease, counterpart, grant or agreement with respect to a tenancy is required to be made by registered instrument, and such lease, counterpart, grant or agreement—

(a) is with respect to land held by a groveholder, as such, or to land let or granted for the purpose of planting a grove, or

(b) is for a term not exceeding ten years, and stipulates for rent not exceeding one hundred rupees annually,

the parties to such lease, counterpart, grant or agreement may, in lieu of registering the same, obtain the attestation thereto of a revenue court or of a revenue officer not inferior in rank to a *qanungo*, or of such other person as the local Government may, by general or special order in this behalf appoint and subject to such conditions (if any) as the local Government may, by rules made under this Act, direct.

(2) Such court, officer or other person shall, after satisfying himself as to the identity of the parties and their acquaintance with, and assent to, the terms of the lease, counterpart, grant or agreement, make, sign and date an endorsement thereon to the effect that he has so satisfied himself.

(3) No such instrument shall be accepted for attestation under this section unless presented within the period prescribed for presentation for registration under part IV of the Indian Registration Act, 1908.

(4) An instrument attested under this section shall be deemed to be a registered document for all purposes of the Indian Registration Act, 1908.

A Qabuliat.—Need not be signed by the landholder, nor a *Patta* by a tenant. III U. D. 417.

Agreement reduced into writing unless stamped and registered will not be admitted in evidence. B. R. 8 of 1920.

Lease of tenancy for life may exceed ten years and therefore cl. (b) is not applicable to such lease, nor if rent exceeds Rs. 100, see 1922 R. C. 220, 14 A. L. J. 57 respectively.

Attestation.—By a Deputy Collector in execution capacity is legal, II U. D. 466.

Endorsement must be simultaneous with attestation, II U. D. 445.

128. In the absence of a contract to the contrary, a landholder is entitled to enter upon and measure the holding of his tenant.
Landholder's right to measure land.

CHAPTER IX.

PAYMENT AND RECOVERY OF RENT.

Payment of arrears of rent.

129. The rent of a tenant shall be payable in instalments of the following instalments and at the following dates :—

- (a) if the instalments and dates have been agreed on by the parties to the tenancy, the instalments and dates so agreed on ;
- (b) in the absence of any such agreement, if the instalments and dates have been determined and recorded by a settlement officer, the instalments and dates so determined and recorded ;
- (c) in other cases for permanent tenure-holders and tenants with a right of occupancy twenty-one days before the dates appointed for the payment of the instalments of land revenue of the mahal ; and for all other tenants thirty days before the dates so appointed.

130. A payment of rent may be made by the tenant, or through his agent, or by postal money-order, or by deposit in court under section 144.
Rent how payable.

131. An instalment of rent not paid on the day on which it falls due becomes, on the following day, an arrear of rent, and the tenant shall be liable to pay interest on such arrear at one per cent. per mensem.

Suit for interest on arrears of rent, lies in a Revenue Court. III U. D. 178.

132. (1) An arrear of rent shall be recoverable by suit, or by recovery of distraint, or by notice through the tahsildar, in accordance with the provisions of this Act or in any one or more of such ways.

(2) Arrears of rent due in respect of Government property may be recovered in accordance with sections 39 to 42 of the United Provinces Court of Wards Act, 1912, as if they were arrears due in respect of property under the charge of the court of wards.

Suit.—for arrears of rent due from an occupancy tenant who has died may be brought against his heirs in a Revenue Court. 14 All. 381. Suit for recovery of damages from a 'Batal' tenant who has not sown, lies in a Revenue Court, 20 A. L. J. 430 F. B.

A suit under this section lies only when cash rent or money equivalent is settled. 13 R. D. 699, 582.

133. (1) A plaintiff may unite in the same suit several claims for arrears of rent against the same tenant : provided that they are in respect of holdings situated in the same mahal.

(2) In such a suit the decree shall specify separately the amounts (if any) found due in respect of the several holdings.

This section is new and overrules the decision in 3 A. L. J. 610. When on partition, the land in a holding has been distributed among several mahals, separate suit for rent shall be instituted in respect of land in each mahal. 78 I. C. 277.

134. (1) When a tenant makes a payment on account of rent, application of whether in satisfaction of a decree or otherwise, to his landholder with express intimation that he wishes the payment credited to any year, instalment or holding the payment, if accepted must be applied accordingly :

Provided that, where the tenant has not appropriated a payment made in respect of a decree passed under section 133 (2), the court shall appropriate the payment in such manner as to save as many holdings as possible for the tenant.

(2) Subject to sub-section (1), the landholder may apply the payment at his discretion in discharge of any arrear or arrears as he thinks fit ;

Provided that—

(a) he shall not apply the payment in discharge of an arrear of which the recovery is barred by the law in force for the time being as to the limitation of suits and applications, and

(b) subject to clause (a), he shall apply the payment in discharge of an arrear due in respect of an occupancy holding in preference to one due in respect of a statutory or non-occupancy holding, and

132-A.* (1) In case of any general refusal on the part of the under-proprietors or tenants of any local area to pay arrears of rent, rates or cesses due by them to their landlords, the Local Government may, by notification in the Gazette, declare that such arrears may be recovered as arrears of land revenue.

(2) In any local area to which a notification made under sub-section (1) applies, a landlord to whom an arrear of rent, rate or cess is due by an under-proprietor or tenant may (notwithstanding anything to the contrary contained in this Act, or the United Provinces Local Rates Act, 1914, or any other enactment for the time being in force), instead of suing for recovery of the arrear under this Act, apply in writing to the Collector to realize the same, and the Collector shall, after satisfying himself that the amount claimed is due, proceed, subject to rules made under section 275, to recover such amount with costs and interest as an arrear of land revenue.

(3) Nothing in this section shall be held to prevent the Collector from proceeding under section 185 of the United Provinces Land Revenue Act, 1901, in any case to which that section applies.

(4) The Collector shall not be made a defendant to any suit in respect of an amount for the recovery of which an order has been passed under this section.

(5) No appeal shall lie from an order of a Collector under this section, but nothing herein contained and no order passed under this section shall debar—

(a) a landlord from maintaining a suit under section 230 for the recovery of any amount due to him which has not been recovered under this section, or

(b) a person from whom any amount has been recovered under this section, in excess of the amount due from him, from recovering the said amount under section 230.

* As amended by Act II of 1931.

(c) he shall not cancel or vary any appropriation communicated to the tenant without the consent of the tenant.

(3) Where at the commencement or any suit of proceeding in which the question of the application of any payment of rent arises, neither the tenant nor the landholder has made any appropriation, the payment shall be applied—

(a) in discharge of an arrear due in respect of an occupancy holding in preference to one due in respect of a statutory or non-occupancy holding, and

(b) subject to clause (a), in discharge of an arrear of a longer duration in preference to one of a less duration, and

(c) subject to clauses (a) and (b) and where there are several arrears, in discharge of each arrear proportionately :

Provided that the payment shall not be applied in discharge of any arrear which is barred by the law in force for the time being as to the limitation of suits and applications.

Explanation.—An arrear means an instalment of rent due in respect of a single holding, or any portion of such instalment, for the time being remaining unpaid after the date appointed for the payment thereof.

135. Any payment made by a tenant from whom rent is due to the landholder to whom it is due shall, in the absence of evidence of a contrary intention on his part, be deemed a payment on account of rent.

Presumption that payments by tenants are towards rent.

136. Any person to whom any sum is due on account of canal dues under section 47 of the Northern India Canal and Drainage Act,* 1873, shall, in respect thereof, have all the legal remedies provided in this Act, as if such sum were an arrear of rent, and where the land for which the sum is due is sub-let, he shall have those remedies against the tenant and sub-tenant jointly.

Produce rents.

137. (1) When rent is taken by estimate or appraisal of the standing crop, the tenant shall be entitled to the exclusive possession of the crop.

Rights and liabilities in respect of produce.

(2) When rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landholder.

(4) If the tenant removes any portion of the crop or produce at such a time or in such a manner as to prevent the due estimate or appraisal or division thereof, or deals therewith in a manner contrary to local custom, the produce may be deemed to have been as full as the fullest crop of the same description on similar land in the neighbourhood for that harvest.

* See *infra*.

Suit may be brought for the produce itself, P. R. (1873) No. 23 ; or for its money value, 25 W. R. 307, IV U. D. 173. The value is the value at the time the rent was due. 23 W. R. 368.

138. When rent is taken by division of the produce in kind, or by estimate or appraisal of the standing crop—
Application for officer to make division, estimate or appraisal.
 (a) if either landholder or tenant neglects to attend at the proper time, or
 (b) if there is a dispute about the quantity, value or division of the produce,
 an application may be presented by either party to the court requesting that an officer be deputed to make the division, estimate or appraisal.

With the application the applicant shall deposit such fee as may be prescribed by the local Government in rules made in this behalf.

Rules.—Published in notification No. $\frac{1068}{1-375-F}$ dated 21st April, 1902.
 The officer shall ordinarily be the Kurk Amin and the fee to be deposited with the application is one rupee.

139. (1) On receiving such application, the court shall issue a Procedure on written notice to the opposite party to attend on the such application. date and at the time specified in the notice, and shall depute an officer by whom such division, estimate or appraisal shall be made.

(2) If the opposite party objects that the rent is not taken by division, estimate or appraisal, or that no rent is payable, the officer deputed shall record the objection, but shall proceed as hereinafter provided.

(3) If, on or before the date appointed, the dispute has not been adjusted, he shall call on each of the parties to appoint, and shall himself appoint, a resident of the neighbourhood, as an assessor to assist in the division of the produce, or the estimate or appraisal of the crop.

(4) If either party fails to attend, or refuses to appoint an assessor, the officer deputed shall nominate an assessor on his behalf.

(5) The officer deputed shall record, and in making his award shall have regard to the opinions of the assessors.

(6) In the case of a division of the produce if the parties agree to the award, the division shall be made accordingly. If the parties do not agree to such division, and in all cases in which the rent is payable by estimate or appraisal of the standing crop, the officer deputed shall make an estimate of the value of the produce or crop and determine the rent payable. He shall then deliver his award and submit it with a report of his proceedings to the court.

(7) The parties shall be at liberty to file objections to the award within one week after the day on which the award was delivered ; and the court shall hear such objections, and pass orders thereon, after such further inquiry (if any) as may appear to be necessary.

If an objection is filed that the rent is not payable by division, estimate or appraisal, or that no rent is payable, and the court upholds the objection, it shall set aside the award.

If such objection is not upheld or if any other objection is filed, the court may modify or confirm the award as it thinks fit, and shall pass an order for the payment of the rent and costs (if any), and such order shall have the effect of a decree for arrears of rent.

Officer deciding objections acts *ultra vires*, 23 A. W. N. 40. Applicant allowed to take objection as to the non-joinder of other co-sharers as plaintiffs. II U. D. 454.

Receipts for rent.

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

(2) The landholder shall prepare and retain a counterfoil or copy of the receipt.

141. (1) The receipt and counterfoil or copy shall specify such of the following particulars as can be specified by the landholder at the time of payment, namely,—

- (a) the names of the payer and payee ;
- (b) the name of the village with mahal or patti ;
- (c) the amount paid ;
- (d) Where there is more than one holding an indication of the holding on account of which the rent has been paid ;
- (e) the year and instalment to which the payment has been credited ;
- (f) whether the payment has been accepted as a payment in full, or only on account ; and
- (g) the date on which the rent is paid.

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

142. If a landholder without reasonable cause refuses to deliver to a tenant a receipt containing the particulars hereinbefore prescribed for any rent paid by him or to credit the rent paid to the year and instalment to which the tenant has requested the payment to be credited, the tenant shall be entitled to recover from him such compensation not exceeding double the amount or value of the rent paid as the court thinks fit to decree.

Compensation is recoverable only in respect of money actually paid as rent. 6 W. R. Act X 179.

143. When in any suit for arrears of rent or any suit in which the payment of rent is in issue between the landholder and the tenant, the court finds that the landholder has without reasonable cause refused or neglected to deliver to the tenant a receipt, or to prepare and retain a counterfoil or copy of the receipt, containing substantially the particulars required by section 141, it may award the tenant such compensation not

Suit by tenant for compensation for withholding a receipt or wrongly crediting rent.

Power to award compensation for withholding a receipt or not keeping counterfoil in suit in which rent is in issue.

exceeding double the amount or value of the rent or canal dues paid as it may see fit to decree.

This section is new and allows for a suit for damages against a landholder who refuses to grant receipt or prepare and retain a copy of the same.

Deposit of rent in court.

Application to deposit rent in court. 144. (1) In any of the following cases, in which a money rent is due, namely,—

- (a) when a tenant tenders to a landholder full payment of the rent due from him, and the landholder refuses to receive it, or intimates his unwillingness to grant a receipt for it;
- (b) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf;
- (c) when two or more person severally claim the right to collect the rent or, when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent;
- (d) when by contract or local usage two or more persons are entitled to collect separately their respective shares of the rent of the holding;
- (e) when the tenant is sued for a portion of the rent of a holding under sub-section (3) of section 266;

the tenant may make an application in writing to the court for permission to deposit in court the full amount of rent then due.

(2) An application to deposit rent under clause (e) shall, notwithstanding anything contained in the Fourth schedule, be made to the court before which the suit is pending.

Tender—is essential to entitle a tenant to make a deposit in Court. 15 W. R. 4. It must be made at a reasonable time and place and to a proper person. 16 W. R. 79.

Full payment of rent—rent which the tenant honestly believes to be due from him. 15 Cal. 766. Valid tender stops the running of interest from the date when tender was made. 35 Cal. 34. Omission to make the deposit under this section after due tender will not destroy the legal effect of the tender. 2 W. R. Act X 88.

145. (1) The application shall contain a statement of the grounds Contents of application. on which it is made and shall state—

in cases (a) and (d), the names of the person or persons to whose credit the deposit is to be entered.

in cases (b) and (e), the names of the co-sharers to whom the rent is due; and

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

(2) The application shall be verified as a plaint.

146. If it appears to the court to which an application under the Receipt to be provisions of section 144 is made that the applicant is granted. entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the court.

The Court cannot hold a judicial inquiry as to the validity of the ground of deposit. 15 Cal. 168. A suit for recovery of value of crops misappropriated by landlord after distraint can be brought in a Civil Court. 13 R. D. 680.

147. A receipt given under the last preceding section shall operate Receipt a valid as an acquittance for the amount of the rent payable acquittance. by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (d) of section 144, by the person specified in the application as the person to whose credit the deposit was to be entered ;

in any other case, by the person or persons entitled to the rent.

Where a tenant is not entitled to make a deposit under s. 144, the receipt will not operate as an acquittance. 48 I. C. 445 (c).

148. The court receiving the deposit shall forthwith cause to be Notification of affixed at a conspicuous place at the court-house, and deposit. in the vernacular language of the district, a notification of the deposit of such rent, containing the name of the tenant, the name of the landholder, the amount of rent deposited, and any other material particulars.

149. If the amount of deposit is not paid away under the next Notice to whom following section within the period of fifteen days next sent. following the date on which the notification is so affixed, the court shall forthwith—

in cases (a) and (d) of section 144, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered ;

in case (b) of that section, cause a notice of the receipt of the deposit to be posted at each landholder's village office or residence, or in some conspicuous place in the village in which the holding is situate, and

in case (c) of that section, cause a notice to be served on every person who it has reason to believe claims or is entitled to such deposit.

150. (1) The court may pay the amount of the deposit to any Payment or re- person appearing to it to be entitled to the same, or fund of deposit. may, it thinks fit, and shall, if the deposit has been made under clause (c) of section 144, except upon the joint application of the disputing parties, retain the amount pending a decision of the civil court as to the person so entitled.

2) The payment may, if the court so directs, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a civil or revenue court to

the contrary, be repaid to the depositor on his application and on his returning the receipt given by the court with which the rent was deposited or on his producing such other evidence of his having made the deposit as the court may consider sufficient.

151 No suit or other proceeding shall be instituted against the **Barring of Secretary of State for India in Council, or against any suits.** officer of the Government, in respect of anything done by a court regarding a deposit under the foregoing sections ; but nothing in this section shall prevent any person, entitled to recover the amount of such deposit, from recovering the same from a person to whom it has been paid under the last preceding section.

CHAPTER X.

DISTRAINT.

Landholder's right of distraint.

152. (1) The produce of every holding in the cultivation of a tenant shall be deemed to be hypothecated for the **Recovery of arrears by distraint** rent payable in respect of such holding by such tenant and by every person other than a thekadar intermediate between such tenant and the landlord ; and, until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of a decree of a civil or revenue court, or otherwise.

(2) When an arrear of rent is due from a tenant the landlord may, in lieu of, or in addition to suing for the arrear as provided by this Act, recover the same by distress and sale of the produce of the holding in respect of which the arrear is due.

(3) Nothing in this section shall be deemed to affect the provisions of sections 2, 3 and 4 of the Bengal Indigo Contracts Regulation,* 1823, or of section 11 of the Opium Act,† 1857, or of section 141 of the United Provinces Land Revenue Act,† 1901.

Crops sown by a tenant's mortgagee in possession may be distrained by the landlord. 9 All. 244. The landlord can sue for the balance of arrear due after distraint. B. R. 3 of 1900. The distraint is allowed not only for owners of rent due but for rent accruing due. 15 All. 152. Men, having knowledge of the lien cannot purchase the crop. 5 All. 518.

When distraint not allowed. **153.** (1) Notwithstanding anything in the last preceding section, no distraint shall be made —

- (a) by a co-sharer who is not entitled to collect the whole of the rent from a tenant ;
- (b) by a landholder who has covenanted not to distrain ;
- (c) by a landholder of any produce, of the whole or any portion of which a previous distraint has been made by him ;
- (d) in respect of any arrear which has been due for a longer period than one year ;
- (e) in respect of any arrear for which security has been accepted by the landholder ;

* See Appendix A.

† See *infra*.

(f) in respect of any arrear of rent of which the payment has been remitted or suspended under section 73 ;

and no distraint shall be made —

(g) by an agent who is not expressly authorized by power-of-attorney in that behalf ;

(h) by a servant of a person empowered to distrain, unless he has a written authority to distrain.

A landlord can distrain the crop for arrears of rent due from one of the tenants cultivating jointly. 2 A. W. N. 126.

Cl. (c). Where some out of a number of co-sharers were collecting rent and 2 of them were lambardars entitled to collect rent on behalf of others, held that a distraint by such persons was valid. II U. D. 685.

Cl. (d) is not applicable to execution of decrees for arrears of rent. II. U. D. 685.

What may be distrained. 154. (1) The landholder shall be entitled to

(a) any crops or other products of the earth standing or ungathered on the holding ;

(b) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or in a homestead.

(2) The landholder shall not be entitled to distrain—

(a) any crops or other products more than thirty days before maturity ;

(b) any crops or other products after they have been stored by the tenant ;

(c) any other property whatsoever.

Crops or other products -do not include trees yielding fruits. 4 A. W. N. 135.

Clauses (a) and (b) allow the landlord to distrain inspite of the purchase of such crops by a third person. 3 All. 424.

Procedure.

155. (1) Before or at the time when a distraint is made the distrainer shall serve on the defaulter a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

(2) The demand and account shall be dated and signed by the distrainer, and shall, if practicable, be served personally on the defaulter ; or, if he cannot be found, shall be affixed to his usual place of residence.

Rent falling due a few days after will not justify a distraint. II. U. D. 685.

156. (1) Unless the demand is immediately satisfied the distrainer may distrain property as aforesaid equal in value, as nearly as may be, to the amount of the arrear and the costs of the distress; and shall prepare a list or description of the said property together with the name of the person appointed as caretaker under section 157 (3), date and sign the same and deliver it to the defaulter, or, if he cannot be found, affix it to his usual place of residence, and a copy of such list or description, together with a copy of the written demand and account and the name of the caretaker, shall be filed forthwith in the tahsil.

(2) If the distrainer has notice that the cultivator is some person other than the defaulter, a copy of the demand, and of the list or description of the property shall, in like manner, be delivered to the cultivator.

(3) No distraint shall be made except between sunrise and sunset.

157 (1) Standing crops and other ungathered products may, notwithstanding the distraint, be tended, reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

(2) If the cultivator neglects to do so, the distrainer shall cause the said crops or products to be tended, reaped or gathered, and stored in some convenient place in the neighbourhood, at the expense of the cultivator.

(3) In either case the distrained property shall be placed in the charge of the person appointed by the distrainer as caretaker.

158. Crops or products which, from their nature, do not admit of being stored, may be sold as hereinafter provided before they are reaped or gathered; 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, are fit for reaping or gathering.

159. If a distrainer is opposed, or apprehends resistance, he may apply to the court, and the court shall, if it appears necessary, depute an officer to assist the distrainer in making the distraint.

160. If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the defaulter or cultivator tenders payment of the arrear demanded and of the expenses of the distrainer shall receive the same and shall forthwith withdraw the distraint.

161. (1) Within seven days from the time of making the distraint, the distrainer may apply to the proper officer, hereinafter called the sale-officer, for sale of the property specified in the list or description filed under section 156.

(2) If no such application is made, the crops or products shall be released from distraint.

For purposes of application :—See U. P. Gazette 1927 part II p. 599.

Contents of application.

162. The application shall be in writing, and shall specify the following particulars, namely,—

- (a) the name and residence of the defaulter, and, in the case provided for in section 156 (2), of the cultivator also ;
- (b) the amount due ;
- (c) the date of the distraint ; and
- (d) the place in which the distrained property is.

163. Together with the application, the distrainer shall deliver to the sale-officer the fee for the service of notice as of notice. hereinafter provided.

164. (1) Immediately on receipt of such application and fee the sale-officer shall send a copy of the application and of the list or description filed under section 156 to the court having authority to entertain a suit to contest the distraint,

and shall serve notice on the defaulter, requiring him either to pay the amount demanded, or to institute a suit to contest the distraint within fifteen days from the receipt of the notice.

(2) In the case provided for in section 156 (2) similar notice shall be served on the cultivator.

(3) The sale-officer shall by order fix the date for the sale, which shall be not less than twenty days from the date of the application, and shall cause it to be proclaimed at the place where the distrained property is ; and he shall also send a copy of his order to the court to be put up in its office.

(4) The proclamation shall also specify—

- (a) the property to be sold,
- (b) the demand for which it is to be sold,
and
- (c) the place where the sale is to be held.

165. If the institution of a suit to contest the distraint has not been certified, under section 175 (2), to the sale-officer on or before the date fixed in the proclamation of sale, he shall, unless the said demand, with such expenses of the distraint as are allowed by him, is discharged in full, proceed in the manner hereinafter prescribed, to sell the property or such part of it as may be necessary to satisfy the demand with the expenses of the distraint and the costs of the sale.

166. (1) The sale shall be held at the place where the distrained property is or at the nearest place of public resort, if the sale-officer is of opinion that it is likely to sell there to better advantage.

(2) The property shall be sold by public auction in one or more lots, as the sale-officer may think advisable.

(3) If the demand, with the expenses of the distraint and the costs of the sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

167. If, on the property being put up for sale, a fair price in the estimation of the sale-officer is not offered for it, and if the defaulter or cultivator applies to have the sale postponed until the next day, or, if a market is held near the place of sale, the next market-day, the sale shall be postponed until such day, and shall be then completed, whatever price may be offered for the property.

Postponement is limited to the next day or next market day. 2 A. L. J. 128.

168. The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the sale-officer thinks necessary :

Payment of purchase-money. Provided that, where the purchaser of any lot is the distrainer, he shall be allowed to set off against the price (less one anna in the rupee on account of the costs of the sale) of such lot any sum due to him on account of the arrear for which the distraint was made.

169. In default of such payment, the property shall be put up again and sold, and the deficiency in price (if any) which may happen on such second sale, and all expenses attending such second sale shall be certified to the court by the sale-officer and shall, at the instance either of the distrainer, or the defaulter, or the cultivator, be recoverable from the defaulting purchaser under the provisions of the Code of Civil Procedure, 1908, relating to the execution of a decree for the payment of money.

170. When the purchase-money has been paid in full, the sale-officer shall give the purchaser a certificate describing the property purchased by him and the price paid.

171. (1) From the proceeds of every sale of distrained property under this Act, the sale-officer shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall remit the amount so deducted to the tahsildar.

(2) He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distraint, and of the issue of the notice and proclamation of sale prescribed in section 164 to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

(3) The remainder shall be applied to the discharge of the arrear for which the distraint was made.

(4) The surplus (if any) shall be delivered to the person whose property has been sold.

Sale-officers and employee's prohibited from purchasing.

172. Sale-officers, and all persons employed by or subordinate to such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

173. If, in any case on proceeding to hold any such sale, the sale-officer finds that due notice of the distraint and intended sale has not been given, he shall, if the defaulter so desires, postpone the sale and report the case to the court, which shall thereupon direct the issue of another notice and proclamation of sale under section 164, or pass such other order as it thinks fit.

No fee is chargeable for fresh notice or for proclamation.

174. (1) When the sale-officer goes to any place for the purpose of holding a sale under this Act, and no sale takes place because the demand of the distrainer has been previously satisfied, without any intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of costs shall be leviable, and shall be calculated on the estimated value of the distrained property.

(2) If the distrainer's demand is not satisfied until the day fixed for the sale, the charge shall be payable by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

(3) In every other case it shall be payable by the distrainer, and may be recovered from him as an arrear of revenue.

(4) In no case shall a larger amount than ten rupees be recoverable under this section.

Suits relating to distraint.

175. (1) If sale has not taken place under section 165 or section 169, any person whose property has been distrained may bring a suit to contest the distraint, provided that, if notice has been served on the plaintiff under sub-section (1) or sub-section (2) of section 164, he must institute his suit within fifteen days from the receipt of the notice.

(2) If a suit is instituted under sub-section (1), the court shall send to the sale-officer, or, if so requested, shall deliver to the plaintiff a certificate of the institution of such suit; and on such certificate being received by, or presented to, the sale-officer before sale has taken place, he shall suspend the sale.

(3) In a suit to contest a distraint, the distrainer shall be required to prove the amount of the arrear for which the distraint was made.

(4) If the plaintiff in a suit under this section is the defaulter or the cultivator, and the demand of the distrainer, or any part thereof, is found to be due, the court shall make a decree for the amount in favour of the distrainer, and such amount shall be recovered from the property as provided in section 177.

(5) If the distraint is adjudged to be vexatious or groundless, the court, besides directing the release of the distrained property, may, on the application of the plaintiff, award to him such compensation as the circumstances of the case may require.

Any person.—Implies that the person suing need not be the cultivator ; he may be a person intermediate between the tenant and the landlord. B. R. 14 of 1899.

176. (1) The plaintiff may, at the time of instituting any such suit as aforesaid, or at any subsequent period deposit in court the amount of the arrear claimed together with a sum of Rs. 10 to cover the expenses of the distraint or give security for the payment of whatever sum may be adjudged to be due from the defaulter with interest and cost of the suit.

(2) When such deposit has been made or security given, the court shall give to the plaintiff a certificate to that effect, and if so requested, shall serve the distrainer with notice of the same.

(3) Upon such certificate being presented to the distrainer, or served on him by order of the court, the property shall be released from distraint.

177. (1) When the distrained property has not been released from distraint under the provisions of section 176, if the demand, or any portion of it, is adjudged to be due, the court shall issue an order to the sale officer specifying the amount adjudged to be due, and authorizing the sale of such property.

(2) The sale-officer shall thereupon fix a date for the sale not less than five nor more than ten days from the date of the proclamation, and shall cause the same to be proclaimed, and, unless the amount specified in the order of the court, together with the expenses of distraint, is paid, shall sell the property as hereinbefore provided.

178. If a person whose property has been distrained is prevented by any sufficient cause from bringing a suit to contest the distraint as provided by section 175, and his property is sold, he may, nevertheless, institute a suit to recover compensation for such distraint and sale.

179. If any person under colour of this Act distrains or sells, or causes to be sold any property otherwise than according to the provisions of this Act,

or if any distrained property is lost, damaged or destroyed by reason of the distrainer not having taken proper precautions for the keeping and preservation thereof,

or if the distraint is not immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the property may institute a suit against the distrainer for compensation for any injury which he has thereby sustained.

If the distrainer is an agent or servant, his principal may be joined as a defendant in the suit.

If the distrainer proves that the loss or the damage of property has been due to the negligence of the sale-officer, the latter alone will be responsible for the injury or damage.

The limitation of 2 months for a suit under this section runs from the date of the release of the property from the distraint, 45 All. 208 ; or from the date when such property is lost, destroyed or damaged or the plaintiff has knowledge of such loss etc. ; 8 A. L. J. 503. The burden of proving the damages lies on the plaintiff. 8 W. R. 22.

Special provisions.

180. (1) When an arrear of rent is realized from a cultivator by proceedings in distraint by any person other than his immediate landholder, he shall be entitled to deduct the amount so realized from any rent payable by him to such landholder, and such landholder, if he is not the defaulter, shall in like manner be entitled to deduct the same amount from any rent payable by him to his landholder, and so on until the defaulter is reached.

(2) In lieu of deducting any such amount so realized the sub-tenant shall be entitled to institute a suit for the recovery of the same from the defaulter.

(3) Where land is sub-let and any conflict arises between the claims of a superior and inferior landholder who distrain the same property, the claims of the superior landholder shall have priority.

181. When any conflict arises between the rights of a distrainer and of a person attaching or selling the same property in execution of a decree of a civil or revenue court, the right of the distrainer shall prevail ; but the surplus (if any) payable under section 171 to the person whose property has been distrained shall be deposited in the court from which the order for attachment or sale issued.

No relief is afforded to a third person against fraudulent and collusive distraint brought about by a zemindar against his tenant. The section provides for the precedence of a rent-claim where the distraint is genuine. 1929 All. 845.

Penalties.

Penalties for dishonest distraint, or resistance to distraint.

182. (1) If any person—
(a) under colour of this Act dishonestly distrains, sells or causes to be sold, any property, otherwise than in accordance with the provisions of this Act, or

(b) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

(2) Any person who abets the doing of any such act shall be deemed to have abetted the commission of such offence.

Dishonestly.—Without anything to justify him in supposing that he had the right to distrain. 15 W. R. 543.

CHAPTER XI.

RENT-FREE GRANTS.

183. A rent-free grant means a grant of a right to hold land
Definition of rent-free by a landlord with or without considera-
rent-free grant. tion :

Provided that, if made after the commencement of this Act, such grant shall be made by registered instrument.

Explanation I.—When a sale of land takes place, a reservation in favour of the vendor of a portion of the land sold, to be held rent-free by such vendor, is a rent-free grant

Explanation II.—A grant of land for the performance of a service, religious or secular, is a rent-free grant.

Land outside the scope of this section.—(1) Land granted by the Government free of revenue or exempted from the payment of revenue, 33 I. C. 507; (2) Land subject to the payment of rent or revenue and however low. 6 A. L. J. 733.

Landlord.—includes (1) Perpetual lessee of a village or mohal, 16 A. L. J. 619; (2) a mortgagee in possession. II U. D. 492.

Explanation I.—Overrules the decision in II U. D. 148.

Explanation II.—Re-affirms the law under the old Act. 1927 R. C. 158.

184. Land held rent-free by a person who is not recorded as the proprietor, mortgagee or thekadar thereof, and in respect of which no liability for rent is recorded in the annual registers, shall, in the absence of any evidence to the contrary, be presumed to be held under a rent-free grant.

Presumption in favour of certain land being held under a rent-free grant.

This section is new and raises a presumption of rent-free grant in favour of a person who held the land without any record of liability to pay rent, 27 I. C. 12. The burden of proving payment of rent lies on the person who alleges it; 14 R. D. 545. **Bila Lagan** does not necessarily imply a rent-free grant and a presumption under this section is not retrospective. 14 R. D. 64.

Grants in respect of which the right of suit is barred.

Grants in respect of which suit is barred. **185.** (1) No suit shall lie under the provisions of this chapter in respect of land—

- (a) held rent-free in a district or portion of a district which is permanently settled under a grant made prior to the permanent settlement, or
- (b) held rent-free under a judicial decision of a date prior to the twenty-second day of December, 1873, or
- (c) held rent-free by a holder whose title is based on a transfer of the land for valuable consideration made by the landlord or by a rent-free holder thereof before the twenty-second day of December, 1873, provided that at that date the right of the landlord to resume the land had been barred by section 28 of Act X of 1859 or by article 130 of the Second Schedule of the Indian Limitation Act, 1871.

Judicial decision—decision given by a court of competent jurisdiction, 1 O. L. J. 698, 26 I. C. 722. If a settlement officer merely enters the facts as he finds them without deciding any question of right, it is not a **judicial decision**. 11 A. L. J. 277 ; S. D. 6 of 1909.

Grants held in proprietary right, but liable to assessment of revenue.

186. (1) Land held rent-free in respect of which a suit is not barred by the provisions of section 185 shall be deemed to be held in proprietary right, and the holder shall be liable to pay the revenue due in respect thereof, where—

- (a) it is held under a grant made in perpetuity and in consideration of the loss or surrender of a right previously vested in the grantee, or
- (b) it is held under a grant made in perpetuity by a written instrument for valuable consideration, or
- (c) not being held for the performance of some service, religious or secular, or, conditionally, or for a term, it has been held rent-free for fifty years immediately preceding the commencement of this Act and by two successors in interest to the original grantee, or, where there was more than one such grantee, to any one of such grantees.

(2) Whenever a court declares land to be held in proprietary right under this section it shall determine the revenue payable in respect thereof.

Explanation.—For the purposes of clause (c) of sub-section (1) a person to whom the interest of a deceased person passes by right of survivorship shall be deemed to be his successor in interest.

This section reproduces in effect s. 158 of the repealed Act.

Land outside the scope of this section.—(1) Land in respect of which a suit is barred by the provision of s. 185. (2) **Haqiat mutfariqa** never called *Nankar* or *Shankalp* or the like. V U. D. 111. (3) Land granted by way of maintenance and not absolutely. 1 O. L. J. 589. (4) Groves ordinarily. 33 I. C. 147.

For valuable consideration—see II U. D. 552, II U. D. 472 and 477.

Fifty years.—Where land granted rent-free is planted with a grove and then the grove ceases to exist, the period during which the grove existed is counted towards 50 years. 15 A. L. J. 867.

Successors in interest.—Includes transferees and is not confined to heirs, executors and administrators, 8 A. L. J. 539 ; but it does include a mortgagee 32 I. C. 76, I. U. D. 242.

The explanation to this section overrules the decision in II U. D. 651 and gives effect to the decision in 14 A. L. J. 878.

Grants liable to fixing of rent or ejection.

187. All land held rent-free under a grant not coming within the provisions of section 185 or section 186 is liable to **fixing of rent**. have rent fixed on it.

Dismissal of a suit for resumption is not a bar to a suit under this section. I. U. D. 408.

188. (1) Where land held rent-free is liable to have rent fixed on Liability to it under section 187, the holder thereof shall be liable to ejectment. to ejectment if, by the terms of the grant or by local custom, the land is held -

- (a) at the pleasure of the grantor, or
- (b) for the purpose of some specific service, religious or secular, which the landlord no longer requires, or
- (c) conditionally or for a term, when the condition has been broken or the term has expired.

(2) In a case falling under clause (b) of sub-section (1) the filing of a suit for fixing of rent or for ejectment shall be deemed sufficient notice that the service is no longer required ; but where no previous notice in writing has been given to the grantee, the court may, in its discretion, direct that the whole costs of the suit be borne by the plaintiff.

(3) A rent-free grantee who is, or may become, liable to ejectment under the provisions of this section may make any improvement which a statutory tenant might make, and the provisions of sections 78 and III and of sections 113 to 120 shall apply to every such grantee as if he were a statutory tenant.

Cl. (a) " **Barazamandi Malikan** " does not necessarily imply resumption at the pleasure of the grantor, II U. D. 399. In case of **sankalpa** a very strong evidence is required to prove that it is resumable. II U. D. 436. A grant *muafi khairati*, *dohli* tenure *muafi*, grants for charitable purposes, unless a custom to the contrary is proved and a grant to a temple or idol are irresumable—see 31 I. C. 898, II U. D. 166, III U. D. 186 and 2 O. C. 295 respectively.

Cl. (b) service must be for the benefit of the grantor, which implies the right to dispense with. 2 All. 732. There must be an allegation of specific service in the suit. 1 U. D. 194. Now filing a suit is sufficient notice that the services are no longer required and notice is not necessary as in the old section. But if notice is not given, the Court may direct the payment of costs.

Cl. (c) **Breach of a condition.**—Land granted for building proposes can be resumed, after the house has fallen down. II U. D. 16. Grant made for the up-keep of an Imambara when sold to a Hindu is resumable. II U. D. 515.

Expiry of the term—grant made for the life term terminates at the death of the grantor. 3 O. C. 43.

Sub-s. (3) allows for compensation which was not allowed under the repealed Act and thus overrules the decision in B. R. 4 of 1904.

189. The liability to fixing of rent under section 187, and to ejectment under section 188 in cases to which that section applies arises -

Date from which liability to fixing of rent and ejectment arises.

(a) where the land is held under a written instrument by which the grantor has expressly agreed that it shall not be resumed, on the death of the original grantor, or on the expiration of the settlement in force at the date of the grant, or on the expiry of a period of thirty years from the date of the grant, whichever event first occurs ;

- (b) where the land is held for the purpose of some specific service, religious or secular, when the service is no longer required ;
- (c) where the land is held conditionally or for a term, when the condition has been broken or the term expires, or on the expiry of seven years from the date of the grant, whichever event first occurs ;
- (d) in any other case, on the expiry of one year from the date of the grant.

190. (1) Where land held under a rent-free grant is found liable to have rent fixed thereon under section 187, the grantee shall be deemed to have been a tenant from the date of the grant, and the class of his tenancy shall be determined in accordance with the provisions of this Act.

(2) A tenant referred to in sub-section (1) who at the commencement of this Act had held the same land continuously for twelve years within the meaning of sections 11 to 14 of the Agra Tenancy Act, 1901 shall be deemed to have acquired a right of occupancy.

(3) If the grantee is declared to be an occupancy or statutory tenant, the rent shall be decreed at the appropriate rates specified in section 59.

(4) The rent decreed under sub-section (3) shall be payable from the first day of July next following the date of the institution of the suit

Sub-s. (2) The period of illegal sub-letting will be excluded. II U. D. 263.

Sub-s. (3) Declaration cannot be given in a suit for ejectment. II U. D. 404.

191. A decree for ejectment under section 188 shall be executed in the same manner as a decree for the ejectment of a tenant, and the provisions of sections 93 to 98 shall apply to every such decree.

Miscellaneous provisions.

192. In any suit brought under the provisions of section 186, section 187, section 188 or section 44, unless the plaintiff objects, the court shall, after framing the necessary issues, grant any relief under any of those sections to which it may find the plaintiff entitled, notwithstanding that such relief may not have been asked for in the plaint :

Provided, first, that after framing such issues the court shall, on the request of either party, grant reasonable time for the production of evidence :

Provided, secondly, that where the plaintiff has claimed a relief to which he was not entitled, the court may take this fact into consideration in awarding costs.

In a suit for ejection the question of fixing rent cannot be gone into without a specific issue. 13 R. D. 453.

193. Suits under this chapter shall, when the local area in which the land is situated is under settlement, be instituted in the court of the settlement officer or assistant settlement officer, who shall have the powers of a court under this chapter.

A plea of payment is not a plea of set-off. 1931 All. 62 ; 1930 A. L. J. 1267.

194. Nothing in this chapter shall affect the right of Government to assess revenue on any land in accordance with section 58 or section 103 of the United Provinces Land Revenue Act,* 1901.

195. Notwithstanding anything contained in chapter XV, appeals from decrees or orders under this chapter shall be governed by the provisions of chapter X of the United Provinces Land Revenue Act,* 1901, except that the period of appeal to the commissioner shall be thirty days from the date of the decree or order appealed against.

CHAPTER XII.

GROVE-HOLDERS.

196. A grove-holder is a person to whom land has been let or granted by a landlord or a permanent tenure-holder for the purpose of planting a grove, or who has in accordance with local custom entitling him to do so or with the written permission of the landlord or the permanent tenure-holder, planted a grove on land held by him as tenant (not being a permanent tenure-holder, a fixed-rate tenant or a sub-tenant) or as rent-free grantee, not being a grantee to whom the provisions of section 185 or section 186 apply, of such landlord or permanent tenure-holder, as the case may be :

Provided that where the permission was granted prior to the commencement of this Act, the permission need not have been in writing and may have been either express or implied.

Letting will be presumed in case of the existence of a grove for a long period without any objection from the landlord. B. R. 2 of 1892. If grove has not been planted but there is possibility to plant one without unreasonable delay, the tenant will not be ejected. 1925 R. C. 202.

197. Notwithstanding anything previously contained in this Act, but subject in respect of the matters mentioned in clauses (a), (b), (d), (e), and (f) to any custom or contract to the contrary—

Rights and liabilities of grove-holders.

(a) it shall be presumed that a grove-holder holds the land in respect of which he is grove-holder as a non-occupancy tenant under a lease the term of which will expire when the land ceases to be grove-land ;

* See *infra*.

- (b) the interest of a grove-holder shall be transferable by voluntary transfer or in execution of a decree of a civil or revenue court or otherwise ;
- (c) the interest of a grove-holder shall devolve as if it were land and the devolution of such interest shall not be governed by the provisions of section 24 or section 25.
- (d) a grove-holder may sub-let the whole or any portion of his grove-land, but not so as to confer on his sub-tenant any interest outlasting his own interest and that of persons claiming through him or to relieve himself of any of his liabilities to his landholder ;
- (e) a grove-holder shall not be liable to ejection by his landholder except under section 34 or on the ground that he holds under a lease the term of which has expired, or will expire at or before the end of the current agricultural year, but nothing in this clause shall be deemed to prevent the landholder from obtaining the sale of his grove-holder's interest in execution of a decree for arrears of rent ;
- (f) a landholder may exercise against a grove-holder the right conferred by sections 152 to 154 to realize the rent by distress and sale of the fruit or, where these have a commercial value, of the flowers of the grove, or of any crops grown under or among the trees thereof, but not of any other produce of the grove ;
- (g) nothing in chapter XI of this Act shall be deemed to apply to land held by a grove-holder as such ; and
- (h) where a person becomes a grove-holder in respect of land of which he is a tenant or rent-free grantee, he shall hold such land as grove-holder in supersession of all subsisting rights and liabilities so far as they are inconsistent therewith.

Cl. (a) Grove-holder may replace trees as they fall down or are cut down, 6 A. W. N. 138 ; VI U. D. 239 ; II U. D. 728, 729, 730. A grove ceases to be a grove if it is brought under cultivation and its character is not maintained, S. D. 8 of 1912 and S. D. 14 of 1912 ; 1929 All. 557 ; also when it is cut down V U. D. 43 ; 3 L. R. 160 ; 1922 R. C. 34 ; VI U. D. 121. A grove-holder on ejection cannot claim compensation, III U. D. 441.

Cl. (b) gives effect to the decisions in S. D. 1 of 1913 ; S. D. 2 of 1924 ; IV U. D. 60 ; 20 A. L. J. 70. A grove-holder can sublet whole or any portion of his grove-land 14 R. D. 583. A grove-holder can let out for growing crops which may be grown under and among the trees. 1930 A. L. J. 1089.

Cl. (e) A grove-holder cannot be ejected, 1922 R. C. 567 ; S. D. 4 of 1911 ; III U. D. 236 and 604.

Cl. (h) gives effect to the decisions in 1923 R. C. 390. See also S. D. 7 of 1912 and 19 A. L. J. 616.

198. Whenever it is found in any suit or other proceeding relating to grove-land that such land is held by a person who has no proprietary right therein, the court may presume that he holds such land as a grove-holder.

Presumption regarding grove-land.

Presumption arising under this section can be rebutted. II U. D. 14. If some of the trees have fallen down, the grove-holder does not lose his right as such. 1925 R. C. 367. Disappearance of fruit trees and appearance of self-sown trees and the land recorded as tenancy are evidence that the land has ceased to be a grove-land. 10 Rev. and Cri. L. J. 204.

CHAPTER XIII.

THEKADARS.

199. (1) A thekadar is a farmer or other lessee of proprietary rights in land, and in particular of the right to receive rents or profits.
Definition of thekadar, theka and theka area.

(2) The farm or lease is called a theka, the person who grants it the lessor, and the area to which it relates the theka area.

The holder of a clearing cultivating lease is not a thekedar. If a tenant becomes a thekedar, his tenancy right merges into theka. B. R. 4 of 1918.

Method of granting theka. **200.** A theka may be made only by a written instrument executed by the landlord.

201. (1) Except as otherwise provided by the terms of his theka, a thekadar may exercise during the period and to the extent of his theka all the rights of his lessor under this Act, except—
Rights of a thekadar in the absence of contract.

(a) the right to sue for enhancement of rent under section 53;

(b) the right to confer occupancy rights under section 17;

(c) the right to grant leases to tenants for a period exceeding seven years or exceeding the unexpired portion of the term of his theka;

(d) the right to give written permission to sub-let under section 29;

(e) the right to make an improvement except as provided in section 214;

(f) the right to sue a rent-free grantee under the provisions of section 186, section 187 or section 188.

(2) The rights mentioned in clauses (a) to (f) of sub-section (1) shall not be exercised by the thekadar unless they are conferred expressly by the terms of the theka.

(3) Rights which may be exercised by a thekadar under the foregoing sub-sections shall not be exercised by his lessor during the period of the theka, unless the terms of the theka otherwise direct.

A thekadar can bring a suit for arrears of rent and can eject a tenant. III U. D. 551. He can grant a lease upto 7 years and can compromise an ejectment suit. 1923 R. C. 353. He can bind the landlord by the terms of the tenancy created by himself. II U. D. 626. But a thekadar cannot confer occupancy right; 1923 R. C. 548, and cannot acquire *sir* rights, IV U. D. 77. The terms of the theka are binding upon the lessor and none of the powers conferred thereby upon the thekedar, can, during the period of the theka, be exercised by the lessor. V U. D. 382. The onus to prove that

the thekedar has not got full powers lies on the landlord. V U. D. 256 ; S. D. 9 of 1892.

202. Except as otherwise provided by the terms of the theka, the lessor shall be, and the thekedar shall not be, entitled to recover arrears of rent and other dues in respect of the theka area, which accrued prior to the commencement of the theka if legal proceedings for their recovery are instituted within one year of the commencement of the theka ; and a thekedar shall not be entitled to recover any such arrears, remaining due at the expiry of his theka or at the time of his ejection or surrender of the theka, whichever event first occurs, unless legal proceedings for the recovery of such arrears are commenced within one year of the expiry of the theka or of the thekedar's ejection or surrender of the theka.

Rights of transfer and succession. **203** (1) Except as may be otherwise provided by the terms of the theka, the interest of a thekedar—

- (a) shall not be transferable, or be saleable in execution of a decree.
- (b) unless the theka has been given on payment of a premium shall not be heritable.

(2) Where a thekedar's interest is heritable it shall devolve as if it were land so far as is consistent with the retention by the landlord of a right or possibility of reversion.

Is not transferable—See 13 R. D. 815.

Ejection to be according to law. **204.** No thekedar shall be ejected otherwise than in accordance with the provisions of this Act.

Grounds of ejection. **205** (1) A thekedar shall be liable to ejection on one or more of the following grounds, namely :—

- (a) on the ground that a decree against him for arrears of rent remains unsatisfied ;
- (b) on the ground of any act or omission prejudicial to the rights of the landlord or inconsistent with the purpose of the theka ;
- (c) on the ground that he, or any sub-thekedar under him, has broken a condition, on breach of which he is by the terms of his theka, liable to be ejected ;
- (d) on the ground that the term of the theka has expired, or except, in the case of thekas granted before the commencement of this Act that a period of thirty years has elapsed since the theka was granted ;
- (e) in the case of a theka from year to year, on the expiry of a notice to determine the theka provided that at least six months' notice ending on any date in the last year of the thekedar's tenure shall be given.

(2) Notwithstanding anything in clauses (b) and (c) of sub-section (1) no thekedar shall be ejected for non-payment of rent otherwise than in accordance with clause (a) of that sub-section.

Notice.—Notice must be in writing and signed by the lessor or some one authorised by him ; 29 Cal. 235. It must convey an intention to terminate the theka. 7 All. 899 F. B.

206. (1) When a landlord desires to eject a thekadar on the ground specified in clause (a) of section 205, he shall apply by way of execution of the decree to the court, empowered at the time to execute the same.

Procedure to eject a thekadar for non-payment of arrears decreed.

(2) Thereafter the court shall proceed, so far as may be, in accordance with the procedure prescribed by section 80.

207. When a landlord desires to eject a thekadar on any other ground than that specified in clause (a) of section 205, he shall proceed by suit.

Procedure in other cases.

208. In a suit for the ejectment of a thekadar any sub-thekadar may be joined as a party to the suit, and shall be so joined where the suit is on the ground of any act or omission of such sub-thekadar or to which such sub-thekadar was a party.

Sub-thekadar and other transferees when to be made defendants.

209. The provisions of section 85 with regard to a tenant, found liable to ejectment on a ground specified in clauses (a) and (b) of section 84 shall apply in the case of a thekadar found liable to ejectment on a ground specified in clause (b) or (c) of section 205

Procedure in case based on forfeiture.

(1) Every decree or order for the ejectment of a thekadar shall be executed in accordance with the provisions of the Code of Civil Procedure, 1908, relating to the execution of decrees for delivery of immovable property, and the provisions of sub-section (2) of section 93 of this Act shall apply to every such decree or order.

Execution of decree for ejectment.

(2) No decree or order for the ejectment of a thekadar under sub-section (1) shall be executed in respect of land in the actual occupation of the thekadar under or in pursuance of the theka before the first day of April in any year or such later date as the Board prescribes by rule in respect of any local area, or after the thirtieth day of June in any year.

211. When a thekadar re-occupies without the written consent of the landlord any land from which he has been ejected in accordance with sub-section (2) of section 210 the provisions of section 95 shall apply as if for the word "person" the word "thekadar" were substituted.

Penalty for unlawful re-occupation.

(1) A thekadar who has been wrongfully ejected from the whole or any part of the theka area, or wrongfully prevented from exercising any of his rights as thekadar, by the landlord or any person claiming under or as agent of the landlord, may sue for any or all of the following remedies :—

Remedies of thekadar wrongfully ejected.

(a) recovery of possession ;

(b) an injunction ;

(c) compensation for such wrongful dispossession or unlawful interference ;

(d) compensation for an improvement lawfully made by him.

(2) The provisions of sub-sections (2), (3) and (4) of section 99 shall apply to any such suit as if for the word "tenant" the word "thekadar" were substituted

213. A thekadar may with the consent of his lessor surrender his interest in the theka at any time.

214. In the absence of anything to the contrary, in the terms of improvements. the theka—

(a) a landlord, notwithstanding the theka, may make any improvement on or affecting the theka area which he is entitled under section 115 to make,

(b) a thekadar may with the written consent of the landlord, make any improvement which the landlord could lawfully make.

215. A thekadar, who has made an improvement, which he is entitled to make shall be entitled to compensation as provided in sections 78 and 212, and the amount of such compensation shall be determined in the same way as compensation to a tenant as provided in section 117.

216. Except as otherwise provided by the terms of the theka, the provisions of sections 129 to 132 [except sub-sections 129 to 132 and section 140 to 151. section (2) of section 132 and the words "or by distraint" and the words "or in any one or more of such ways" in sub-section (1 of the same section)] and of sections 140 to 151 inclusive shall apply to a thekadar as if for the word "tenant" the word "thekadar" were substituted.

217. The provisions of sections 265 and 266 governing the exercise by two or more co-sharers of their rights as against a common tenant shall be applicable also to the exercise of such rights as against a common thekadar.

218. If a thekadar remains in possession after the expiry of his theka, and the lessor accepts rents from him or otherwise assents to his continuing in possession, the theka is, in the absence of an agreement to the contrary renewed from year to year.

The thekadar will not become a proprietor by holding over. II U. D. 203.

219. (1) The provisions of sections 71, 73, 74, 75 and 76 shall apply to all thekadars unless there is an express provision to the contrary in the theka.

(2) A theka shall be deemed to be a lease for agricultural purposes within the meaning of section 117 of the Transfer of Property Act, 1882.

This section is new and overrides the decision cited in 48 All. 385.

220. Every suit or application brought by a thekadar against his Application of lessor, or against a thekadar by his lessor, under the Fourth Schedule. provisions of the chapter, which is of the same nature as any suit or application specified in the Fourth Schedule, which may be brought by a tenant against his landholder or by landholder against his tenant, shall be deemed to be included in that schedule under the same serial number as such similar suit or application.

CHAPTER XIV.

ARREARS OF REVENUE, PROFITS, ETC.

221. A lambardar may sue a co-sharer for arrears of revenue payable to the Government through the lambardar by such co-sharer and for village expenses and other dues for which such co-sharer may be liable to the lambardar.

Suit for arrears of revenue, etc., by lambardar.

A *lambardar* who after paying the revenue due from a co-sharer ceases to be a *lambardar*, is entitled to sue the other co-sharers in the Revenue Court. 3 A. W. N. 8. A *lambardar* can sue all co-sharers jointly, if there is no distribution of revenue among them. B. R. 10 of 1884. A *lambardar* cannot sue as *lambardar* one or more co-sharers for any sum due by reason of their holding as *sir* or *khudkasht* land in excess of their shares. 1927 All. 623, 25 A. L. J. 1057. A single suit against a large number of co-sharers for different amounts due from them is not allowed. IV U. D. 142.

222. A co-sharer who pays arrears of revenue on account of another co-sharer who defaults may sue such co-sharer for the amount so paid.

Suit for arrears of revenue by co-sharer.

Joint lessee, thekadars of farmers are not co-sharers. 1 L. R. 2 H. C.

223. A muafidar or assignee of revenue may sue for arrears of revenue due to him as such.

Suit for arrears of revenue by muafidar, etc.

This section follows the decision in B. R. 4 of 1893 and is against the H. C. decision in 26 All. 570.

224. A taluqdar or other superior proprietor may sue for arrear of revenue or rent due to him as such.

Suit for arrears of revenue or rent by taluqdar, etc.

225. (1) In the absence of any determination of the date by the Profits when settlement officer or of an express agreement among divisible. the co-sharers, profits shall be divisible on such dates as the local Government may, by rules made under this Act, prescribe.

(2) Revenue or profits not paid on the day on which they fall due become on the following day arrears, and the lambardar or co-sharer or muafidar or assignee of revenue or taluqdar or superior proprietor, as the case may be, entitled to realize such dues, shall be entitled to claim interest on such arrears at one per cent per mensem

Cl. (2) so far as it relates to *interest* overrules the decision in 23 All. 5 and gives effect to the decision is Board's file no. 1138 of 1886.

Suit for settlement of accounts and profits against lambardar.

226. (1) A co-sharer may sue the lambardar for settlement of accounts and for his share of the profits of a mahal, or of any part thereof.

(2) In any such suit the court may award to the plaintiff not only a share of the profits actually collected, but also of such sums as have remained uncollected owing to the negligence or misconduct of the lambardar.

(3) In any such suit the burden of proving the amount collected shall be on the lambardar, and where he fails to discharge it the court may presume that the profits have been collected in full or with such deduction on account of unrealizable arrears as it considers reasonable.

The plaintiff in a suit for profits is entitled to get a decree for his share of the arrears collected on account of previous year, as well as his share of the gross rental for the year in suit. 22 A. L. J. 610, F. B. This overrules the earlier rulings. 43 All. 29, 20 A. L. J. 313 ; V U. D. H. C. 162. Interests may be allowed on profits claimed and found due. 1 All. 261. The plaintiff must allege and prove neglect or misconduct. 12 All. 301. When the plaintiff gives evidence that tenants are solvent and a large amount remains uncollected without any special circumstances, the onus lies on *lambardar* to prove that it is not due to his negligence, but to some other reasons. 13 A. L. J. 851. When the *lambardar* admits that all the tenants are solvent, but a large amount remains uncollected and the entry of the collected sum is not made in *Siyaha*, he must prove why it was not made. 10 A. L. J. 529. Where 76 p. c. of the rents were realized and a decree was obtained for the rest, it was held that that was no negligence and the plaintiff is entitled to a decree on actual collections only. 1923 R. C. 228. The *lambardar* cannot claim a set-off on account of food and clothing supplied or funeral expenses borne for the plaintiff. 6 A. W. N. 172. The co-sharer being a mortgagee not in possession cannot recover from the mortgagee *lambardar*. 14 L. C. 260.

For *Limitation* see 1922 R. C. 3.

Suit for profits against co-sharer.

227. (1) A co-sharer may sue another co-sharer for a settlement of accounts, and for his share of the profits of a mahal, or of any part thereof.

(2) In any such suit when it is proved or admitted that either party has made collections the amount of which is in issue, he shall be bound to furnish a true account of such collections. If he fails to do so the court may make any presumption against him which it considers reasonable.

Suit wrongly described as one under s. 226 may be amended into one under this section. 11 Rev. and Cri. L. J. 20. A *lambardar* can sue only for himself and not for other co-sharers. 38 All. 223 ; 8 A. L. J. 1245. A co-sharer is liable only for actual collections made by him. I U. D. 372. A decree cannot be passed against him on gross rental for his negligence in collections. 1930 All. 640, 14 R. D. 520.

Production of *Siyaha* is not sufficient compliance with s. 227 (2). 1930 All. 640 ; 14 R. D. 520.

228. In any suit under sections 221, 222 or 227 the plaintiff may sue any number of co-sharers collectively, but in such case the decree shall specify the extent to which each of the defendants is affected thereby.

Form of plaint and decree in certain suits.

This section overrules the decision in IV U. D. 142.

229. The words "lambardar," "co-sharer," "muafidar," "assignee of revenue," "taluqdar," and "superior proprietor" in this chapter include also the heirs, legal representatives, executors, administrators and assigns of such persons.

A thekadar from a *lambardar* is not his assignee and cannot maintain a suit for arrears of revenue, II U. D. 749 ; neither he can be sued under s. 227, since he is neither a co-sharer nor a legal representative or assignee. 1924 R. C. 328 (H. C.). The heirs of the *lambardar* may be sued for profits collected by the *lambardar*. 13 A. W. N. 102. A decree passed against a widow *lambardar* cannot be executed against her husband's property in the hands of the reversioners. IV. U. D. 430.

CHAPTER XV.

JURISDICTION OF COURTS.

Suits and applications.

230. Subject to the provisions of section 271, all suits and applications of the nature specified in the Fourth Schedule shall be heard and determined by the revenue courts, and no courts other than a revenue court shall, except by way of appeal or revision as provided in this Act, take cognizance of any suit or application, or of any suit or application based on a cause of action in respect of which adequate relief could be obtained by means of any such suit or application.

Explanation.—If the cause of action is one in respect of which adequate relief might be granted by the revenue court, it is immaterial that the relief asked from the civil courts may not be identical with that which the revenue court could have granted.

The explanation provides a list of jurisdiction : Adequate relief, if obtainable in a Revenue Court is sufficient, to give jurisdiction to the Revenue Court. 16 A. L. J. 542. So long as the suit or application specified in schedule IV can be heard by the revenue Court the jurisdiction of Civil Court is completely ousted. 1929 All. 571 ; 51 All. 853 (S. B.) 1929 A. L. J. 849, 13 R. D. 556. The jurisdiction so decided upon cannot be altered either by a change in the form of relief asked for or by changing the form of application or suit mentioned in the fourth schedule:—see 22 A. L. J. 466 and 23 All. 17 respectively. A suit being exclusively within the jurisdiction of a Revenue Court, being decided or pending for decision before such Court, will bar a civil suit in respect of the same matter from being instituted in a Civil Court:—See 19 A. L. J. 279 and 23 A. L. J. 941 F. B., 1927 All. 613. Besides a consideration of relief, it is also necessary to see the relationship existing between the parties and the nature of the litigation in order to know whether a certain suit or application lies in a Civil or a Revenue Court. Suits between landholders and tenants regarding the question of tenancy, class of tenancy, validity of a lease or other document lie exclusively within the jurisdiction of a Revenue Court, see 1923 R. C. 243, V U. D. 75 and III U. D. 327 respectively. So a suit against a co-sharer for mesne profits and a suit by the owner of a distrained crop against the distrainer lies in a Revenue Court see 3 A. L. J. 767 and 12 A. L. J. 303 respectively. A suit by a landlord against a trespasser lies in a Civil Court, 1930 All. 304 ; 14 R. D. 266. A

suit for declaration that a certain person is or is not a rent-free grantee lies in a Civil Court. But the rent-free grantee cannot sue in a Civil Court for a declaration that his holding is not liable to have a rent assessed on it. 3 All. 167.

231. Subject to the provisions of this Act, the provisions of section Application of 5 of the Indian Limitation Act, 1908, shall apply Limitation Act. to all suits and other proceedings under this Act.

This section, while providing for applicability of s. 5 of the Limitation Act does not exclude applicability of the rest of the Limitation Act to suits and proceedings under the Tenancy Act. Time taken in obtaining copies is excluded. 1929 All. 745 ; 119 I. C. 251 ; 14 R. D. 201.

For purposes of limitation regarding Appeal or Review, the following rules are provided in the Board's Circular 8-11 rule 7. 'In computing the period of limitation prescribed for an appeal, the day on which the order or decree appealable was pronounced and the time required for obtaining the copy of the said order or decree shall be excluded. When a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it was founded shall also be excluded.'

232. The suits and other proceedings specified in the Fourth Limitation in Schedule shall be instituted within the time prescribed cases under Act. in that schedule for them respectively.

233. For the purposes of the Court-fees Act, 1870, the amount Court-fees payable on suits and applications. of fee payable in the suits and other proceedings specified in the Fourth Schedule shall be computed as prescribed in the sixth column thereof.

Grades of Courts.

234. An Assistant collector of the second class shall have power Powers of assistant collector of the second class. to dispose of all suits specified in serial Nos. 4 to 9 (inclusive) of group A, in which the value of the subject-matter does not exceed two hundred rupees and all applications included in group C of the Fourth Schedule.

235. An assistant collector of the first class shall have power Powers of assistant collector of the first class. to dispose of all suits and applications specified in groups A, B and C of the Fourth Schedule :
Provided that no assistant collector shall have power to try suits for the enhancement, abatement or commutation of rent under chapter V, unless he is empowered by the local Government in that behalf.

236. An Assistant collector in charge of a sub-division shall have Powers of assistant collector in charge of sub-division. power to dispose of all applications specified, in group D of the Fourth Schedule.

237. A collector shall have all the powers which may be exercised Powers of collector. under this Act by an assistant collector in charge of a sub-division, and in addition shall also have power to dispose of the applications specified in group E of the Fourth Schedule.

238. The local Government may confer on an assistant collector Investment of assistant collector with powers of collector. of the first class all or any of the powers of a collector under this Act, and he shall exercise such powers in respect of such cases or classes of cases as the collector may direct.

Courts in which proceedings to be instituted. **239** (1) Notwithstanding anything contained in section 15 of the Code of Civil Procedure, 1908—

- (a) all suits specified in serial Nos. 4 to 9 (inclusive) of group A, in which the value of the subject-matter does not exceed two hundred rupees, and all applications included in group C of the Fourth Schedule shall be filed in the court of the tahsildar ;
- (b) all suits under serial Nos. 1, 2, 3, 10, 11, 12, 13, 14 and 15 of group A, and all other suits included in group A in which the value of the subject-matter exceeds two hundred rupees, and all suits included in group B of the Fourth Schedule, and all applications included in group D of the Fourth Schedule, shall be filed in the court of the assistant collector in charge of the sub-division :

Provided that if there is no assistant collector in charge of the sub-division, all such suits and applications shall be filed in the court of the collector :

Provided also that the collector may by written order direct that any class of suits or applications referred to in this sub-section be instituted in the court of any other assistant collector competent to try them under the provisions of this Act.

(2) All applications included in group E of the Fourth Schedule shall be filed in the court of the collector.

(3) All applications included in group F of the Fourth Schedule shall be filed in the court empowered to entertain them under the provisions of this Act.

Courts in which certain applications to be made.

According to s. 239 (b) all suits under s. 45 are to be filed in the court of the Assistant Collector in charge of the sub-division and not in the court of the Settlement Officer. 14 R. D. 481.

Appellate jurisdiction of courts.

Appeal to be as allowed by Act. **240.** No appeal shall lie from any decree or order passed by any court under this Act except as provided in this Act.

This section applies to appeals filed after commencement of this Act, 26 A. 375 ; but it will not apply to appeals under the Letters Patent from the judgment of a High Court Judge nor to appeals to the Privy Council, 26 All. 395. This section applies to all appeals, both civil and criminal. 40 All. 219.

Appeals from original decrees.

Appeals from decrees of assistant collectors of the second class. **241.** Except as provided by section 271 an appeal shall lie to the collector from every decree of an assistant collector of the second class.

In a suit filed when the old act was in force the right of appeal is to be governed by the law existing at the date of the institution of the suit. 1928 All. 437, 50 All. 965, 26 A. L. J. 998 (F. B.).

Appeals from decrees of assistant collector, first class or collector to commissioner or civil court.

242. (1) An appeal shall lie to the district judge from the decree of an assistant collector of the first class or of a collector in any of the suits included in group A of the Fourth Schedule in which—

- (a) the amount of value of the subject-matter exceeds rupees two hundred ; or
- (b) the rent annually payable by a tenant has been in issue in the court of first instance, and is in issue in the appeal ; or
- (c) the amount of rent payable separately to one or more of a number of co-sharers has been in issue in the court of first instance and is in issue in the appeal :

and in any suit under sections 221, 222, 223, 224, 226, and 227 in which—

- (d) the amount of the revenue annually payable has been in issue in the court of first instance and is in issue in appeal ;

Provided that, when the amount or value of the subject matter of the suit exceeds Rs. 5,000 the appeal shall lie to the High Court.

(2) Subject to the provisions of sub-section (3) of this section and section 195 an appeal shall lie to the commissioner from the decree of a collector or of an assistant collector of the first class in all suits included in group B of the Fourth Schedule.

(3) In addition to the provisions of section 271 an appeal shall lie to the district judge from the decree of an assistant collector of the first class or of a collector in suits except suits under chapter XI in which—

- (a) a question of proprietary right has been in issue between the parties claiming such right in the court of first instance, and is in issue in the appeal ; or
- (b) a question of jurisdiction has been decided and is in issue in the appeal ;

Provided that when the amount or value of the subject-matter of the suit exceeds Rs. 5,000, the appeal shall lie to the High Court.

Objection to the forum of appeal was not allowed, if not taken before the Commissioner or in the memo of appeal to the Board ; see III U. D. 182 ; but it was allowed by the High Court Judge to be urged before him where an objection to an appeal having being taken before the District Judge was not heard by him. VI U. D. 800. The plaintiff cannot raise the valuation of a suit to gain a right of appeal. 1926 R. C. 333.

Cl. (1). Subject-matter refers to subject-matter of suit and not of appeal. An appeal lies to the District Judge in a suit, the value of which exceeds Rs. 200 although the value of the appeal is below Rs. 200. 1929 All. 845 ; 1930 A. L. J. 215 ; 14 R. D. 98 ; 1930 All. 97 ; 52 All. 442 ; 1930 A. L. J. 386 and 13 R. D. 793. In an order setting aside a sale, an appeal lies to the High Court where the subject-matter of suit exceeds Rs. 5,000. 1930 All. 15 ; 1930 A. L. J. 224 ; 14 R. D. 63.

Rent annually payable is not the actual amount of money due at any time. 13 All. 193. In a suit in which the rent payable by the tenant was not in issue, the appeal will not lie to the District Judge. 21 All. 247.

District judge includes the subordinate judge incharge of the office of a district judge. 23 All. 453.

Question of proprietary right.—In a suit in which it was held by the first court that a question of proprietary title was involved, an appeal lies to the District Judge. 25 A. W. N. 259. Where such a question is genuinely raised, the Commissioner should at once return the appeal, VI U. D. 259; and in such a case an appeal lies to the district judge. 1927 All. 727; 106 I. C. 307. Where a question of proprietary title was raised as regards a few of the plots in suit and not as regards others the Commissioner should return the appeal for presentation to the District Judge and should not decide it in part. VI U. D. 288.

Question of jurisdiction.—A hollow plea of jurisdiction does not affect the appellate forum. III U. D. 659. The plea of jurisdiction once decided, the appeal will lie to the District Judge and the appellate court will have no power to say that the plea was frivolous. See 15 A. L. J. 319 and VI U. D. 114 respectively. A plea of jurisdiction can be raised for the first time in second appeals. IV U. D. 800. The mere denial by the defendant that he was the plaintiff's tenant under s. 123 does not raise a plea of jurisdiction. 19 A. L. J. 130.

Appeals from appellate decrees.

Appeals from appellate decrees of collector. 243. An appeal shall lie to the district judge from the appellate decree of a collector in any suit in which—

- (a) a question of proprietary right has been in issue between the parties claiming such right in the first appellate court, and is in issue in the appeal; or
- (b) a question of jurisdiction has been decided and is in issue in the appeal

An appeal lies to the district judge in a question of proprietary right, 1930 All. 155; 52 All. 714; 1930 A. L. J. 1065. If rent paid in good faith to third person no question of proprietary right is involved and an appeal does not lie to the District Judge. 1929 All. 312; 1929 A. L. J. 614.

No third appeal lies, 1921 All. 161.

Appeals from appellate decrees of commissioner. 244. An appeal shall lie to the Board from the appellate decree of a commissioner on any of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

An appeal is prohibited from an order passed in appeal from another order and not from an order passed in appeal from a decree. 1930 All. 455; 52 All. 711; 1930 A. L. J. 1065. There is no second appeal from orders which are not decrees. IV U. D. 30. A finding of fact on a judicial consideration of evidence bars a second appeal, III U. D. 437; but if it is unsupported by evidence, it can be interfered with in appeal III U. D. 581. A question of mixed law and fact can be raised in the second appeal. IX U. D. 69. A question of law can be raised for the first time in second appeal, if it can be decided on the basis of the existing record. 1922 R. C. 423. Second appeal lies from appellate decrees passed *ex-parte*. I U. D. 401. A person who was not a party in appeal to the commissioner cannot appeal to the Board. II U. D. 312.

Power of Board to reject an appeal summarily.

245. The Board may either admit an appeal or may summarily reject it.

Appeals from appellate decrees of district judge.

246. An appeal shall lie to the High Court from the appellate decree of a district judge on any of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

Appeals from orders.

Appeals from orders of assistant collector of the second class.

247. An appeal shall lie to the collector from every order of an assistant collector of the second class.

Appeals from orders of assistant collector of the first class and of collector.

248. (1) An appeal shall lie to the collector from the order of an assistant collector of the first class, and to the commissioner from the original order of a collector in any of the cases specified below, namely,—

- (a) orders rejecting an application under section 15 (2) or (3) ;
- (b) orders deciding a question regarding compensation for improvements under section 78 ;
- (c) orders allowing time under section 80 ;
- (d) orders under section 114, section 115, section 120 (c) and section 124.

(2) An appeal shall lie from the order of an assistant collector in charge of a sub-division under section 18 in accordance with the provisions of section 18 (7).

(3) An appeal shall lie from the following orders of an assistant collector of the first class or of a collector, namely, orders mentioned in sections 47 and 104 and in order XLIII, rule I, of the Code of Civil Procedure, 1908.

Such appeal shall lie to the court, if any, having jurisdiction under section 242 of this Act to hear an appeal from the decree in the suit, or in the case of applications for execution, the court having jurisdiction to hear an appeal from the decree which is being executed.

(4) An appeal shall lie to the Board from every order under sections 40, 41 and 42.

Cl. (3) No second appeal lies from the remand order of a district judge, 1929 All. 586 ; 1929 A. L. J. 885 ; 13 R. D. 584.

Appeals not to lie from appellate orders.

249. No appeal shall lie from any order passed in appeal.

This section has to be read in reference to the heading above s. 247. 1930 All. 455 ; 52 All. 714 ; 1930 A. L. J. 1065. No appeal lies from an order in execution. 1930 All. 91 ; 122 I. C. 415. There is no provision in the Tenancy Act which allows an appeal to the High Court from an order of remand passed by a District Judge in appeal. 1929 All. 560 ; 1929 A. L. J. 863.

Review.

250. The Board, on its own motion or on the application of a Review by party to the case, may review and may rescind, alter, Board. or confirm any decree or order made by itself, or by a single member.

251. Every other court shall be competent to review its judgment in accordance with the provisions of the Code of Civil Procedure, 1908, and all the provisions of order XLVII of the said Code shall apply to any such review.

The two sections confirm the ruling in I U. D. 64. Only the judge who delivered the judgment can entertain the application for review. 11 Rev. and Cri. L. J. 195. Copy of the judgment sought to be reviewed need not be filed. 17 All. 213 F. B.

Revision.

252. The Board may call for the record of any case decided by any subordinate revenue court in which no appeal lies either to the district judge or to the Board, and if such subordinate court appears—

- (a) to have exercised a jurisdiction not vested in it by law; or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the Board may pass such order in the case as it thinks fit.

Case.—Includes suits and proceedings, II U. D. 90; but suits under the U. P. Land Revenue Act are excluded IX U. D. 3. Revision does not lie, if appeal lies. II U. D. 65. The Board may treat the memorandum of appeal as revision application and *vice versa*. II U. D. 7 and I U. D. 204 respectively.

253. The High Court may call for the record of any suit or application which has been decided by any subordinate revenue court and in which an appeal lies to the district judge and in which no appeal lies to the High Court, and if such subordinate revenue court appears—

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may pass such order in the case as it thinks fit.

As revision lies only in those cases where appeal to the District Judge lies, no revision lies to the High Court in suits for profits decided by the revenue courts if the valuation of the suit does not exceed Rs. 200 because in such cases no appeal lies to the district judge. 1929 All. 586; 1929 A. L. J. 885; 13 R. D. 584. The High Court has no power of revision except under s. 253. The expression 'such revenue court' does not include a district judge and therefore the High Court has no power of revision of an order of a district judge, though *ultra vires*, illegal or irregular. 1929 All. 73, 51 All. 1020.

254. Where the two members of the Board differ regarding a point of law they may make a reference to the High Court of Judicature at Allahabad, whose decision shall be final.

The Board cannot refer abstract questions of law to the High Court for obtaining its opinion. 1927 All. 491, 49 All. 711, 25 A. L. J. 519.

Transfer of cases.

255. The Board may, on sufficient cause, transfer of cases by Board. any suit, application or appeal, applications or appeals, from any other revenue court competent to deal therewith.

256. A commissioner may exercise within the limits of the same powers as the Board under the following section.

257. (1) A commissioner may, with the previous sanction of the Board, transfer any appeal or class of appeals, pending before himself, to any collector or additional collector within his division.

(2) The order passed by a collector or additional collector on an appeal transferred to him by a commissioner under sub-section (1) shall be subject to appeal and revision in the same manner as if it had been passed by the commissioner.

(3) The commissioner may by order recall any appeal or class of appeals transferred to a collector or additional collector under sub-section (1) to his own court.

Transfer of appeal not authorized by the Government notification is illegal. III U. D. 326. A general sanction by the Local Government justifies the Commissioner to transfer appeals to Collectors. VI U. D. 100.

258. A collector or an assistant collector in charge of a sub-division may transfer any case or class of cases, pending before himself, to any subordinate court competent to deal therewith.

259. A collector or an assistant collector in charge of a sub-division may withdraw any case or class of cases from any court subordinate to him, and may try such case or class of cases himself, or transfer the same to any other subordinate court competent to deal therewith.

260. A settlement officer may transfer any case or class of cases pending before him to any assistant settlement officer, and may withdraw any case or class of cases from an assistant settlement officer and may try such case or class of cases himself, or transfer the same to any other assistant settlement officer.

261. For the purpose of sections 258 and 259 the courts of all assistant collectors shall be deemed to be subordinate to the collector and the courts of all assistant collectors of the second class to be subordinate to the assistant collector in charge of the sub-division within which they exercise jurisdiction.

CHAPTER XVI.

PROCEDURE.

262. (1) The Board may sit for the disposal of cases under this Act at the headquarters of any district in Agra.

Place of sitting of revenue courts.

Every other revenue court shall sit for the disposal of such cases as is provided in section 189 of the United Provinces Land Revenue Act,* 1901.

Applications on which orders may be passed without notice.

Application of Code of Civil Procedure.

263. No notice to the opposite party shall be necessary before orders are passed on applications under sections 144, 150 and 159.

264. The provisions of the Code of Civil Procedure, 1908, except —

- (a) provisions inconsistent with anything in this Act, so far as the inconsistency extends,
 - (b) provisions applicable only to special suits or proceedings outside the scope of this Act, and
 - (c) the provisions contained in list I of the Second Schedule,
- shall apply to all suits and other proceedings under this Act, subject to the modifications contained in list II of the Second Schedule.

A suit by a *lambardar* for ejecting trespassers or squatters from common *abadi* land is maintainable under this section as it is for the benefit of the whole body of co-sharers. 1930 All. 690 ; 14 R. D. 425. No set-off can be allowed under the Tenancy Act, 1930 All. 168 ; 1928 A. L. J. 1103 ; nor even *nankar*, 1930 All. 179, 14 R. D. 233.

265. (1) The *lambardar* in an undivided mahal or in the common land of the mahal, thok or patti of which he is the *lambardar*. Powers of *lambardar*. *lambardar* is entitled in the absence of any contract or usage to the contrary to collect rents and other dues.

(2) Whenever the *lambardar* is entitled under the provisions of sub-section (1) to collect rents, he shall also be entitled to settle and eject tenants, to eject rent-free grantees, to enhance rents, and to do all acts incidental to the proper management of the estate with a view to the common benefit :

Provided that a *lambardar* shall not be entitled on behalf of other co-sharers without their written consent to —

- (a) grant a theka ;
- (b) sell or cut down trees or groves ;
- (c) confer occupancy rights otherwise than in accordance with the provisions of section 17 of this Act.

A *lambardar* cannot ordinarily grant a lease of joint property for long years without the consent of the co-sharers. Adequacy of rent is not the only consideration. 13 R. D. 518 ; 114 I. C. 752. The *lambardar* has the power to eject persons who have without his permission or the permission of the co-sharers entitled to exercise a power in that behalf built on the *abadi* land. 14 R. D. 425.

266. (1) Except as otherwise provided in section 265, where there are two or more co-sharers in any right, title or interest, all things required or permitted to be done by the possessor of the same shall be done by them conjointly, unless they have appointed an agent to act on behalf of them all.

* See *infra*.

(2) Nothing in sub-section (1) shall affect a special contract by which a co-sharer in an undivided holding is entitled to receive separately his share of the rent as a tenant.

(3) When one or two of more co-sharers is not entitled to sue alone, and the remaining co-sharers refuse to join as plaintiffs, a suit for money recoverable by them jointly, such co-sharer may sue separately for his share, joining the remaining co-sharers as defendants.

(4) Where the tenant of any holding is also a co-sharer in the proprietary right in such holding, nothing in the section shall require him to be joined as plaintiff in any suit or application brought or made against him as such tenant under the provisions of this Act.

Sub-s. (1).—On an imperfect partition, the lambardar being not a co-sharer in one of the partitioned lots, the co-sharers of the lot and not the lambardar can sue for rent of that land. II U. D. 54. A lambardar, who generally collects rents may sue alone to eject, although some of the co-sharers also collect rents. IX U. D. 36. If all the co-sharers join as plaintiffs in an ejectment suit; but one of them withdraws, the whole suit fails. III U. D. 306. An ejectment suit should not be decreed at the instance of one co-sharer alone. 1929 All. 609; 13 R. D. 666.

Shall be done conjointly.—A co-sharer cannot give a lease of any portion of the joint property, affecting prejudicially the rights of other co-sharers, but if all the co-sharers act in concert and in the same interest, one who does not execute the lease may be estopped. V U. D. 83.

Sub-s. (2).—Local usage or special contract must be strictly proved. VI U. D. 175.

Sub-s. (3).—Confirms the ruling in 25 I. C. 531. If some sharers are not impleaded, the suit is bad in law and it should not be dismissed but an opportunity should be given to bring the other co-sharers on record. 1929 All. 847, 13 R. D. 795.

Sub-s. (4).—A tenant who has purchased a fractional share in the Zemindari may, as a co-sharer, plead s. 266 in a suit to eject him as a tenant, provided there are other co-sharers. 1926 R. C. 355.

CHAPTER XVII.

CONFLICT OF JURISDICTION AND QUESTIONS OF TITLE.

Conflict of jurisdiction.

267. (1) Where either a civil or a revenue court is in doubt whether it is competent to entertain any suit, application or appeal, or whether it should direct the plaintiff, applicant or appellant to file the same in a court of the other description, the court may submit the record, with a statement of the reasons for its doubt, to the High Court.

Power to refer to High Court question as to jurisdiction.

(2) Where any suit, application or appeal having been rejected either by a civil court or by a revenue court on the ground of want of jurisdiction, is subsequently filed in a court of the other description, the latter court, if it disagrees with the finding of the former, shall submit the record, with a statement of the reasons for its disagreement, to the High Court.

Provided that, if the court is a revenue court subordinate to a collector, no reference shall be made under the foregoing provisions of this section except with the sanction of the collector previously obtained.

(4) On any such reference being made, the High Court may order the court either to proceed with the case, or to return the plaint, application or appeal for presentation to such other court as it may declare to be competent to try the same.

(5) The order of the High Court shall be final and binding on all courts subordinate to it or to the Board of Revenue.

268 When, in a suit instituted in a civil or revenue court, an appeal lies to the district judge or High Court, an objection that the suit was instituted in the wrong court shall not be entertained by the appellate court unless such objection was taken in the court of first instance; but the appellate court shall dispose of the appeal as if the suit had been instituted in the right court.

269. (1) If in any such suit such objection was taken in the court of first instance but the appellate court has before it all the material necessary for the determination of the suit it shall dispose of the appeal as if the suit had been instituted in the right court.

(2) If the appellate court has not before it all such materials, and remands the case, or frames and refers issues for trial, or requires additional evidence to be taken, it may direct its order either to the court in which the suit was instituted, or to such court as it may declare to be competent to try the same.

(3) No objection shall be taken or raised in appeal or otherwise to any such order on the ground that it has been directed to a court not competent to try the suit.

The provisions of these sections do not apply to cases purely within the jurisdiction of Revenue Courts. 1922 R. C. 14; 1930 All. 713, 1930 A. L. J. 1233. They are applicable to cases on the border line of jurisdiction of Civil and Revenue Courts. IV U. D. 713. Section 268 was held applicable to all cases instituted in the first instance in a Civil or Revenue Court, in which appeal lay to the District Judge or High Court. 12 A. L. J. 902. The High Court cannot allow in second appeal a plea of jurisdiction not taken in the trial or first appellate Court. 118 I. C. 681, 14 R. D. 66.

Sub-s. (2).—The appellate court cannot alter the description of a suit for the purpose of deciding the appeal, but must proceed as if the suit was instituted in the right court. 10 A. L. J. 52.

Sub-s. (3).—An order of remand to a court considered competent by the appellate court is not appealable. 21 All. 267.

Question of proprietary right in revenue court.

Procedure when tenant pleads opposite party is not his landholder.

270. When in any suit brought under this Act—

(a) by a landholder against a tenant for arrears of rent, or

(b) by a tenant against a landholder to contest a distraint for arrears of rent,

the tenant pleads that he has paid the rent of the period in respect of which the suit is brought or to a third person to whom he has in good faith paid the rent of the holding up to the date of institution of the suit, or on the date of the distraint, such person shall at the cost of the tenant be made a defendant in the suit, and the question of the payment of rent in good faith to such third person by the tenant shall be inquired into.

(2) If the question is determined in favour of the tenant, the suit shall be decided in his favour and he shall not be made a party to any subsequent suit between the landholder and the third person for the recovery of the amount so paid or for the determination of the proprietary right in the holding.

Plea for defence.—The plea available to the tenant (defendant) is that he had paid the rent in good faith to the person to whom he has been paying rent upto the date of the institution of the suit or the date of distraint. 9 L. R. Rev. 289. Good faith must be alleged and proved 1927 R. C. 39 ; 19 A. L. J. 298, IV U. D. 720. The third party must be impleaded. 12 R. D. 422, 13 R. D. 362, 14 R. D. 436.

Res-judicata.—Any decision in the previous suit will not operate as res-judicata between the landholder and the third person referred to in subsection (2). 1924 R. C. 433.

271. (1) If (a) in any suit or application filed in a revenue court against a person alleged to be the plaintiff's tenant or under section 44 the defendant pleads that he is not a tenant, but has a proprietary right in the land, or

Procedure when party raised plea of proprietary right.

(b) in any suit instituted under chapter XIV the defendant pleads that the plaintiff has not got the proprietary right entitling him to institute the suit, or

(c) in any suit instituted under section 121 a dispute as to the proprietary right in the land in suit is raised,

and such question of proprietary right has not been already determined by a court of competent jurisdiction, the revenue court shall frame an issue on the question of proprietary right and submit the record to the competent civil court for the decision of that issue only.

Explanation I.—A plea of proprietary right which is clearly untenable and intended solely to oust the jurisdiction of the revenue courts shall not be deemed to raise a question of proprietary right within the meaning of this section.

Explanation II.—“A question of proprietary right” does not include the question whether land in the actual possession of a proprietor thereof is held by such proprietor as his *sir* or *khudkash* or as a tenant or sub-tenant.

(2) The civil court, after re-framing the issue, if necessary, shall decide that issue only and return the record together with its finding in that issue to the revenue court, which submitted it.

(3) The revenue court shall then proceed to decide the suit, accepting the finding of the civil court on the issue referred to it.

(4) Every decree of a revenue court passed in a suit in which an issue involving a question of a proprietary right has been decided by a civil court under sub-section (2) of this section shall—

(a) if the question of proprietary right is in issue also in appeal, be appealable to the civil court which has jurisdiction to hear appeals from the court to which the issue of proprietary right has been referred ;

(b) if the question of proprietary right is not in issue in appeal, be appealable to the revenue court.

For the explanation of a competent court see 1931 All. 28, 14 R. D. 654, 1931 A. L. J. 8.

Explanation I.—Is new and gives effect to the decision in VI U. D. 23. The trial court is not required to act under the first part of s. 271, if the plea of proprietary right is untenable and intended solely to oust the jurisdiction of a Revenue Court. 1930 All. 647, 14 R. D. 564.

Explanation II.—Is new and overrides the rulings in V U. D. 34 ; 30 All. 183 and B. R. 14 of 1914. The latest rulings to make this explanation clear are reported in 1928 All. 764, 1929 A. L. J. 289.

272. If any such question of proprietary right has been determined by a revenue court, and is a matter in issue in appeal in such in appeal in the court of the district judge or the High Court, and such appellate court has not before it all the materials necessary for the determination of such question, it may either—

(a) remand the case to the revenue court, or

(b) frame issues with respect to such question, and refer them for trial to any subordinate civil court of competent jurisdiction.

Questions of tenant right in Civil Court.

273. (1) If in any suit relating to an agricultural holding instituted in a civil court the defendant pleads that he holds such land as the tenant of the plaintiff or of a person in possession holding from the plaintiff, the civil court shall frame an issue on the plea of tenancy and submit the record to the appropriate revenue court for the decision of that issue only.

(2) The revenue court after re-framing the issue, if necessary, shall decide that issue only, and return the record together with its finding on that issue to the civil court which submitted it.

(3) The civil court shall then proceed to decide the suit, accepting the finding of the revenue court on the issue referred to it.

(4) The finding of the revenue court on the issue referred to it shall, for purposes of appeal, be deemed to be part of the finding of the civil court

This section deals with the procedure of civil suits for ejection or for profits brought against a person who has taken possession of an agricultural holding without the consent of the plaintiff and pleads tenancy in his defence. 25 A. L. J. 545, 1927 All. 369 (F. B.), 1931 All. 211, 122 I. C. 597. The class of tenancy is to be determined by a Revenue Court. 1931

All. 198, 15 R. D. 162. The word "shall" indicates that the procedure laid down in this section is mandatory. 19 A. L. J. 850. When an issue is remitted by the Civil Court to the Revenue Court for its finding the Civil Court must accept the finding of the Revenue Court. 1931 All. 91, 15 R. D. 16. After coming into force of this Act (of 1926) s. 273 should be applied and not 202 of the old Act. 1931 All. 37; 1930 A. L. J. 1251, 12 R. D. 656. Where a zamindar or a landholder sues to eject a person as a trespasser and the defendant sets up the plea of tenancy and says that he is the tenant in chief of the plaintiff in respect of the land, it was held that the Revenue Court should decide the issue. 7 A. L. J. 960, 1927 All. 346. A suit for ejectment against a trespasser can be brought either in a civil or a revenue court. 1927 All. 846.

CHAPTER XVIII.

MISCELLANEOUS.

Power of local Government to make rules. 274. The local Government may, after previous publication, make rules consistent with this Act —

- (a) as to the fees payable under this Act ;
- (b) as to the time of the year for execution of decrees for ejectment in any local area ;
- (c) as to the attestation of leases, counterparts and agreements under section 127 ;
- (d) as to the dates on which profits shall be divisible ;
- (e) generally for giving effect to the provisions of this Act ; and
- (f) as to the publication and cancellation of notifications under clause (a) of the third proviso of section 19.

For rules see circular 1-11, 8-11 and 9-11 relating to general conduct of business and to appeals respectively published in notification no 21/222 and 2124/1-571-F dated 16th July, 1902 (Gazette 19th July 1902 Part I and II respectively) and notification no. 3234/1 12-7-1904 (15 Nov. 1906) (Gazette of 18 Nov. 1906 Part I Pages 860-4 respectively).

Power of Board Government to make rules. 275. The Board may, with the previous sanction of the local Government and after previous publication, make rules consistent with this Act and with any rules made under section 274—

- (a) for the guidance of officers in the determination, enhancement, abatement and commutation of rent ;
- (b) as to the manner of publication of a notice of abandonment ;
- (c) as to the procedure to be followed in applications under this Act ;
- (d) as to the transfer of cases by revenue courts ;
- (e) as to the person before whom, and the mode in which affidavits may be made and the matters which may be proved by affidavit ; and
- (f) generally for giving effect to the provisions of this Act.

Provision for excessive ejectment suit before commencement of the Act. 276. (1) When at the commencement of this Act proceedings in the court of first instance in any suit instituted under clause (a) or clause (b) of section 58 of the Agra Tenancy Act, 1901, at any time between the first day of July, 1924, and the thirtieth day of June,

1926, inclusive, are stayed under an order of the collector, the court shall dismiss such suit, and the order of the collector staying the suit shall not be questioned in any civil or revenue court :

Provided that the process-fees and court-fees paid by the plaintiffs in such suits shall be refunded to them.

(2) The collector may pass an order declaring the number of suits instituted by a landlord after the thirtieth day of June, 1926, under clause (a) or clause (b) of section 58 of the Agra Tenancy Act, 1901, relating to land in any specified mahal, to be excessive, and the court shall thereupon dismiss all such suits and order the refund to the plaintiff of the process-fees and court-fees paid by him in such suits :

Provided (a) that, in deciding whether the number of such suits is excessive, the collector shall have regard to the average number of suits instituted by the landlord in the five years preceding the first day of July, 1924, in respect of land in that mahal under the aforesaid clauses of section 58 of the Agra Tenancy Act, 1901, and (b) that the number of such suits instituted by a landlord after the thirtieth day of June, 1926, shall not be deemed to be excessive unless it exceeds by fifteen per cent. the average number of such suits instituted by him during the aforesaid five years.

(3) Nothing in this section shall apply to a suit for the ejection of a thekadar, a sub-tenant, or a tenant of land in which statutory rights do not accrue under the provisions of section 19.

(4) A tenant, a suit against whom has been dismissed under the provisions of this section, shall not be deemed to have acquired a right of occupancy at the commencement of this act, unless he had acquired such a right at the date of the institution of the suit.

Where the Collector put a query mark against some cases reported to him for stay he can direct after 7th September 1926 that they should be proceeded with and disposed of. IX U. D. 112. Suits so stayed, after the cancellation of the stay order, cannot be dismissed. IX U. D. 90.

277. (1) A tenant to whom, on payment of rent to his landholder, a receipt in the prescribed form has not been given may, within three months of the date of payment, demand a receipt from the landholder by registered post.

(2) If the tenant without, reasonable cause fails to make such demand, he shall not be entitled to compensation under the provisions of section 143.

THE FIRST SCHEDULE.

(See Section 1.)

Areas excepted in the first instance, from the operation of the Act.

A.—The districts of Almora and Garhwal.

B.—(1) The following villages of the Tarai and Bhabar Government estates in the district of Naini Tal :—

PARGANA BAZPUR.

Serial No. *Names of villages.*

1	Bajawala.
2	Bannakhera.
3	Bannakhera Sani.
4	Banskhera.
5	Banskheri.
6	Baraihni.
7	Bhainsia.
8	Bhajwanagla.
9	Bhikampur.
10	Bijai Rampura.
11	Chanakpur.
12	Gularia Gobra.
13	Gulzarpur.
14	Hazira
15	Haripura.
16	Harsan.
17	Khamari.
18	Maindaya Hattoo.
19	Rajpura No. 1.
20	Ratanpuri.
21	Somalpuri.
22	Sheopuri.
23	Thapaknagla.
24	Kelabandwari.
25	Faridpur.

PARGANA GADARPUR.

1	Alakhdei.
2	Andkhera.
3	Beria.
4	Bari Rain.
5	Buxaura.
6	Khanpur Pachham.
7	Khanpur.
8	Kulha.
9	Madnapur.
10	Maholi Jungle.
11	Mukandpur.
12	Nandpur.
13	Pipalia.
14	Kopa.
15	Jafarpur.
16	Gadarpuri

NORTH OF KASHIPUR.

1	Kamdebpur.
2	Beria.
3	Lalitpur.
4	Karailpuri.
5	Thari.
6	Kandala.

<i>Serial No.</i>	<i>Names of villages.</i>
7	Birpur Lachi.
8	Birpur Tara.
9	Rajpur.
10	Pipalsana.
IN KHUSHALPUR CIRCLE.	
1	Khushalpur.
2	Lampur Moti.
3	Lampur Lachi
4	Shahbazpur.

(2) The remainder of the district of Naini Tal [exclusive of the pargana of Kashipur, of the government-owned villages in the Tarai and Bhabar government estates except those mentioned in B (1) above, and of the following villages in the Tarai sub-division :—

<i>Name of Peshkari.</i>	<i>Name of villages</i>
Bazpur	.. { Kankata. Kuwa Khera. Rajpura.
Kichha	.. { Anjania. Piru Nagla. Darau.
Kilpuri	.. { Bijti. Bitha Akbar. Haldua. Malpuri. Matha. Nakatpura. Pipalia Nathu. Sabepur. Sainjana. Sarkara}.

C.—The portion of the Mirzapur district lying to the south of the Kaimur range excluding the villages owned by Governor.

D.—The tract of country known as Jaunsar-Bawar in the Dehra Dun district.

THE SECOND SCHEDULE.

LIST I.

Sections and orders of the Code of Civil Procedure, 1908, which do not apply to suits or Proceedings under this Act.

Section 9.

Sections 68 to 72 inclusive.

Section 88.

Sections 113, 114, 115.

Order XXII, rule 8.

- „ XXXIII, (Pauper suits). The whole.
- „ XXXV (Interpleader suits). The whole.
- „ XXXVI (Special case). The whole.
- „ XLIV (Pauper appeals). The whole.
- „ XLVI (Reference). The whole.

LIST II.

Sections and orders of the Code of Civil Procedure, 1908, which apply subject to the modifications stated against each.

Serial No.	Sections.	Modification.
1	24	Applies only to the transfer of appeals under this Act by the High Court from the court of one district judge to the court of another district judge.
2*	33	No decree need be prepared in the case of an application under this Act unless the preparation of a decree is prescribed by rule
3	58(2)	When a judgment-debtor has been released from detention under this section and the amount due under the decree does not exceed Rs. 100, the court may declare him absolved from further liability for payment of money under that decree, and such liability shall thereupon be extinguished except in regard to liability to ejectment.
4	60	To the particulars not liable to attachment or sale shall be added "manure stocked by an agriculturist."
5	98	Nothing in this section shall require two members of the Board to sit together in the exercise of appellate or revisional jurisdiction under this Act.
6	144	In this section the words "or order" shall be deemed to be inserted after the word "decree" wherever it occurs.
7	Order V, rule 5	In all suits under this Act the summons to the defendant shall be for the final disposal of the suit, unless the court is of opinion that the summons should be for the settlement of issues, only.
8	Order V, rules 9-90.	A summons or notice may, if the local Government by rule, either generally or in respect of any local area or any class of cases, so directs, be served by post either in addition to, or substitution for, any other mode of service.
9	Order VII, rule 1.	<p>In addition to the particulars contained in this rule, the plaintiff shall specify the name of the village or mahal and of the pargana or other local division, in which the land is situate to which the suit or other proceeding relates, and (unless such land can be otherwise adequately described) the number of each field according to the Government survey;</p> <p>and if the suit is for arrears of rent, the plaintiff shall contain a statement of account showing the annual demand for each period to which the suit relates, the amount (if any) received, and the amount claimed to be due;</p>

* A set-off is not admissible in the Revenue Court under schedule II, list 2, serial no. 2. 1929 All. 691; 121 I. C. 386; 13 R. D. 725.

LIST II.—(concl'd)

Serial No.	Orders	Modification.
		and if the suit is for the ejection of a tenant, the plaintiff shall set forth the ground or grounds on which the ejection is sued for.
10	Order VIII, rule 6.	No set-off shall be allowed in any suit under this Act, except a sum due to the defendant on an unsatisfied decree under this Act or under any enactment hereby repealed.
11	Order XX. rule 6	Every decree for rent shall also state the amount including interest due on account of such agricultural year in respect of which relief is granted.
12	Order XXI ...	(1) No application for the execution of a decree shall be made by an assignee of the decree unless the assignor's interest in the land to which it relates has become and is vested in such assignee.
13	...	(2) If the property against which execution is applied for is a mahal or a share of a mahal, or the holding of a permanent tenure-holder, the decree shall be sent to the collector, who shall execute the same as if it had been a decree of his own court
14	Order XLI, rule 1. read with Order XLII,	In addition to the copies required by this rule every memorandum of second appeal shall be accompanied by a copy of the judgment of the original court.
15	Order XLI. rule II	Nothing in this rule shall require the Board to hear any party before rejecting an appeal summarily.
16	Order XLI, rule 22 (1).	No respondent in an appeal before a revenue court shall, except by leave of the court, support a decree by raising a question of proprietary right decided against him in the court below unless, within one month from the date of service on his pleader of notice of the date fixed for hearing the appeal, he has intimated in writing to the appellate court his intention to do so
17	Order XLI, rules 30 and 31.	No judgment of the Board need be dated, signed or pronounced in open court

THE THIRD SCHEDULE.

(See section 125).

FORM OF LEASE OR COUNTERPART.

I, A. B., son of C. D., resident of E., have leased the
F. G., son of H. I., resident of J., have taken on lease the
 undermentioned land to F. G., son of H. I., resident of J., in
from A. B., son of C. D., resident of E., in
 mahal K., mauza L.

(Here adequately describe the holding)

at an annual rent of Rs. (), payable in the following instalments and
 on the following dates, namely,—

() Rs. on the () day of ()
 () Rs. on the () day of ()
 () Rs. on the () day of ()
 () Rs. on the () day of ()

the period of the lease being for () years, that is to say, from
 (date) to (date)

Dated the () day of (), 19 .

{ Signed } A. B., landholder.
 { or marked. } F. G., tenant.

(Witness, if marked) M. N.

THE FOURTH SCHEDULE.

[The jurisdiction both original and appellate specified in the heading of each group is in all cases subject to the provisions of sections 241, 271 and 273.]

GROUP A—SUITS.

[Suits triable, in the case of serial Nos. 1, 2, 3, 10, 11, 12, 13, 14, and 15, whatever the value, and in the case of serial Nos. 4 to 9 (inclusive), when exceeding Rs. 200 in value, by assistant collector of the first class—appeal, if any, to the civil court; in the case of serial Nos. 4 to 9 (inclusive) when not exceeding Rs. 200 in value, by assistant collector of the second class—appeal to collector.]

Serial No.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court-fees.
1	48	For compensation for rent or produce exacted in excess of rent lawfully payable.	One month ...	The date of the execution.	As in the Court-fees Act, 1870.
2	84	For the ejection of a tenant on a ground specified in section 84.	One year ...	When the forfeiture is incurred or the condition is broken.	Ditto.
3	85	For an injunction, or for the repair of damage or waste, or for compensation.	Ditto ...	When the damage is done or the waste begins, or the condition is broken.	Ditto.
4	132 or 81	For arrears of rent, or where rent is paid in kind for the money equivalent of such rent, including suits by an assignee and suits for arrears due to a person who has ceased to be a landholder.	Three years ...	When the arrears became due.	Ditto.
5	142	For compensation for refusing to deliver receipt for rent paid or to credit the rent paid as requested by the tenant.	Three months ...	The date of the refusal...	Ditto.

6	175	To contest a distraint	As in section 175	As in section 175 ...	As in the Court-fees Act, 1870.
7	178	To recover compensation for distraint and sale of property.	Two months ...	The date on which the sale takes place.	Ditto.
8	179	For compensation for wrongful acts of distrainer.	Ditto. ...	The date on which the right to sue accrues.	Ditto.
9	180(2)	For recovery of the amount realized from a sub-tenant by proceedings in distraint.	Ditto. ...	The date of realizations.	Ditto.
10	221	By a lambardar to recover from a co-sharer arrears of revenue, village expenses, and other dues.	Three years ...	When the arrears became due.	Ditto.
11	222	By a co-sharer to recover from a co-sharer who defaults arrears of revenue paid by the plaintiff on account of the defendant.	Ditto. ...	When the arrears were paid.	Ditto.
12	223	By a muafidar or assignee of revenue for arrears of revenue due to him as such.	Ditto. ...	When the arrears became due.	Ditto.
13	224	By a taluqdar or other superior proprietor for arrears of revenue or rent due to him as such.	Ditto. ...	Ditto ...	Ditto.
14	226	By a co-sharer against a lambardar for his share of the profits of a mahal, or of any part thereof.	Ditto. ...	When the share of the profits became payable.	Ditto.
15	227	By a co-sharer against a co-sharer for a settlement of accounts and his share of the profits of the mahal or of any part thereof.	Ditto. ...	Ditto ...	Ditto.

THE FOURTH SCHEDULE.—(continued.)

GROUP B—SUITS.

[Suits triable by assistant collector of the first class—appeal to commissioner except in the case of serial Nos. 19, 20 and 21, which are governed by section 195.]

Serial No.	Section of Act.	Description of suit.	Period of limitation	Time from which period begins to run.	Proper court-fees.
1	37	For division of a holding or distribution of rent or both.	None ...	None ...	On rent payable in respect of the part to be separated as in the Court-fees Act, 1870
2	44	For ejectment of trespasser and damages ...	Twelve years ...	When the landholder first knew of the unauthorized occupation.	On rent payable as in the Court-fees Act, 1870.
3	45	For determination of rent ...	As in section 45	As in section 45 ...	As in the Court-fees Act, 1870.
4	60	For commutation of rent ...	None ...	None ...	Ditto.
5	61	For enhancement or abatement of the rent of a fixed-rate, ex-proprietary, occupancy or statutory tenant, or heir of a statutory tenant.	Do. ...	Do. ...	Ditto.

6	62	For enhancement or abatement of rent against or by a number of tenants collectively.	None	...	None	...	...	The same as if the suit had been brought by or against a single tenant.
7	70	For enhancement of the rent of a non-occupancy tenant.	Do.	...	Do.	...	...	The same as in the case of an occupancy tenant under the Court-fees Act, 1870.
8	70	For abatement of the rent of a non-occupancy tenant.	Do.	...	Do.	...	...	As in the Court-fees Act, 1870.
9	71	For the avoidance of a lease for a period exceeding term of landlord's engagement with the local Government.	One year	...	From date of declaration of the new assessment.	...	...	According to the amount of the rent payable under the lease.
10	82	For relief against a tenant or his transferee on account of an illegal sub-lease or other transfer.	None	...	None	...	...	As in the Court-fees Act, 1870.
11	92	For the ejectment of a non-occupancy tenant who contests his liability to ejectment.	Do.	...	Do.	...	...	According to the amount of the rent payable by the tenant.
12	99	For recovery of possession of a holding, or for compensation, or both.	Six months	...	When the wrongful dis-possession takes place.	...	...	As in the Court-fees Act, 1870.
18	106	To set aside a notice of surrender ...	Fifteen days	...	The date of the receipt or service of the notice.	...	...	Eight annas.
14	108	For possession by an heir or reversioner ...	Six months	...	The date of entry by the landholder.	...	...	As in the Court-fees Act, 1870.

THE FOURTH SCHEDULE.—(continued.)

GROUP B.—SUITS.—(concl'd.)

Serial No.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court-fees.
15	121	For a declaration of plaintiff's right as tenant ...	None ...	None ...	Eight annas.
16	122	By a landholder for a declaration as to who is his tenant.	Do. ...	Do. ...	Ditto.
17	123	For a declaration as to any matter specified in section 123.	Do. ...	Do. ...	Ditto.
18	125	For a lease or counterpart ...	Do. ...	Do. ...	As in the Court-fees Act, 1870.
19	186	For assessment of revenue on a rent-free grant	Do. ...	Do. ...	According to the annual letting value of the land as estimated by the plaintiff.
20	187	For fixing rent on a rent-free grant...	Do. ...	Do. ...	Ditto.
21	188	For the ejection of a rent-free grantee ...	Twelve years ...	As in section 189 ...	Ditto.

GROUP C.—Application triable by assistant collector of the second class.

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court-fees.
1	81	For arrears of rent or ejection in default ...	Three years ...	When the arrears become due.	As in the Court-fees Act, 1870.
2	86	For the ejection of non-occupancy tenant ...	None ...	None ...	Eight annas.
3	105	For the service of a notice of surrender under section 103 or 104.	As in section 105...	As in section 105 ...	Nil.
4	138	For the deputation of an officer to make division, estimate, or appraisement of produce or crops.	None ...	None ...	As in the Court-fees Act, 1870.
5	144	For permission to deposit rent ...	Do. ...	Do. ...	One rupee.
6	150	For payment or refund of rent deposited under section 144.	Do. ...	Do. ...	As in the Court-fees Act, 1870.
7	159	For assistant to distriener against resistance or apprehension of resistance.	Do. ...	Do. ...	Ditto.

THE FOURTH SCHEDULE—(continued.)

GROUP D.—Applications triable by Assistant Collector in charge of the sub-division.

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court-fees.
1	15 (2) & (3)	For relinquishing ex-proprietary rights ...	As in section 15...	As in section 15 ...	As in the Court-fees Act, 1870.
2	17	For recording occupancy rights ...	None ...	None ...	Ditto.
3	114	For permission to make an improvement ...	Ditto. ...	Ditto. ...	Ditto.
4	115	Ditto Ditto ...	Ditto. ...	Ditto. ...	Ditto.
5	120 (1) (a)	For establishment of right to make an improvement.	Ditto. ...	Ditto. ...	Ditto.
	120 (1), (b) & (c)	For settlement of dispute as to an improvement.	One year ...	The date of completion of the improvement	Ditto.
GROUP E.—Applications triable by Collector—appeal to Board of Revenue.					
1	39	To give effect to an exchange of land ...	None ...	None ...	According to the amount of rent payable for the more highly rented of the two pieces of land exchanged.
2	40	To acquire land ...	Do. ...	Do. ...	According to the amount of rent payable for the land acquired.
3	41	To acquire land ...	Do. ...	Do. ...	Ditto.
4	42	To recover possession of land acquired ...	Six months ...	Expiry of two years from the date of acquisition, or the date of admission of another tenant or the use of land for any other purpose, as the case may be.	Ditto.

GROUP F—Other applications.

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court-fees.
1	4 (e)	For declaration and demarcation of land as <i>str...</i>	None ...	None ...	As in the Court-fees Act, 1870.
2	80	For the ejection of a tenant on the ground of an unsatisfied decree for arrears of rent.	Three years ...	The date of the final decree in the case.	Ditto
3	...	For the execution of a money decree under this Act or under any enactment repealed by this Act, not being a decree for a sum of money exceeding Rs. 500 inclusive of the costs of executing such decree, but exclusive of any interest which may have accrued after decree upon the sum decreed.	Ditto. ...	Ditto. ...	Ditto
4	...	For the execution of such a decree when exceeding Rs. 500.	The period allowed for the execution of a decree of the civil court.	As in the case of a decree of the Civil Court.	Ditto.
5	...	For the execution of any decree other than a money decree.	One year ...	The date of the final decree in the case	As in the Court-fees Act 1870.
6	98	For an adjudication as to the price of crops or other products which the landholder has elected to purchase under section 97.	As in section 98.	As in section 98 ...	Ditto.
7	119	For permission to give compensation otherwise than by payment of money for an improvement made by a tenant.	As in section 119.	As in section 119 ...	Ditto.
8	124	For determination of rent after ejection from part of holding.	Six months ...	The date of the decree or order for ejection.	Ditto.
9	250 & 251.	For a review of judgment ...	Ninety days ...	The date of the decree or order.	Ditto.
10	252	For revision ...	None ...	None ...	Ditto.

THE FOURTH SCHEDULE—(concluded).

GROUP G—Appeals.

Serial No.	Section of Act.	Description of application	Period of limitation.	Time when	Time when
1	...	To a collector	Thirty days ...	The date of the decree or order appealed against.	As in the Court-fees Act, 1870.
2	...	To a commissioner or to a district judge ...	Ditto ...	Ditto. ...	Ditto.
3	...	To the Board or the High Court	Ninety days ...	Ditto.	Ditto.