

GOVERNMENT OF BIHAR AND ORISSA,
LEGISLATIVE DEPARTMENT.

THE
BIHAR TENANCY ACT, 1885.

(ACT 8 OF 1885)

[As modified up to the 15th July, 1935.]



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P R E F A C E.

THE Bihar Tenancy Act, 1885 (Act 8 of 1885), has been amended by the Bengal Tenancy (Amendment) Act, 1886 (Act 8 of 1886), the Devolution Act, 1920 (Act 38 of 1920), the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act 3 of 1898), the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act 1 of 1903), the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914), the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), the Bihar Tenancy (Amending and Validating) Act, 1920 (B. & O. Act 9 of 1920), the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), and the Bihar Tenancy (Amendment) Act, 1935 (B. & O. Act 7 of 1935).

In this reprint of the Act—

- (1) repealed matter has been omitted, explanatory foot-notes being inserted;
- (2) the amendments made by the later Acts have been inserted in proper places, with explanatory foot-notes; and
- (3) some further foot-notes have been added for convenience of reference.

J. A. SAMUEL,

Deputy Secretary to Government.

The 15th July, 1935.

STATEMENT OF REPEALS AND AMENDMENTS.

Section 1	...	Amended	...	...	Ben. Act 1 of 1907, s. 3. B. & O. Act 8 of 1934, s. 2.
Section 2	...	Amended	...	...	B. & O. Act 8 of 1934, s. 3.
Section 3	...	Amended	...	...	Ben. Act 1 of 1907, s. 4. B. & O. Act 8 of 1934, s. 4.
Section 12	...	Amended	...	...	Ben. Act 8 of 1886, s. 1. Ben. Act 1 of 1907, s. 5.
Section 13	...	Amended	...	...	Ben. Act 8 of 1886, s. 2. Ben. Act 1 of 1907, s. 5.
Section 14	...	Repealed	...	...	Ben. Act 1 of 1907, s. 2.
Section 15	...	Amended	...	...	Ben. Act 1 of 1907, s. 6. B. & O. Act 8 of 1934, s. 5.
Section 15A	...	Inserted	...	...	B. & O. Act 8 of 1934, s. 6.
Section 16	...	Amended	...	...	Ben. Act 1 of 1907, s. 7.
Chapter IVA	...	Inserted	...	...	Ben. Act 1 of 1907, s. 8.
Section 19	...	Amended	...	...	Ben. Act 1 of 1907, s. 9. B. & O. Act 8 of 1934, s. 7.
Section 22	...	Amended	...	...	Ben. Act 1 of 1907, s. 10.
Section 23	...	Substituted	...	...	B. & O. Act 8 of 1934, s. 8.
Section 23A	...	Inserted	...	...	B. & O. Act 8 of 1934, s. 9.
Sections 26A to 26P	...	Inserted	...	...	B. & O. Act 8 of 1934, s. 10.
Section 30	...	Amended	...	...	Ben. Act 3 of 1898, s. 2.
Section 31	...	Amended	...	...	Ben. Act 3 of 1898, s. 3.
Section 31A	...	Inserted	...	...	Ben. Act 3 of 1898, s. 4.
	...	Amended	...	...	B. & O. Act 8 of 1934, s. 11.
Section 31B	...	Inserted	...	...	Ben. Act 3 of 1898, s. 4.
Section 39	...	Amended	...	...	Ben. Act 3 of 1898, s. 5.
Section 40	...	Amended	...	...	Ben. Act 1 of 1907, s. 11. B. & O. Act 3 of 1916, s. 2 and Schedule.
Section 40A	...	Inserted	...	...	Ben. Act 1 of 1907, s. 12.
Chapter VIIA	...	Inserted	...	...	B. & O. Act 7 of 1935, s. 2.
Section 52	...	Amended	...	...	Ben. Act 3 of 1898, s. 6. Ben. Act 1 of 1907, s. 13.
Section 54	...	Amended	...	...	B. & O. Act 8 of 1934, s. 12.
Section 56	...	Amended	...	...	B. & O. Act 3 of 1916, s. 2 and Schedule.

Section 58 ...	... Amended ...	... Ben. Act 1 of 1907, s. 14.
Section 61 ...	... Amended ...	... B. & O. Act 8 of 1934, s. 13.
Section 67 ...	... Amended ...	... Ben. Act 1 of 1907, s. 15.
Section 69 ...	... Amended ...	... Ben. Act 1 of 1907, s. 16.
Section 78 ...	... Substituted ...	... B. & O. Act 8 of 1934, s. 14.
Section 75 ...	... Amended ...	... Ben. Act 1 of 1907, s. 17.
Section 80 ...	... Amended ...	... B. & O. Act 3 of 1916, s. 2 and Schedule.
Section 88 ...	... Amended ...	... Ben. Act 1 of 1907, s. 18. B. & O. Act 8 of 1934, s. 15.
Chapter X ...	... Substituted ...	... Ben. Act 3 of 1898, s. 7.
Section 101	... Repealed in part and amended.	Act 38 of 1920, s. 2 and Schedule I. Ben. Act 1 of 1907, s. 19.
Section 102	... Amended ...	... Ben. Act 1 of 1907, s. 20.
Section 102A	... Inserted ...	... Ben. Act 1 of 1907, s. 21.
Section 103B	... Substituted ...	... Ben. Act 1 of 1907, s. 22.
Section 104	... Amended ...	... Ben. Act 1 of 1907, s. 24.
Section 104H	... Amended ...	... Ben. Act 1 of 1907, s. 25.
Section 105	... Amended ...	... Ben. Act 1 of 1907, s. 24. Act 38 of 1920, s. 2 and Schedule I.
Section 105A	... Inserted ...	.. Ben. Act 1 of 1907, s. 26.
Section 106	... Substituted ... Amended ...	... Ben. Act 1 of 1903, s. 4. ... Ben. Act 1 of 1907, s. 27.
Section 107	... Amended ...	... Ben. Act 1 of 1907, s. 28.
Section 108	... Amended ...	... Ben. Act 1 of 1907, s. 29.
Section 108A	... Inserted ...	... Ben. Act 1 of 1907, s. 30.
Section 109	... Amended ...	... Ben. Act 1 of 1907, s. 31.
Section 109A	... Amended ...	... Ben. Act 1 of 1907, s. 32.
Sections 109B to 109D	Inserted ...	... Ben. Act 1 of 1907, s. 33.
Section 111	... Amended ...	... Ben. Act 1 of 1907, s. 34.
Section 111B	... Inserted ...	... Ben. Act 1 of 1907, s. 35.
Section 112	... Repealed in part ... Amended ...	... Act 38 of 1920, s. 2 and Schedule I. ... Ben. Act 1 of 1907, s. 36.
Section 114	... Repealed in part ... Amended ...	... Act 38 of 1920, s. 2 and Schedule I. ... Ben. Act 1 of 1907, s. 37.
Section 115A	... Inserted ...	... Ben. Act 1 of 1907, s. 38.

Section 116	...	Amended	...	...	Ben. Act 1 of 1907, s. 40.
Section 119	...	Amended	...	...	Ben. Act 3 of 1898, s. 40.
Section 120	...	Amended	...	...	Ben. Act 1 of 1907, s. 41.
Sections 147A and 147B.	...	Inserted	...	...	Ben. Act 1 of 1907, s. 42.
Section 148	...	Amended	...	...	Ben. Act 1 of 1907, s. 43.
Section 148A	...	Inserted	...	...	Ben. Act 1 of 1907, s. 44.
Section 149	...	Repealed in part	...	...	Ben. Act 1 of 1907, s. 45.
Section 150	...	Repealed in part	...	...	Ben. Act 1 of 1907, s. 45.
Section 153	...	Amended	...	...	Ben. Act 1 of 1907, s. 46.
Section 153A	...	Inserted	...	...	Ben. Act 1 of 1907, s. 47.
Section 158	...	Amended	...	...	Ben. Act 1 of 1907, s. 48.
Section 158A	...	Amended	...	...	B. & O. Act 8 of 1934, s. 16.
Chapter XIII A	...	Substituted	...	...	B. & O. Act 4 of 1914, s. 69.
Section 158B	...	Inserted	...	...	Ben. Act 1 of 1907, s. 50.
		Amended	...	...	B. & O. Act 4 of 1914, s. 69.
Section 161	...	Amended	...	...	Ben. Act 1 of 1907, s. 51.
Section 163	...	Amended	...	...	B. & O. Act 3 of 1916, s. 2 and Schedule, Part II.
Section 167	...	Amended	...	...	B. & O. Act 4 of 1914, s. 69 and Schedule III.
Section 168	...	Amended	...	...	Ben. Act 1 of 1907, s. 52.
Section 169	...	Amended	...	...	Ben. Act 1 of 1907, s. 53.
Section 170	...	Amended	...	...	B. & O. Act 8 of 1934, s. 17.
Section 171	...	Amended	...	...	B. & O. Act 4 of 1914, s. 69 and Schedule III.
Section 172	...	Amended	...	...	B. & O. Act 4 of 1914, s. 69 and Schedule III.
Section 174	...	Amended	...	...	Ben. Act 1 of 1907, s. 55.
Section 178	...	Amended	...	...	Ben. Act 1 of 1907, s. 56. B. & O. Act 8 of 1934, s. 19.
Section 186A	...	Inserted	...	...	B. & O. Act 1 of 1907, s. 57.
Section 188	...	Amended	...	...	B. & O. Act 8 of 1934, s. 20.
Section 188A	...	Inserted	...	...	Ben. Act 1 of 1907, s. 58. Ben. Act 1 of 1907, s. 59.
Section 189	...	Amended	...	...	B. & O. Act 8 of 1934, s. 21.
Section 189A	...	Inserted	...	...	B. & O. Act 9 of 1920, s. 2.
Section 192	...	Amended	...	...	Ben. Act 1 of 1907, s. 60.
Schedule III, Part I	Amended	...	...	...	Ben. Act 1 of 1907, s. 61. B. & O. Act 8 of 1934, s. 22.
Schedule III, Part III	Amended	Ben. Act 1 of 1907, s. 61.

ACT 8 OF 1885.

(The Bihar Tenancy Act, 1885.)

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SCHEDULE I.—REPEAL OF ENACTMENTS.

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ACT 8 OF 1885.

(THE BIHAR TENANCY ACT, 1885.)^[1]

(14th March, 1885.)

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

Whereas it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under

[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Gazette of India, 1883, Part V, p. 129; for Report of Select Committee, see *ibid.*, 1884, Part V, p. 25; and for Proceedings in Council, see *ibid.*, 1883, Supplement, pp. 268, 831, 885, 996, 1519 and 2303; *ibid.*, 1884, Supplement, pp. 633 and 1405; *ibid.*, 1885, Supplement, pp. 269, 639, 743 and 776.

LOCAL EXTENT.—

Portions of the Act are in force in the Sonthal Parganas.

Section 31A (1) applies only to districts or parts of districts to which it is extended by the Local Government by notification in the local official Gazette. It has been extended to the Government Estate Tanfir Barhia in the district of Monghyr, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

COMMENCEMENT.—Act 8 of 1885 was declared to come into force on the 1st November 1885, by a notification dated the 4th September, 1885—see Calcutta Gazette, 9th *idem.* Part I, p. 874. That notification was, however, modified as to the commencement of ss. 61 and 64 and Chapter XII by Act 20 of 1885, s. 1, which enacted that those portions of the Act should come into force on such date, not later than the 1st day of February, 1886, as the Local Government might appoint, or, if no such date was appointed then on the 1st February, 1886. (No such date was appointed.) Act 20 of 1885 was repealed by the Amending Act, 1891 (12 of 1891).

OTHER ENACTMENTS CONTAINING PROVISIONS AS TO LANDLORD AND TENANT.—For a comprehensive view of the several enactments relating to landlord and tenant, see the head "Landlord and Tenant" and cross-references therefrom, in the index at the end of Vol. IV of the Bihar and Orissa Code. Other enactments on the subject which are in force in Bihar and Orissa are—

- | | |
|---|--|
| (1) the Mesne Profits and Improve-
ments Act, 1855 (11 of 1855); | printed in General Acts, 1834--72, Ed. 1928,
p. 69. |
| (2) the Opium Act, 1878 (1 of 1878),
ss. 4, 5, 9, 11, 22 (cultivation of
the poppy); | ditto, 1873--86, Ed. 1928,
p. 111. |
| (3) the Transfer of Property Act,
1882 (4 of 1882), Ch. V (leases
of immovable property); | ditto, 1873--86, Ed. 1928,
p. 331. |
| (4) the Cantonments (House-accom-
modation) Act, 1923 (VI of
1923); and | ditto, 1921--1923, Ed. 1928
p. 202. |
| (5) the Code of Civil Procedure, 1908
(5 of 1908), ss. 4 and 5 (suits
between landlord and tenant). | |

(Secs. 1-3.)

the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the [1] [Bihar] Tenancy Act, 1885. Short title.

(2) [It shall come into force on such date^[2] (hereinafter called the *Commencement* commencement of this Act) as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, appoint in this behalf.]

[3] [(3) It shall extend to the districts of Patna, Gaya, Shahabad, Local Muzaffarpur, Saran, Champaran, Darbhanga, Bhagalpur, Monghyr extent, and Purnea, except any area constituted, or deemed to have been constituted, a municipality, under the provisions of the Bihar and Orissa Municipal Act, 1922, or part thereof, if such area is specified in a notification issued in this behalf by the Local Government.]

B. & O.
Act 7
of 1922.

2. (1) The enactments specified in Schedule I hereto annexed are Repeal. repealed in the [4] [districts] to which this Act extends [* * *].^[5]

[6] [* * *].

[7] [(2) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

[7] [(3) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

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

(1) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the

[1] The word "Bihar" was substituted for the word "Bengal" by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 2 (a).

[2] See foot-note headed "Commencement," ante, p. 12.

[3] This sub-section was substituted for the original sub-section (3) by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 2(b).

[4] The word "districts" was substituted for the word "territories" by *ibid*, s. 3(a).

[5] The words "by its own operation" were omitted by *ibid*.

[6] Sub-section (2) of section 2 was omitted by *ibid*, s. 3(b).

[7] The original sub-sections (3) and (4) were re-numbered as (2) and (3) by *ibid*.

(Sec. 3.)

Collector of a district, and includes Government *khas mahals* and revenue-free lands not entered in any register;

(2) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate;

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

(4) "Landlord" means a person immediately under whom a tenant holds, and includes the Government;

(5) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant:

in sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII, [1][Chapter XIV] and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent;

(6) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery";

(7) "Tenure" means the interest of a tenure-holder or an under-tenure-holder;

(8) "permanent tenure" means a tenure which is heritable and which is not held for a limited time;

(9) "Holding" means a parcel or parcels of land held by a *raiyat* and forming the subject of a separate tenancy;

[2][10] "Village" means the area defined, surveyed and recorded as a distinct and separate village in—

(a) the general land-revenue survey which has been made of the [3][districts to which this Act extends], or

(b) any survey made by the Government which may be adopted by notification in the [4][official] Gazette as defining villages for the purposes of this clause in any specified area;

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of

[1] The word and figures "Chapter XIV" in clause (5) of s. 3 were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 4(1).

[2] Clause (10) was substituted for the original clause (10) by *ibid*, s. 4(2).

[3] The words within the square brackets in clause (10) were substituted for the words "Province of Bengal" by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 4(a).

[4] The word "official" was substituted for the word "Calcutta" by *ibid*, s. 4(b).

(Sec. 3.)

the Board of Revenue, by general or special order,[¹] declare to constitute a village.]

(11) "Agricultural year" means, where the Bengali year prevails, the year commencing on the first day of *Baisakh*, [²] where the *Fasli* or *Amli* year prevails, the year commencing on the first day of *Asin*, [³] and, where any other year prevails for agricultural purposes, that year;

(12) "Permanent Settlement" means the Permanent Settlement of [*Bengal*.] Bihar and Orissa, made in the year 1793;

(13) "Succession" includes both intestate and testamentary succession;

(14) "Signed" includes "marked," when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to;

(15) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette;

(16) "Collector" means the Collector of a district or any other officer appointed [⁴] by the Local Government to discharge any of the functions of a Collector under this Act;

(17) "Revenue-officer," in any provision of this Act, includes any officer whom the Local Government may appoint, [⁵] by name or by virtue of his office, to discharge any of the functions of a Revenue-officer under that provision;

(18) "Registered" means registered under any Act [⁶] for the time being in force for the registration of documents. [⁷]

[1] For a list of orders made under the last paragraph of s. 3(10), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. IV.

[2] The month of *Baisakh* corresponds to the last part of April and the first part of May.

[3] The month of *Asin* corresponds to the last part of September and the first part of October.

[4] For a list of orders made under s. 3(16), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

[5] For an order made under s. 3(17), see *ibid*.

[6] See now the Indian Registration Act, 1908 (16 of 1908), in General Acts, 1898—1909, Ed. 1928, p. 431.

[7] Further definitions are given in following sections, namely:—

s. 5 ("tenure-holder" and "*raiyat*");

s. 20 ("settled *raiyat*");

s. 26D ("stated value");

s. 26E ("agent");

s. 41 ("non-occupancy-*raiyat*");

s. 47 ("admitted to occupation");

s. 49A ("complete usufructuary mortgage");

s. 76 ("improvement");

s. 160 ("protected interests");

s. 161 ("incumbrance" and "registered and notified incumbrance").

(Secs. 4-5.)

CHAPTER II.

CLASSES OF TENANTS.

Classes of
tenants.

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

- (1) tenure-holders, including under-tenure-holders,
- (2) *raiyats*, and
- (3) under-*raiyats*, that is to say, tenants holding, whether immediately or mediately, under *raiyats*;

and the following classes of *raiyats*, (namely) :—

- (a) *raiyats* holding at fixed rates, which expression means *raiyats* holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,
- (b) occupancy-*raiyats*, that is to say, *raiyats* having a right of occupancy in the land held by them, and
- (c) non-occupancy-*raiyats*, that is to say, *raiyats* not having such a right of occupancy.

Meaning of
"tenure-
holder"
and
"raiyat."

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

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

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

(3) A person shall not be deemed to be a *raiyat* unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a *raiyat*, the Court shall have regard to—

- (a) local custom; and
- (b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard *bighas*, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

(Secs. 6-7.)

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

6. Where a tenure has been held from the time of the Permanent Settlement, its rents shall not be liable to enhancement except on proof—

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

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

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than 10 *per centum* of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

(Secs. 8-12.)

Power to order gradual enhancement.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Rent once enhanced may not be altered for fifteen years.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

Other incidents of tenures.

Permanent tenure-holder not liable to ejection.

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

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

Transfer and transmission of permanent tenure. Voluntary transfer of permanent tenure.

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

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

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or [²][usufructuary] mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely :—

(a) when rent is payable in respect of the tenure, a fee of two *per centum* on the annual rent of the tenure : provided that no such fee shall be less than one rupee or more than one hundred rupees; and

(b) when rent is not payable in respect of the tenure, a fee of two rupees;

[¹] As to the validation of certain transfers made under s. 12, 13, 17 or 18, see the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act 1 of 1903), s. 1; and as to payment of fees under those sections, see *ibid*, s. 2.

[²] This word "usufructuary" in s. 12(2) was inserted by the Bengal Tenancy (Amendment) Act, 1886 (8 of 1886), s. 1.

(Sec. 13.)

[¹][together with the costs necessary for the transmission of the landlord's fee to the landlord.]

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee, [²][the costs necessary for the transmission of the same] and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be [³][transmitted] to, and the notice to be served on, the landlord [⁴] [named in the notice] in the prescribed manner.

14 of 1882. [⁵]**13.** (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, [⁶][or when a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed,] the Court shall, before confirming the sale under section 312[⁷] of the Code of Civil Procedure, [⁸][or making a decree or order absolute for the foreclosure,] require the purchaser [⁹][or mortgagee] to pay into Court the landlord's fee prescribed by the last foregoing section, [¹⁰][together with the costs necessary for its transmission to the landlord] and such further fee for service of notice of the sale [¹¹][or final foreclosure] on the landlord as may be prescribed.

(2) When the sale has been confirmed, [¹²][or the decree or order absolute for the foreclosure has been made,] the Court shall send to the

[¹] These words in square brackets were added to s. 12 (2) by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 5 (1).

[²] The words "the costs necessary for the transmission of the same", in s. 12(3), were inserted by *ibid*, s. 5(2) (i).

[³] The word "transmitted" in s. 12(3) was substituted for the word "paid", by *ibid*, s. 5(2) (ii).

[⁴] The words "named in the notice" in s. 12(3) were inserted by *ibid*, s. 5(2) (iii).

[⁵] As to the validation of certain transfers made under s. 12, 13, 17 or 18, see the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act 1 of 1903), s. 1; and as to payment of fees under those sections, see *ibid*, s. 2.

[⁶] The words in square brackets in s. 13(1) were inserted by the Bengal Tenancy (Amendment) Act, 1886 (8 of 1886), s. 2(1).

[⁷] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rule 92 in Order XXI in Sch. I to that Code—see s. 153 thereof.

[⁸] The words in square brackets in s. 13(1) were inserted by the Bengal Tenancy (Amendment) Act, 1886 (8 of 1886), s. 2(2).

[⁹] The words "or mortgagee" in s. 13(1) were inserted by *ibid*, s. 2(3).

[¹⁰] The words "together with the costs necessary for its transmission to the landlord", in s. 13(1), were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 6(1).

[¹¹] The words "or final foreclosure" in s. 13(1) were inserted by the Bengal Tenancy (Amendment) Act, 1886 (8 of 1886), s. 2(4).

[¹²] The words in square brackets in s. 13(2) were inserted by *ibid*, s. 2(5).

(Secs. 14-15A.)

Collector the landlord's fee, [1][the costs necessary for the transmission of the same] and a notice of the sale [2][or final foreclosure] in the prescribed form, and the Collector shall cause the fee to be [3][transmitted] to, and the notice to be served on, the landlord [4][named in the notice] in the prescribed manner.

14. (Transfer of permanent tenure by sale in execution of decree for rent.) Rep. by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907).

Succession
to permanent
tenure.

[5]**15.** When a succession to a permanent tenure takes place, the person succeeding shall [6][within one year from the date of such succession] give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by section 12, [7][together with the costs necessary for its transmission to the landlord] and the Collector shall cause the landlord's fee to be [8][transmitted] to, and the notice to be served on, the landlord [9][named in the notice] in the prescribed manner.

Penalty for
failure to
give notice
of succes-
sion.

[10]**15A.** (1) If the person succeeding to a permanent tenure fails to give notice of such succession within the period specified in section 15 and to pay the fees and costs required by the said section to be paid, the Collector may, on the application of the landlord of the tenure, impose on such person a penalty not exceeding twenty-five rupees.

[1] The words "the costs necessary for the transmission of the same", in s. 13(2), were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 5(2) (i).

[2] The words "or final foreclosure" in s. 13(2) were inserted by the Bengal Tenancy (Amendment) Act, 1886 (8 of 1886), s. 2(6).

[3] The word "transmitted" in s. 13(2) was substituted for the word "paid" by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 5(2) (ii).

[4] The words "named in the notice" in s. 13(2) were inserted by *ibid.*, s. 5(2) (iii).

[5] As to payment of fees under ss. 15 and 18 to the Registrar of Mutations under the Land Records Maintenance Act, 1895 (Ben. Act 3 of 1895), see s. 20 of that Act.

[6] The words "within one year from the date of such succession" were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 5.

[7] The words "together with the costs necessary for its transmission to the landlord" in s. 15, were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 6(1).

For further provisions as to landlords' fees, see Chap. IVA, *post*, p. 21.

[8] The word "transmitted" in s. 15, was substituted for the word "paid" by *ibid.*, s. 6(2) (i).

[9] The words "named in the notice", in s. 15 were inserted by *ibid.*, s. 6(2) (ii).

[10] Section 15A was inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 6.

(Secs. 16-18A.)

(2) The Collector may award any portion of such penalty to the landlord of the tenure as costs of the application.]

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice, [1][fees and costs] referred to in the last foregoing section.

Bar to recovery of rent, pending notices of succession.

[2]17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

Transfer of and succession to, share in permanent tenure.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

[2][3]18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

Incidents of holding at fixed rates.

- (a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and
- (b) shall not be ejected by his landlord, except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

[4] CHAPTER IVA.

PROVISIONS AS TO TRANSFERS OF TENURES AND HOLDINGS AND LANDLORD'S FEES.

18A. Nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, amount or fixity of rent, area, transferability or any incident of any tenure or holding referred to in such instrument.

Saving as to statements in instruments of transfer where landlord no party.

[1] The words "fees and costs" in s. 16, were substituted for the words "and fees", by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 7.

[2] As to the validation of transfers made under s. 17 or 18, see foot-note[5] on p. 19, ante.

As to the forfeiture of fees deposited under ss. 12, 13, 15, 17 and 18(a), see s. 18C, post, p. 22, and s. 189(2), post, p. 134.

[3] As to the payment of fees under ss. 15 and 18 to the Registrar of Mutations under the Land Records Maintenance Act, 1895 (Ben. Act 3 of 1895), see s. 20 of that Act.

[4] Chapter IVA was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 8.

(Secs. 18B-19.)

Saving as to
acceptance
of land-
lord's fees.

18B. The acceptance by a landlord of any landlord's fee payable under Chapter III or Chapter IV in respect of any tenure or holding shall not operate—

(a) as an admission as to the permanence, amount or fixity of rent, area, transferability or any incident of such tenure or holding, or

(b) as an express consent under section 88 to the division of such tenure or holding, or to the distribution of the rent payable in respect thereof.

Forfeiture
of un-
claimed
landlord's
fees.

18C. All landlord's fees paid under Chapter III or Chapter IV which are held in deposit on or after the commencement of the Bengal Tenancy (Amendment) Act, 1907, may, unless accepted or claimed by the landlord within three years from such commencement or from the date of the service of the notice prescribed in section 12, section 13 or section 15 (as the case may be), whichever is later, be forfeited to the Government. Ben. Act
of 1907.

[¹] CHAPTER V.

OCCUPANCY-RAIYATS.

General.

Continuance
of existing
occupancy
rights.

[²][**19.** (1)] Every *raiyat* who, immediately before the commencement of this Act [³][or the Bengal Tenancy (Amendment) Act, 1907] [¹] has, by the operation of any enactment, by custom, or otherwise, a right of occupancy in any land, shall, when this Act [³][or the Bengal Tenancy (Amendment) Act, 1907] comes into force, have a right of occupancy in that land. Ben. Act 1
of 1907.

Ben. Act 1
of 1907.

[⁴][(2) The exclusion from the operation of this Act, by a notification under sub-section (3) of section 1, of any area constituted [⁵][or deemed to have been constituted] a Municipality under the provisions of the

[¹] Chapter V does not confer a right of occupancy in certain lands—see s. 116, *post*, p. 99.

[²] The original s. 19 was re-numbered 19 (1) by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 9(1).

[³] The words and figures "or the Bengal Tenancy (Amendment) Act, 1907", in s. 19, were inserted by *ibid*, s. 9(2).

[⁴] This sub-section (2) was inserted by *ibid*, s. 9 (3).

[⁵] The words "or deemed to have been constituted" were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 7(a).

(Secs. 20-21.)

B. & O.
Act 7 of
1922.

[¹][Bihar and Orissa Municipal Act, 1922], or of any part of such area, [²]* * *] shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area.]

20. (1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a *raiyat* land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled *raiyat* of that village

Definition
of "settled
raiyat".

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

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

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

(5) A person shall continue to be a settled *raiyat* of a village as long as he holds any land as a *raiyat* in that village and for one year thereafter.

(6) If a *raiyat* recovers possession of land under section 87, he shall be deemed to have continued to be a settled *raiyat* notwithstanding his having been out of possession more than a year.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a *raiyat*, it shall, as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a *raiyat*.

21. (1) Every person who is a settled *raiyat* of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a *raiyat* in that village.

Settled
raiyat to
have
occupancy
rights.

(2) Every person who, being a settled *raiyat* of a village within the meaning of the last foregoing section, held land as a *raiyat* in that village

[1] The words and figures " Bihar and Orissa Municipal Act, 1922 " were substituted for the words and figures " Bengal Municipal Act, 1884 " by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 7(a).

[2] The words " or the inclusion of any area in the town of Calcutta by notification under section 637 of the Calcutta Municipal Act, 1899 " were repealed by *ibid*, s. 7(b).

(Secs. 22-23.)

at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

Effect of acquisition of occupancy-right by landlord.

22. (1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the *raiyat* in the holding become united in the same person by transfer, succession or otherwise, [1][such person shall have no right to hold the land as a tenant, but shall hold it as a proprietor or permanent tenure-holder (as the case may be)]; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, [2][he shall be entitled to hold the land subject to the payment to his co-proprietors or joint permanent tenure-holders of the shares of the rent which may be from time to time payable to them; and if such transferee sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a *raiyat*, as the case may be, in respect of the land.

Illustration.—A, a co-sharer landlord, purchases the occupancy-holding of a *raiyat* X. A is entitled himself to hold the land on payment to his co-sharers of the shares of the rent payable to them in respect of the holding. A sub-lets the land to Y, who takes it for the purpose of establishing tenants on it; Y becomes a tenure-holder in respect of the land. Or A sub-lets it to Z, who takes it for the purpose of cultivating it himself; Z becomes a *raiyat* in respect of the land.]

(3) A person holding land as an *ijaradar* or farmer of rents shall not, while so holding, acquire. [3][by purchase or otherwise], a right of occupancy in any land comprised in his *ijara* or farm.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in *ijara* or farm.

Rights of *raiyat* in respect of use of land.

[4][**23.** (1) When a *raiyat* has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.

[1] These words in square brackets in s. 22 (1) were substituted for the words "the occupancy-right shall cease to exist," by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 10 (a).

[2] The portion of s. 22 (2) which is printed in square brackets on this page was substituted for the words "it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person," by *ibid.* s. 10(b).

[3] These words in square brackets in s. 22 (3) were inserted by *ibid.* s. 10(c).

[4] This section was substituted for the original s. 23 by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 8.

(Sec. 23A.)

(2) The following shall not be deemed to impair the value of the land materially or to render it unfit for the purposes of the tenancy, namely :—

- (a) the manufacture of bricks and tiles for the domestic or agricultural purposes of the *raiyat* and his family;
- (b) the excavation of tanks or the digging of wells intended to provide a supply of water for drinking or other domestic purposes of the *raiyat* and his family; and
- (c) the erection of buildings for the domestic or agricultural purposes of the *raiyat* and his family.

(3) If an occupancy-*raiyat*, who pays for his holding rent in any of the ways specified in sub-section (1) of section 46, excavates a tank on such holding for any purpose mentioned in clause (b) of sub-section (2) the landlord and the *raiyat* shall be entitled to equal shares in the produce of such tank :

Provided that this section shall not affect the landlord's right in *jalkar* other than in the tanks excavated by a tenant on his holding for which he pays rent in cash.]

[1][23A. Notwithstanding anything contained in section 23, when a *raiyat* has a right of occupancy in respect of any land—

Rights of
occupancy-
raiyat in
trees.

- (a) if the rent of such land is paid in cash, or if such land is part of a rent-free holding, the *raiyat* may,
 - (i) plant trees and bamboos on such land and cut, cut down and appropriate the same,
 - (ii) cut, cut down and appropriate any trees or bamboos standing on such land,
 - (iii) appropriate the flowers, fruits and other products of any trees or bamboos standing on such land;
- (b) if the rent of such land is paid in any of the ways specified in sub-section (1) of section 40, the landlord and the *raiyat* shall have equal shares in the timber and in the flowers, fruits and other products of all trees or bamboos growing on such land whether planted before or after the commencement of the Bihar Tenancy (Amendment) Act, 1934, but the *raiyat* shall not be entitled to plant any tree or bamboo on such land without the consent of the landlord, and neither the *raiyat* nor the landlord shall, without the consent of

B. & O.
Act 8 of
1934.

[1] S. 23A was inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 9.

(Secs. 24-26B.)

the other, be entitled to cut down or appropriate any such tree or bamboo :

Provided that if there is a specific entry in the latest record-of-rights regarding any tree or bamboo which was standing on any land specified in clause (a) or clause (b) before the date of the final publication of such record-of-rights, the rights of the landlord and the *raiyat* in such tree or bamboo shall be in accordance with such entry or with any decision of a Civil Court affecting such entry.]

Obligation of *raiyat* to pay rent.

24. An occupancy-*raiyat* shall pay rent for his holding at fair and equitable rates.

Protection from eviction except on specified grounds.

25. An occupancy-*raiyat* shall not be ejected by his landlord from his holding, except in execution of a decree for ejection passed on the ground—

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

(b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Devolution of occupancy right on death.

26. If a *raiyat* dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property : provided that, in any case in which under the law of inheritance to which the *raiyat* is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

Transfer of occupancy-holding with occupancy-right.

[¹]**26A.** The provisions of sections 26B to 26M and section 26P shall apply to all transfers of occupancy-holdings or portions thereof, together with the occupancy-rights therein, made by sale, exchange, gift or will, after the date of the commencement of the Bihar Tenancy (Amendment) Act, 1934.

B. & O.
Act 8 of
1934.

Power to transfer occupancy-holding.

[¹]**26B.** (1) An occupancy-*raiyat* shall have power to transfer his occupancy-holding or any portion thereof, together with the right of occupancy therein, by sale, exchange, gift or will, but, except as provided in sub-section (2), no such transfer shall be valid against the landlord unless he has given, or is deemed under section 26F to have given, his consent thereto.

[¹] Sections 26A to 26P were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 10.

(Secs. 26C-26D.)

(2) When an occupancy-holding or portion thereof is transferred by gift or will to the husband or wife of the donor or testator or to a son adopted under the Hindu law or to a relation by consanguinity within three degrees of such testator or donor, and when the transferee has served a notice on the landlord in the prescribed form and containing the prescribed particulars, such transfer shall be valid against the landlord, who shall be deemed to have given his consent thereto.

Transfer by gift or will to husband or wife or other close relation.

(3) When a portion of a holding has been transferred under sub-section (2) the landlord may, within six months of the service of the notice referred to in sub-section (2), apply to the Collector for an order varying the distribution of the rent of the holding as set forth in the instrument of transfer, or, if there is no such instrument, in the said notice, and the Collector may, if he considers that such distribution is inequitable, after hearing the parties and making such inquiry as he thinks fit, pass an order distributing the rent of the original holding between the portion transferred and the portion retained by the transferor, in such manner as he considers fair and equitable.

Distribution of rent in cases of transfer by gift or will to husband or wife or other close relation.

[¹][26C. (1) A transfer of an occupancy-holding or portion thereof otherwise than by will or sale in execution of a decree or of a certificate filed under the Bihar and Orissa Public Demands Recovery Act, 1914, can be made only by a registered instrument :

Compulsory registration of certain transfers.

B. & O.
Act 4
of 1914.

Provided that nothing in this sub-section shall apply to an oral gift made by a Muhammadan.

(2) The registering officer shall not accept for registration an instrument transferring by sale, exchange or gift,—

- (a) one or more occupancy-holdings or portions thereof,—unless the value of each holding or portion transferred is separately stated in the instrument,
- (b) a portion of an occupancy-holding,—unless the rent payable to the landlord for the portion so transferred, as settled between the transferor and the transferee, is stated in the instrument.

[¹][26D. (1) Except in the cases referred to in sub-section (2) of section 26B, when an occupancy-holding or portion thereof is transferred by sale, exchange, gift or will, the landlord shall be entitled to receive from the transferee, as a condition of his consent to the transfer, a fee hereinafter called the landlord's transfer fee.

Landlord's transfer fee.

[¹] Sections 26A to 26P were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 10.

(Sec. 26-D.)

(2) (a) The landlord's transfer fee shall be, in the case of a transfer by sale, gift or will, a sum equal to eight *per centum*, and in the case of a transfer by exchange, a sum equal to four *per centum*, of the value of the holding or portion transferred.

(b) For the purposes of this section, the value of a holding or portion thereof which is transferred shall, subject to any orders passed by the Collector under clause (c) of sub-section (3) of section 26E or clause (a) of sub-section (2) of section 26J, be—

- (i) in the case of a transfer by sale,—the consideration as set forth in the instrument of transfer;
- (ii) in the case of a transfer by exchange,—the value of the holdings or portions exchanged as set forth in the instrument of transfer, in addition to any consideration given for the exchange;

Explanation.—A and B exchange portions of their holdings. The area of land transferred by A to B is one acre valued at Rs. 150, and the area transferred by B to A is two acres valued at Rs. 250. A, on account of this difference in area, pays to B Rs. 100.

The landlord's transfer fee payable by A to the landlord of the portion of the holding transferred to A will be—

four *per centum* of the value of the two acres transferred to A, as set forth in the instrument of transfer, that is to say Rs. 10.

The landlord's transfer fee payable by B to the landlord of the portion of the holding transferred to B will be—

four *per centum* of the value of the one acre transferred to B, that is to say Rs. 6, and

four *per centum* of the sum of Rs. 100 which A paid to B;

(iii) in the case of a transfer by gift, other than an oral gift made by a Muhammadan,—the value of the holding or portion given, as set forth in the instrument of transfer;

(iv) in the case of a transfer by oral gift made by a Muhammadan,—the value of the holding or portion given as stated by the donor, or if the donor has failed to make such statement, by the donee; and

(Sec. 26-E.)

(v) in the case of a transfer by will—the value of the holding or portion bequeathed as determined by the Court for the purposes of the stamp duty payable for the grant of probate or letters of administration.

(c) The value of the holding or portion transferred, as described in sub-clauses (i) to (v) of clause (b) is hereinafter referred to as the stated value.

[¹][26E. (1) (a) The landlord's transfer fee may be paid to the landlord or deposited with the Collector.

(b) If the transferee desires to pay the landlord's transfer fee to the landlord, he shall—

(i) where only one collection of rent is made, pay the whole of such fee to the landlord or his agent,

(ii) where separate collections of rent are made by individual co-sharer landlords or groups of co-sharer landlords, pay to each such individual co-sharer or his agent, or to the co-sharer who collects the rent for each such group or to his agent, a share of the landlord's transfer fee proportionate to the share of the rent collected by each such individual or each such group.

(iii) In this section and in section 26F, "agent" means a person specially authorised by the landlord, including the landlord himself, to receive landlord's transfer fees, when such authorisation has been notified in the prescribed manner, or when such notification has not been made, the person who collects the rent.

(c) If the transferee desires to deposit the landlord's transfer fee with the Collector, he shall together with such fee deposit with the Collector the costs necessary for the transmission of the same to the landlord; the prescribed process-fee for service of the notice on the landlord, and a statement in the prescribed form with particulars of the land transferred, the area thereof, the rent thereof, the stated value thereof, the amount of the landlord's transfer fee, the name of the landlord or landlords mentioned in the last rent receipt given in respect of the rent of the holding or, if no such mention has been made, the name of a person whom the transferee believes to be a landlord of the holding and such other particulars as may be prescribed.

[¹] Sections 26A to 26P were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 10.

(Sec. 26-E.)

Procedure when the transferee fails to pay the landlord's transfer fee either to the landlord or to the Collector. Application to the Collector by the landlord.

(2) If the transferee has not paid the landlord's transfer fee to the landlord or deposited the same with the Collector within six months from—

- (a) the date of the registration of the instrument of transfer,—in the case of a transfer by sale, exchange or gift, other than an oral gift made by a Muhammadan,
- (b) the date of the gift,— in the case of a transfer by an oral gift made by a Muhammadan,
- (c) the date of the grant of probate or letters of administration,— in the case of a transfer by will,

the landlord may apply to the Collector for an order determining the amount payable as landlord's transfer fee and requiring the transferee to pay the same into Court, and, in the case of the transfer of a portion of a holding, for a further order varying the distribution of the rent of the holding as settled between the transferor and the transferee :

Provided that if the landlord fails to make such an application he shall not by reason of such failure be deemed to have given his consent to the transfer.

(3) On receipt of such an application, the Collector shall serve a notice on the landlord, the transferor and the transferee, and after hearing the parties and holding such inquiry, as he thinks fit, may,—

- (a) if he is satisfied that the landlord had no good and sufficient reason for making the application, reject the application ;
- (b) if he is satisfied that the landlord's transfer fee has not been paid to the landlord, order the transferee to pay the landlord's transfer fee to the landlord or into Court within a specified time ;
- (c) if he is satisfied that the stated value of the holding or portion transferred is below its market value, determine the market value of such holding or portion, and order the transferee to pay to the landlord or deposit into Court as the landlord's transfer fee within a specified time a sum equal to eight *per centum*, in the case of a transfer by sale, gift or will, or four *per centum*, in the case of a transfer by exchange, of the market value, as so determined by him, of the holding or portion ;

Collector's orders on the application. Orders about payment of the landlord's transfer fee.

Penalty.

- (d) if he is satisfied that the transferee has wilfully neglected to pay the landlord's transfer fee, or has wilfully understated the value of the holding or portion transferred with a view

(Sec. 26-F.)

to reducing the amount of landlord's transfer fee, order the transferee to pay to the landlord or into Court as penalty, within such time as may be specified in the order, a further sum equal to the sum ordered to be paid as landlord's transfer fee :

Provided that not more than one penalty shall be imposed under this clause on any transferee; and

(e) in the case of a transfer of a portion of a holding, pass an order varying the distribution of the rent of the holding as stated in the instrument of transfer or, if there is no instrument of transfer, as settled between the transferor and transferee. Orders distributing rent.

(4) Any sum paid into Court by a transferee as landlord's transfer fee or as penalty in accordance with an order under sub-section (3) shall be paid by the Collector or sent by him by money-order—

(a) if only one application has been made—to the applicant,

(b) if more than one application has been made—to the person whom the Collector decides to be entitled to receive it.

[¹][26F. (1) If the landlord's transfer fee is paid in accordance with the provisions of clause (b) of sub-section (1) of section 26E and the landlord or his agent or each individual co-sharer or his agent who collects rent separately, or each co-sharer or his agent who collects rent for a group of co-sharer landlords, as the case may be, accepts payment thereof, every person claiming an interest as landlord in the holding or portion transferred shall on such acceptance be deemed to have given his consent to the transfer and, in the case of a transfer of a portion of a holding, to have accepted the distribution of the rent of the holding as settled between the transferor and the transferee before or at the time of such acceptance of payment of the landlord's transfer fee. Effect of payment of landlord's transfer fee to landlord,—landlord's consent.

(2) If the transferee deposits the landlord's transfer fee with the Collector under clause (c) of sub-section (1) of section 26E, the Collector shall grant the transferee a receipt for the same in the prescribed form, and every person claiming an interest as landlord in the holding or portion transferred shall be deemed to have given his consent to the transfer on the date on which such receipt is granted : Effect of payment of landlord's transfer fee to Collector Collector to give receipt to transferee—landlord's consent.

Provided that nothing in this sub-section shall affect the right of the landlord to make an application under sub-section (1) of section 26H.

(3) If an application is made under sub-section (2) of section 26E, every person claiming an interest as landlord in the holding or portion transferred shall be deemed to have given his consent to the transfer

Sections 26A to 26P were inserted by the Bihar Tenancy (Amendment) Act, O. Act 8 of 1934, s. 10.

(Secs. 26G-26H.)

on the date on which the Collector passes orders on such application under sub-section (3) of section 26E.

Collector to
serve notice
on landlord.

[¹][26G. (1) After the Collector has granted a receipt under sub-section (2) of section 26F, he shall serve in the prescribed manner a notice in the prescribed form containing the particulars referred to in clause (c) of sub-section (1) of section 26E,—

- (a) on the landlord named in the statement mentioned in clause (c) of sub-section (1) of section 26E, or if more than one landlord is named in such statement, on one of such landlords, and
- (b) at the village-office of the landlord or, if there is no such office in the village in which the holding is situate, at some conspicuous place in such village.

Collector to
publish lists
of receipt
granted.

(2) The Collector shall in each month publish lists in the prescribed form of all receipts granted by him during the preceding month under sub-section (2) of section 26F by posting a copy of such list at the office of the Sub-Registrar within whose sub-district the holding or portion transferred is situate and at the office of the Sub-Divisional Officer within whose jurisdiction such holding or portion is situate.

Application
for payment
of deposit.

[¹][26H. (1) The landlord of any holding or portion which is mentioned in any list posted under sub-section (2) of section 26G, may—

- (a) at any time after the date of the posting of such list, apply to the Collector for payment to him of the sum deposited as the landlord's transfer fee in respect of the transfer of such holding or portion,
- (b) at any time within six months from the date of the posting of such list, apply in one and the same application for the payment to him of the sum deposited as landlord's transfer fee and for an order declaring—
 - (i) that the stated value of the land transferred is below its market-value, and
 - (ii) in the case of a transfer of a portion of a holding, that the distribution of the rent of the holding as set forth in the instrument of transfer or, if there is no such instrument, in the notice referred to in sub-section (1) of section 26G, is inequitable.

(2) Every application under sub-section (1) shall be in the prescribed form and shall, notwithstanding anything contained in the Court-fees Act, 1870, bear such stamp as the Local Government may from time to time

[¹] Sections 26A to 26P were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 10.

(Secs. 26I-26J.)

to time prescribe by notification in the local official Gazette in respect of applications under clause (a) or clause (b) of the said sub-section (1).

[¹][26I. (1) If no application for payment of any sum deposited with the Collector as landlord's transfer fee in respect of the transfer of a holding or portion thereof is made within six months from the date of the posting under sub-section (2) of section 26G of a list in which the holding or portion transferred is mentioned, the Collector shall pay, or send such sum by money-order, to the person in whose favour such sum was deposited.

Procedure to be followed by the Collector when no application received, or when the only applicant is the landlord in whose favour the sum was deposited.

(2) If the only application made for payment of any such sum is made by the person in whose favour such sum was deposited, and if such application does not seek an order under clause (b) of sub-section (1) of section 26H, the Collector shall at the expiration of six months from the date of the posting of the list referred to in sub-section (1), pay or send such sum by money-order to the person making such application.

[¹][26J. (1) If more than one application under clause (a) of sub-section (1) of section 26H, has been received,

Hearing of applications.

or if one such application has been received from any person other than the person in whose favour the sum was deposited,

or if one or more applications have been received under clause (b) of the said sub-section including an application from the person in whose favour a sum has been deposited as landlord's transfer fee,

the Collector shall serve a notice on the applicant, the transferor, the transferee and the person in whose favour such sum has been deposited.

(2) After hearing the parties and holding such inquiry as he thinks fit, the Collector

(a) shall, if he is satisfied that the stated value of the holding or portion transferred is below its market-value, determine the market-value of such holding or portion, and order the transferee to pay to the landlord or into Court, within a specified time, as part of the landlord's transfer fee, a sum equal to the difference between the sum already deposited by the transferee and a sum equal to eight *per centum*, or, in the case of an exchange, four *per centum*.

Order of payment of correct amount of landlord's transfer fee.

[¹] Sections 26A to 26P were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 10.

(Secs. 26K-26L.)

of the market-value of such holding or portion as so determined by him,

Penalty.

(b) may, if he is satisfied that the value of the holding or portion has been wilfully understated with a view to reducing the amount of the landlord's transfer fee, order the transferee to pay to the landlord or into Court as penalty, within a specified time, a further sum equal to the landlord's transfer fee as determined by him under clause (a),

Distribution of rent.

(c) shall, in the case of a transfer of a portion of a holding, if he is satisfied that the distribution of the rent, as set forth in the instrument of transfer or, if there is no such instrument, in the notice referred to in sub-section (1) of section 26G, is inequitable, pass an order distributing the rent of the original holding between the portion transferred and the portion retained by the transferor, in such manner as he considers fair and equitable, and

(d) shall, if the right to receive the landlord's transfer fee is not disputed, pay the landlord's transfer fee to the person who has applied for it.

(3) If the right to receive the landlord's transfer fee is disputed, the Collector shall, in a summary proceeding, decide who is entitled to receive the landlord's transfer fee, and shall pay or send the same by money-order to the person whom he decides to be entitled to receive it.

(4) The Collector shall hear all applications in respect of the same transfer in a single proceeding, and shall in such proceedings hear any application which has been filed after six months from the date of the posting of a list under sub-section (2) of section 26G, but before the date of the hearing.

Disposal of undelivered sums.

[1][26K. If any sum sent as landlord's transfer fee by the Collector to any person is returned undelivered, the Collector shall deposit such sum in the treasury. Any person may apply for payment to him of such sum at any time within twelve years of the date on which it is returned undelivered and the Collector shall deal with any such application in the prescribed manner. If no such application for payment has been made within the aforesaid period of twelve years, the Collector shall dispose of such sum in the prescribed manner.

Summary rejection of applications made after payment of landlord's transfer fee by Collector.

[1][26L. (1) If an application under clause (a) of sub-section (1) of section 26H is presented after the landlord's transfer fee has been paid to any person by the Collector under section 26I or section 26J, such application shall be summarily rejected.

[1] Sections 26A to 26P were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 10.

(Secs. 26M-26N.)

(2) If no application for an order under sub-clause (ii) of clause (b) of sub-section (1) of section 26H is made, the landlord of the holding or portion transferred shall be deemed to have accepted the distribution of the rent of the holding as stated in the instrument of transfer or as settled between the transferor and the transferee.

[1][26M. (1) When the holding of an occupancy-raiyat or a portion thereof is sold in execution of a decree or of a certificate filed under the Bihar and Orissa Public Demands Recovery Act, 1914, other than a decree or certificate for arrears of rent due in respect of the holding, the Court or the Certificate Officer concerned, notwithstanding the provisions of rule 92 of Order XXI of the Code of Civil Procedure, 1908, or anything contained in the Bihar and Orissa Public Demands Recovery Act, 1914, shall not confirm the sale unless the auction-purchaser files a notice giving particulars of the sale in the prescribed form, and deposits for payment to the landlord a sum equal to eight *per centum* of the purchase-money, the cost of transmitting the said sum to the landlord and process-fee for service of the notice on the landlord.

B. & O. Act of 1914.

5 of 1908.

B. & O. Act of 1914.

Sale of occupancy-holding in execution of decree or certificate.

(2) If the auction-purchaser complies with the requirements of sub-section (1), the Court or Certificate Officer concerned shall, on confirmation of the sale, send to the person mentioned as landlord in the notice filed by the auction-purchaser the sum deposited by him for payment to the landlord, and a copy of the said notice.

(3) Where a portion of an occupancy-holding is sold under this section, the landlord of the holding or the transferor or the transferee may, unless they have already agreed to a distribution of the rent, within six months from the date of the confirmation of the sale, apply to the Collector for an order distributing the rent of the holding, and the Collector shall deal with such application as if it were an application for an order under sub-clause (ii) of clause (b) of sub-section (1) of section 26H, and any order passed by the Collector shall take effect from the date of the sale.

[1][26N. Every person claiming an interest as landlord in any holding or portion thereof shall be deemed to have given his consent to every transfer of such holding or portion by sale, exchange, gift or will made before the first day of January, 1923, and, in the case of the transfer of a portion of a holding, to have accepted the distribution of the rent of the holding as stated in the instrument of transfer, or if there is no such instrument, as settled between the transferor and the transferee.

Landlord's consent deemed to have been given to transfer of occupancy-holding made before 1st January

[1] Sections 26A to 26P were inserted by the Bihar Tenancy (Amendment) Act, 1923, 1934 (B. & O. Act 8 of 1934), s. 10.

(Sec. 26O.)

Transfers of occupancy-holdings made after 1st January 1923 and before date of commencement of Bihar Tenancy (Amendment) Act, 1934—transferees may pay the landlord's transfer fee to landlord or deposit it with Collector. Amount of landlord's transfer fee.

[1][260. (1) If any occupancy-holding or portion thereof was transferred by sale, (other than a sale in execution of a rent-decree) exchange, gift or will on or after the first day of January, 1923, and before the date of the commencement of the Bihar Tenancy (Amendment) Act, 1934, the transferee of such holding or portion, or, if such holding or portion was transferred more than once during the said period, the transferee to whom such holding or portion was last transferred, may, in accordance with the provisions of sub-section (1) of section 26E, pay to the landlord or deposit with the Collector—

P. & O.
Act 8
of 1934.

- (i) in the case of a transfer by sale— six *per centum* of the consideration given for the transfer;
- (ii) in the case of a transfer by exchange—three *per centum* of the total sum arrived at by adding the market-value of the holdings or portions transferred to any other consideration given for the exchange;

Explanation.—A and B exchange portions of their holdings. The area of land transferred by A to B is one acre, valued at Rs. 150, and the area transferred by B to A is two acres, valued at Rs. 250. A, on account of this difference in area, pays to B Rs. 100.

The landlord's transfer fee payable by A to the landlord of the portion of the holding transferred to A will be—

three *per centum* of the value of the two acres transferred to A, as set forth in the instrument of transfer, that is to say Rs. 7-8-0.

The landlord's transfer fee payable by B to the landlord of the portion of the holding transferred to B will be—

three *per centum* of the value of one acre transferred to B, that is to say Rs. 4-8-0, and

three *per centum* of the sum of Rs. 100 which A paid to B.

[1] Secs. 26A to 26P were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 10.

(Sec. 26O.)

- (iii) in the case of a transfer by gift, other than an oral gift made by a Muhammadan—six *per centum* of the value of the holding or portion given;
- (iv) in the case of a transfer by oral gift made by a Muhammadan—six *per centum* of the value of the holding or portion given as stated by the donor or, if the donor has failed to make such statement, by the donee;
- (v) in the case of a transfer by will—six *per centum* of the value of the holding or portion bequeathed as determined by the Court for the purposes of the stamp duty payable for the grant of probate or letters of administration.

(2) The Collector shall grant a receipt in the prescribed form for every sum deposited under sub-section (1).

Collector to grant receipt for deposits.

(3) The consent of every person claiming an interest as landlord in the holding or portion transferred shall be deemed to have been given to the transfer—

Landlord's consent.

- (a) if the landlord's transfer fee is paid in accordance with the provisions of clause (b) of sub-section (1) of section 26E—on such acceptance;
- (b) if the landlord's transfer fee is deposited with the Collector in accordance with the provisions of clause (c) of sub-section (1) of section 26E—on the date on which the receipt for the same is granted by the Collector.

(4) (a) In the case of a transfer of a portion of a holding, the landlord may, if he has not accepted the distribution of the rent of the holding as settled between the transferor and the transferee, within three months of the date of the posting under sub-section (2) of section 26G of a list in which such holding is mentioned, apply for an order varying the distribution of the rent of the holding as so settled.

Distribution of rent.

(b) On receipt of such an application the Collector shall serve a notice on the landlord, the transferor and the transferee of the date on which he intends to hear the application, and after hearing the parties and holding such inquiry as he thinks fit shall, if he is satisfied that the distribution of rent as settled between the transferor and the transferee is inequitable, pass an order varying the distribution of the rent of the holding as so settled.

(5) The following provisions shall, as far as may be, apply to deposits made and receipts granted under this section as if such deposits and receipts were respectively made and granted under section 26E and section 26F, namely, section 26G, clause (a) of sub-section (1) and sub-section (2) of section 26H, section 26I, section 26J, except clauses (a), (b) and (c), section 26K, and sub-section (1) of section 26L.

(Sec. 26P.)

[1][26P. (1) Any sum which a transferee is liable to pay into Court in accordance with an order passed by the Collector shall be recoverable from such transferee as a public demand payable to the Collector, and the holding or portion in respect of the transfer of which such sum is payable, shall be liable to be sold in execution of a certificate filed by the Certificate Officer in respect of such demand, and the proceeds of such sale shall, after deduction of any amount due for arrears of rent in respect of the holding or portion sold, be applied firstly to the payment of such sum.

Suma
recoverable
as public
demands.

(2) An order passed by the Collector under sub-section (3) of section 26B, or under clause (e) of sub-section (3) of section 26E, or under clause (c) of sub-section (2) of section 26J or under clause (b) of sub-section (4) of section 26O shall, unless the Collector for reasons to be recorded in writing otherwise directs, take effect—

Time from
which
orders dis-
tributing
rent shall
take effect.

(i) in the case of a transfer by sale, exchange or gift, other than an oral gift made by a Muhammadan,—from the date of the instrument of transfer or, in the case of a transfer made after the first day of January 1923, and before the date of the commencement of the Bihar Tenancy (Amendment) Act, 1934, if there is no instrument of transfer,—from the date on which the transaction was completed,

(ii) in the case of a transfer by oral gift made by a Muhammadan,—from the date of the gift, and

(iii) in the case of a transfer by will,—from the date of the grant of probate or letters of administration.

(3) The Collector shall have power to award costs to any party to any proceeding under sections 26E to 26O, and any sum so payable as costs shall be recoverable as a public demand payable to the Collector.

Costs.

(4) Any order of the Collector passed under sub-section (3) of section 26B or under sections 26E and 26J or under sub-section (4) of section 26O read with section 26J, or under sub-section (3) of section 26M, shall be final and shall not be questioned in any Civil Court :

Collector's
orders to be
final.

Provided that if such an order is passed by a Deputy Collector exercising the powers of a Collector, an appeal shall lie to the Collector, and the Collector's decision on such appeal shall be final :

Provided further that nothing in this section shall prevent any person entitled to receive any sum paid by the Collector under sections 26E, 26I or 26J, or 26O read with sections 26I and 26J, from recovering the same in the Civil Court from the person to whom it was paid.

[1] Sections 26A to 26P were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 10.

(Secs. 27-29.)

(5) Every order of the Collector mentioned in sub-section (4) shall be deemed to be an order passed in the discharge of his judicial duty within the meaning of the Judicial Officers' Protection Act, 1850.]

Enhancement of rent.

27. The rent for the time being payable by an occupancy-*raiyat* shall be presumed to be fair and equitable until the contrary is proved.

Presumption as to fair and equitable rent.

28. Where an occupancy-*raiyat* pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Restriction on enhancement of money-rents.

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

Enhancement of rent by contract.

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

(b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the *raiyat*;

(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract:

Provided as follows—

(i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii) Nothing in clause (b) shall apply to a contract by which a *raiyat* binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the *raiyat* is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the *raiyat* is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(iii) When a *raiyat* has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b)

(Secs. 30-31.)

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

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

Enhancement of rent by suit.

- [1] (a) that the rate of rent paid by the *raiyat* is below the prevailing rate paid by occupancy-*raiyats* for land of a similar description and with similar advantages in the same village or in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate;]
- (b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;
- (c) that the productive powers of the land held by the *raiyat* have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;
- (d) that the productive powers of the land held by the *raiyat* have been increased by fluvial action.

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

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

Rules as to enhancement on ground of prevailing rate.

- (a) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the *raiyat* and the prevailing rate found by the Court;
- (b) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under

[1] This clause (a) in s. 30 was substituted for the original clause (a) by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act 3 of 1898), s. 2.

The original clause ran thus :—

"(a) that the rate of rent paid by the *raiyat* is below the prevailing rate paid by occupancy-*raiyats* for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate;"

(Sec. 31A.)

14 of 1882.

Chapter XXV of the Code of Civil Procedure^[1] by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392 of the said Code;^[2]

(c) in determining under this section the rate of rent payable by a *raiyat*, his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and, whenever it is found that by local custom any description of *raiyats* hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(d) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration;

^[3](e) if a favourable rate has been determined under clause (c) for any description of *raiyats*, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate;

(f) if the holding is held at a lump rental, the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding, and applying to the area of each class the prevailing rate paid on that class within the village or neighbouring villages.]

^[4]31A. (1) In any district or part of a district to which this sub-section is extended by the Local Government by notification in the <sup>What may be taken in certain districts to be "pre-
"prevailing rate."</sup> ^[5][official] Gazette, whenever the prevailing rate for any class of land is to be ascertained under section 30, clause (a), by an examination of the rates at which lands of a similar description and with similar advantages are held within any village or villages, the highest of such rates at which and at rates higher than which the larger portion of those lands is held may be taken to be the prevailing rate.

[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to s. 78 of, and Order XXVI in Sch. I to, that Code—see s. 158 thereof.

[2] This reference should now be taken to be made to rule 9 in Order XXVI in Sch. 1 to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

[3] Clauses (e) and (f) were inserted in s. 31 by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act 3 of 1898), s. 3.

[4] S. 31A was inserted by *ibid*, s. 4.

[5] The word "official" was substituted for the word "Calcutta" by the Bihar Tenancy (Amendment) Act, 1934. (B. & O. Act 8 of 1934), s. 11.

(Secs. 31B-32.)

Illustrations.

(a) The rates at which land of a similar description and with similar advantages is held in a village are as follows:—

Bighas.				Rs. A. P.	
100	...	...	...	at	1 0 0
200	...	...	...	„	1 8 0
150	...	...	...	„	1 12 0
100	...	...	...	„	2 0 0
150	...	...	...	„	2 4 0
<hr/>					
Total ...	700				

Then Rs. 2-4 is not the prevailing rate, because only 150 bighas, or less than half, are held at that rate. Rs. 2 is not the prevailing rate, because 250 bighas, or less than half, are held at that or a higher rate. Re. 1-12 is the prevailing rate, because 400 bighas, or more than half, are held either at this or a higher rate, and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(b) The rates at which land of a similar description and with similar advantages is held in a village are as follows:—

Bighas.				Rs. A. P.	
100	...	...	...	at	1 0 0
250	...	...	...	„	1 4 0
150	...	...	...	„	1 8 0
150	...	...	...	„	1 12 0
50	...	...	...	„	2 0 0
<hr/>					
Total ...	700				

Then, for the reasons given in Illustration (a), neither Rs. 2 nor Re. 1-12 is the prevailing rate, nor is Re. 1-8 the prevailing rate, because only 350 bighas (exactly half) are held at Re. 1-8 or at rates higher than Re. 1-8. In this case Re. 1-4 is the prevailing rate, because more than half the lands are held at Re. 1-4 or higher rates, and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(2) The Local Government may, by a like notification, withdraw sub-section (1) from any district or part of a district to which it has been extended as aforesaid.

Limit to
enhance-
ment
of prevail-
ing rate.

[1] **31B.** When the prevailing rate has once been determined by a Revenue-officer under Chapter X or by a Civil Court in any suit under this Act, it shall not be liable to enhancement save on the ground and to the extent specified in section 30, clause (b), and section 32.

Rules as to
enhance-
ment
on ground
of rise in
prices.

32. Where an enhancement is claimed on the ground of rise in prices—

(a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

[1] S. 31B was inserted by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act 3 of 1898), s. 4.

(Secs. 33-34.)

(b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (a), the Court may, in its discretion, substitute any shorter periods therefor.

33. (1) Where an enhancement is claimed on the ground of a landlord's improvement—

Rules as to enhancement on ground of landlord's improvement.

(a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

(b) in determining the amount of enhancement the Court shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

(a) the Court shall not take into account any increase which is merely temporary or casual;

(b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

(Secs. 35-38.)

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Power to order progressive enhancement.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the *raiyat*, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

Limitation of right to bring successive enhancement suits.

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40, or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of section 373 14 of 1882. of the Code of Civil Procedure.[¹]

Reduction of rent.

Reduction of rent.

38. (1) An occupancy-*raiyat* holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, (namely):—

(a) on the ground that the soil of the holding has without the fault of the *raiyat* become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

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

[¹] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rule 1 in Order XXIII in Sch. I to that Code—see s. 158 thereof.

(Sec. 39.)

Price-lists.

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

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

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

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

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

(6) In any proceedings under this Chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct [1] [and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct], unless and until it is proved that they are incorrect.

(7) The Local Government, * * * * [2] shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

[1] These words in square brackets in s. 39 (6) were inserted by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act 3, of 1898), s. 5.

[2] The words "subject to the control of the Governor General in Council" in sub-section (7) were repealed by the Devolution Act, 1920 (38 of 1920), section 2 and First Schedule and are omitted.

(Sec. 40.)

Commutation

Commuta-
tion of
rent pay-
able in
kind.

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

(2) The application may be made to the Collector or Subdivisional Officer, or to [2] [a Revenue-officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights] under Chapter X, or to any other officer specially authorized in this behalf by the [Board of Revenue][3].

(3) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the *raiyat* shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the officer shall have regard to—

(a) the average money-rent payable by occupancy-*raiyats* for land of a similar description and with similar advantages in the vicinity;

(b) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available; [* *][4]

(c) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges:[5] [and

(d) improvements effected by the landlord or by the occupancy-*raiyat* in respect of the *raiyat's* holding, and to the rules laid down in section 33 regarding enhancement of rent on the ground of a landlord's improvement].

[1] The words "or partly in any of those ways and partly in cash" in s. 40 (1) were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 11 (i).

[2] These words in square brackets in s. 40 (2) were substituted for the words "an officer making a settlement of rents," by *ibid*, s. 11 (ii).

[3] The words "Board of Revenue" were substituted for the words "Local Government" by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2 and Sch., Part II.

[4] The word "and" in clause (b), repealed by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 11 (iii), is omitted.

[5] These words in square brackets were added to s. 40 (4) by *ibid*, s. 11 (iv).

(Secs. 40A-44.)

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(6) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

[¹]**40A.** (1) Where the rent of a holding has been commuted under section 40, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (a) of sub-section (1) of section 38.

Period for which commuted rents are to remain unaltered.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (5) of section 40.]

[²]CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

41. This Chapter shall apply to *raiyats* not having a right of occupancy, who are in this Act referred to as non-occupancy-*raiyats*.

Applica-
tion of
Chapter.

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

Initial
rent of
non-occu-
pancy-
raiyat.

43. The rent of a non-occupancy-*raiyat* shall not be enhanced except by registered agreement or by agreement under section 46 :

Conditions
of enhance-
ment of
rent.

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

44. A non-occupancy-*raiyat* shall, subject to the provisions of this Act, be liable to ejection on one or more of the following grounds, and not otherwise, (namely) :—

Grounds on
which non-
occupancy-
raiyat may
be ejected.

(a) on the ground that he has failed to pay an arrear of rent;

[¹] Section 40A was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 12.

[²] Chapter VI does not apply to certain lands—see s. 116, *post*, p. 99.

(Secs. 45-46.)

- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;
- (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;
- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

45. (*Conditions of ejection on ground of expiration of lease.*)
Rep. by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 2.

Conditions
of ejection
on ground
of refusal
to agree
to enhance-
ment.

46. (1) A suit for ejection on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-*raiyat* unless the landlord has tendered to the *raiyat* an agreement to pay the enhanced rent, and the *raiyat* has within three months before the institution of the suit refused to execute the agreement.

(2) A landlord desiring to tender an agreement to a *raiyat* under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the *raiyat*. The Court or officer shall forthwith cause it to be served on the *raiyat* in the prescribed manner, and when it has been so served, it shall for the purposes of this section be deemed to have been tendered.

(3) If a *raiyat* on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a *raiyat* under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the *raiyat* does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a *raiyat* refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(Secs. 47-49.)

(7) If the *raiyat* agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejection under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

(8) If the *raiyat* does not agree to pay the rent so determined, the Court shall pass a decree for ejection.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by *raiyats* for land of a similar description and with like advantages in the same village.

(10) A decree for ejection passed under this section shall take effect from the end of the agricultural year in which it is passed.

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

Explanation of "admitted to occupation."

CHAPTER VII.

UNDER-RAIYATS.

48. The landlord of an under-*raiyat* holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, (namely) :—

Limit of rent recoverable from under-*raiyats*.

- (a) when the rent payable by the under-*raiyat* is payable under a registered lease or agreement—fifty *per cent*; and
- (b) in any other case—twenty-five *per cent*.

49. An under-*raiyat* shall not be liable to be ejected by his landlord, except—

Restriction on ejection of under-*raiyats*.

- (a) on the expiration of the term of a written lease;
- (b) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

(Secs. 49A-49C.)

[¹]CHAPTER VIIA.

RESTRICTIONS ON ALIENATION OF LAND BY ABORIGINALS.

Definition. **49A.** In this Chapter "complete usufructuary mortgage" means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage.

Application of Chapter. **49B.** (1) This Chapter shall apply in the first instance only to the Santals in those portions of the districts of Monghyr and Bhagalpur which lie south of the Ganges, and such Santals shall be deemed to be aboriginals for the purposes of this Chapter.

(2) The Local Government may, from time to time, after publication of a declaration of its intention, by notification published in the official Gazette, apply the provisions of this Chapter to any of the following castes or tribes, namely, Santals in the district of Purnea and in any portion of the districts of Monghyr and Bhagalpur which lies north of the Ganges, and Koras, Bhuyias, Kols, Kharwars, Mal Paharias (including Nayas and Pujahars), Sauria Paharias, Mundas and Oraons, in the whole or any part of the districts of Monghyr, Bhagalpur and Purnea.

(3) Upon the publication of a notification under sub-section (2), the castes and tribes specified in the notification shall be deemed to be aboriginals for the purposes of this Chapter.

(4) The publication of a notification under sub-section (2) shall be conclusive evidence that the provisions of this Chapter have been duly applied to such castes or tribes.

(5) The Local Government may, by a like notification, declare that this Chapter shall, in any district or local area, cease to apply to the Santals mentioned in sub-section (1) or to any caste or tribe to which it may have been applied under sub-section (2).

Restriction on transfer of tenant rights. **49C.** No transfer by an aboriginal tenure-holder, *raiyyat* or under-*raiyyat* of his right in his tenure, holding or tenancy, or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement, shall be valid to any extent except as provided in this Chapter.

[¹] Chapter VIIA was inserted by the Bihar Tenancy (Amendment) Act, 1935 (B. & O. Act 7 of 1935), s. 2.

(Secs. 49D-49G.)

49D. An aboriginal tenure-holder may grant a lease to another aboriginal to hold the land as a tenure-holder, or to cultivate it as a *raiyat*, in accordance with the provisions of this Act. Lease by
tenure-
holder.

49E. (1) Subject to the provisions of sub-section (1) of section 85, an aboriginal *raiyat* may sublet his holding to another aboriginal to cultivate it as an under-*raiyat*. Subletting
by
raiyat.

(2) Notwithstanding anything contained in sub-section (2) of section 85, a sub-lease by an aboriginal *raiyat* shall not be admitted to registration if it purports to create a term exceeding five years.

49F. (1) An aboriginal tenure-holder, *raiyat* or under-*raiyat* may enter with another aboriginal into a complete usufructuary mortgage in respect of any land for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed seven years, or the period of his own right, whichever is less : Usufruc-
tuary mort-
gage by
tenure-
holder,
raiyat or
under-
raiyat.

Provided that every mortgage so entered into shall be registered under the Indian Registration Act, 1908.

(2) An aboriginal tenant's power to mortgage his land shall be restricted to only one form of mortgage, namely, a complete usufructuary mortgage.

49G. (1) If in any case—

(a) an aboriginal tenure-holder is unable to lease his land as provided in section 49D, or an aboriginal *raiyat* is unable to sub-let his holding as provided in section 49E, or an aboriginal tenure-holder, *raiyat* or under-*raiyat* is unable to mortgage his land as provided in sub-section (1) of section 49F, or Application
to Collector
for transfer
in certain
cases.

(b) an aboriginal tenure-holder, *raiyat* or under-*raiyat* desires to transfer his land, or any portion thereof, by private sale, gift or will to any person,

he may apply to the Collector for permission, in case (a), to transfer the same to a person who is not an aboriginal, or in case (b), to transfer the same by private sale, gift or will to any person, and the Collector may pass such order on the application as he thinks fit.

(2) Every such transfer shall be made by registered deed, and before the deed is registered and the land transferred, the written consent of the Collector shall be obtained to the terms of the deed and to the transfer.

(3) The Collector shall not give his written consent under sub-section (2) to a transfer by an aboriginal *raiyat* of an occupancy holding

(Secs. 49H-49K.)

or portion thereof until the transferee has deposited with the Collector the landlord's transfer fee payable under the provisions of this Act.

(4) Nothing in this section shall validate a transfer of any land or portion thereof which, by the terms upon which it is held, or by any law or local custom, would not be transferable if this section had not been enacted.

Power of
Collector to
eject mort-
gagee for
wilful neg-
lect to pay
rent of mort-
gaged land.

49H. (1) If the mortgagee of any land mortgaged under this Chapter is legally liable to pay the rent of such land to the landlord and fails to do so, the mortgagor may deposit with the Collector the arrears of rent together with the costs necessary for the transmission of the same to the landlord, and may apply to the Collector for the ejectment of the mortgagee and the restoration of the mortgaged land to the mortgagor.

(2) On receipt of such an application the Collector, after making such enquiry as he thinks fit, may, if he is of the opinion that the mortgagee has wilfully neglected to pay the amount of rent in arrear, eject the mortgagee and restore the mortgaged land to the mortgagor, and the mortgage shall thereupon be deemed to have terminated.

(3) The Collector shall cause to be transmitted to the landlord any sum deposited under sub-section (1).

Courts not
to register,
or recognize
as valid,
transfers in
contraven-
tion of this
Chapter.

49J. No transfer by an aboriginal tenure-holder, *raiyat* or under-*raiyat* in contravention of the provisions of this Chapter shall be registered or in any way recognized as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.

Power of
Collector to
set aside
improper
transfers by
tenure-
holder,
raiyat or
under-*raiyat*.

49K. (1) If a transfer of a tenure, holding or tenancy, or any portion thereof, is made by an aboriginal tenure-holder, *raiyat* or under-*raiyat* in contravention of the provisions of section 49C, or if a transferee has continued or is in possession in contravention of the provisions of sub-section (1) of section 49F or section 49G, as the case may be, the Collector may, of his own motion or on application made in that behalf, after recording an order in writing, eject the transferee from such tenure, holding, tenancy or portion :

Provided that—

(a) the transferee whom it is proposed to eject has not been in continuous possession in contravention of this Act for twelve years, and

(b) he is given an opportunity of showing cause against the order of ejectment.

(Sec. 49L.)

(2) (a) When the Collector has passed an order under sub-section (1), he shall pass a further order restoring the transferred land to the aboriginal tenure-holder, *raiyat* or under-*raiyat*, or to his heir or legal representative.

(b) If such tenure-holder, *raiyat* or under-*raiyat* or his heir or legal representative cannot be found within six months from the date of the order of restoration passed under clause (a), or is unwilling to take possession of the land, the Collector may declare that the right of settlement is vested in the landlord subject to the provisions of section 49L :

Provided that if the right of settlement is not exercised within one year, the Collector may, on the expiry of that period, settle the land on behalf of the landlord on such terms as he deems fit with an aboriginal, and, if the Collector is unable to make such settlement within a period of six months, an unrestricted right of settlement shall vest in the landlord.

49L.(1) Whenever—

(a) the right of settlement of any tenancy, or any portion thereof, is declared to be vested in the landlord under clause (b) of sub-section (2) of section 49K, or

(b) an aboriginal tenant surrenders his tenancy, or a portion thereof, or abandons his residence and ceases to hold his tenancy,

the landlord may, subject to the provisions of sections 86 and 87,

(i) settle the tenancy, or a portion thereof, with an aboriginal, or

(ii) with the approval of the Collector in writing, settle the same with a person who is not an aboriginal or retain it in his own possession :

Provided that the Collector shall not withhold his approval if he is satisfied that the landlord is unable to settle the land with another aboriginal and that the surrender or abandonment referred to in this sub-section was not made with the object of evading the provisions of section 49C, 49F or 49G.

(2) If any landlord resettles or otherwise deals with any tenancy in contravention of the provisions of sub-section (1), the Collector may, subject to the proviso to sub-section (1) of section 49K, eject any person with whom settlement has been made or who is in possession of the land in contravention of the provisions of sub-section (1), and may settle the land with an aboriginal, or, if he is unable to settle the land with an aboriginal, shall restore the land to the landlord.

Resettle-
ment of
certain
tenancies.

(Sec. 49M.)

Restrictions
on sale of
tenant's
rights under
order of
Court.

49M. (1) Notwithstanding anything in this Act,

(a) no decree or order shall be passed by any Court for the sale of the right of an aboriginal tenure-holder or under-*raiyat* in his tenure or tenancy, or in any portion thereof, nor shall any such right be sold in execution of any decree or order, except a decree for an arrear of rent which has accrued in respect of the tenure or tenancy;

(b) no decree or order shall be passed by any Court for the sale of the right of an aboriginal *raiyat* in his holding, or in any portion thereof, nor shall such right be sold in execution of any decree except as provided in sub-section (2).

(2) (a) When a decree for an arrear of rent which has accrued in respect of the holding of an aboriginal *raiyat* has been passed, the Court shall send the case to the Collector for execution of the said decree, and the Collector in execution of the said decree, may, in his discretion, sell the holding or a portion thereof, or eject the said *raiyat* and settle the holding or a portion thereof with another *raiyat* on payment of the decretal amount, or place the landlord in possession of the said holding or a portion thereof for a period not exceeding seven years. If the Collector places the landlord in possession for any period, the decree shall, at the end of such period, be deemed to have been satisfied in full, and the Collector may then restore the holding or portion to the said *raiyat* or his heirs, or may settle it with another aboriginal.

(b) Before restoring or settling the holding under clause (a) of this sub-section, the Collector may, if he is satisfied that the rent of the holding has been illegally enhanced or is substantially in excess of the rent payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, pass an order altering the amount of the rent of the holding to an amount which he considers to be fair.

(3) Nothing in this section shall affect any right to execute a decree for the sale of any tenure, holding or tenancy of an aboriginal, or the terms or conditions of any contract relating thereto, if such decree was passed, or such contract registered,—

(i) in the case of the Santals mentioned in sub-section (1) of section 49B, before the 1st of January, 1934, and

(ii) in the case of other castes and tribes to which this Chapter has been applied, before the date of the publication by the Local Government of a declaration of its intention to issue a notification under sub-section (2) of section 49B in respect to such castes or tribes.

(4) Nothing in this section shall affect any right for the sale of any such tenure, holding or tenancy for the recovery of any dues which are recoverable as public demands.

(Secs. 49N-49Q.)

49N. If an application for the sale of a tenure or tenancy, or any portion thereof, is made in execution of a decree against an aboriginal tenure-holder or under-*raiyat* in respect of the rent of such tenure, tenancy or portion thereof, the Court executing the decree shall allow the tenant reasonable time in which to pay the amount due, and if an application is made to the Collector under sub-section (1) of section 49H before execution of the decree, the Collector shall inform the Court that such application has been made, and the decree shall not be executed until the Collector has disposed of the application.

49O. (1) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Collector of the district from any order made under section 49G, 49H, 49K, 49L or 49M by any officer in the district exercising the powers of a Collector, and the order of the Collector on appeal shall be final :

Provided that every order passed by the Collector on appeal shall be subject to revision and modification by the Commissioner.

(2) Notwithstanding anything in sub-section (1), an appeal from any order made under any of the sections mentioned in that sub-section by an officer acting under Chapter X of this Act shall lie to such officer as the Local Government may appoint in this behalf, and the order of such officer on appeal shall be final :

Provided that, in every such case, every order passed by the said officer on appeal shall be subject to revision and modification by such officer as the Local Government may appoint to deal therewith.

(3) An appeal, as provided in sub-section (1), shall lie to the Commissioner from any original order made by the Collector of the district under any of the sections mentioned in that sub-section.

49P. Notwithstanding anything in this Act, no suit shall lie in any Civil Court to vary or set aside any order passed by any officer in any proceeding under this Chapter except on the ground of fraud or want of jurisdiction.

49Q. Nothing in this Chapter shall affect the validity of any transfer (not otherwise invalid) by a tenure-holder, *raiyat* or under-*raiyat* of his tenure, holding or tenancy, or any portion thereof, made,—

(a) in the case of the Santals mentioned in sub-section (1) of section 49B, before the 1st of January, 1934, and

(b) in the case of other castes and tribes to which this Chapter has been applied, before the date of the publication by the Local Government of a declaration of its intention to issue a notification under sub-section (2) of section 49B in respect to such castes or tribes.

(Secs. 50-52.)

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and
presump-
tions as to
fixity of
rent.

50. (1) Where a tenure-holder or *raiyat* and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

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

Provided that it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a *raiyat*, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

Presumption
as to
amount of
rent and
conditions
of holding.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Alteration of rent on alteration of area.

Alteration
of rent in
respect of
alteration
in area.

52. (1) Every tenant shall—

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made, and

(Sec. 52.)

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

- (a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;
- (b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;
- (c) the length of time during which the tenancy has lasted without dispute as to rent or area; and
- (d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

[¹](5) When in a suit under this section the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be

[¹] Sub-section (5) was added to s. 52 by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act 3 of 1898), s. 6.

(Secs. 53-54.)

added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.]

[¹](6) When in a suit under this section the landlord or tenant proves that, at the time the measurement on which the claim is based was made, there existed in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situate, a practice of settlement being made after measurement of the land assessed with rent, it may be presumed that the area of the tenure or holding specified in any *patta* or *kabuliyat*, or (where there is an entry of area in a counter-foil receipt corresponding to the entry in the rent-roll) in any rent-roll relating to it, has been entered in such *patta*, *kabuliyat* or rent-roll after measurement.]

Payment of rent.[²]

Instalments
of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Time and
place for
payment of
rent.

54. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord [³][or by postal money-order] :

[⁴][Provided that if payment of rent by postal money-order is accepted, an entry in the postal money-order shall not be evidence of the area of the holding, the amount of rent payable or of the existence of the relationship of landlord and tenant between the persons who are described as such in the postal money-order form.]

[⁵](3) Where rent is sent by postal money-order, the postal acknowledgment in the case of acceptance and the money-order coupon in the case of refusal duly sealed by the post office shall be admissible in evidence without formal proof and shall be presumed to be a correct record of acceptance or refusal, as the case may be, by the payee unless the contrary is proved.]

[¹] Sub-section (6) was added to section 52 by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 13.

[²] The word "rent," in ss. 53 to 55, includes also money recoverable under any enactment for the time being in force as if it was rent—*see* s. 3 (5), *ante*, p. 14.

[³] The words "or by postal money-order" were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 12(a)(i).

[⁴] This proviso was substituted for the original proviso by *ibid.* s. 12(a)(ii).

[⁵] This sub-section was inserted by *ibid.* s. 12(b).

(Secs. 55-57.)

[¹](4) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly. Appropriation of payments.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

[²]Receipts and accounts.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord. Tenant making a payment to his landlord entitled to a receipt.

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

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment :

Provided that the [Board of Revenue][³] may, from time to time, prescribe or sanction a modified form. [⁴] either generally or for any particular local area or class of cases.

(4) 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.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord. Tenant entitled to full discharge or statement of account at close of year.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year a statement of account specifying the several

[¹] Sub-section (3) was re-numbered as (4) by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 12(c).

[²] The word "rent," in ss. 56 to 60, includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3(5), *ante*, p. 14.

[³] These words were substituted for the words "Local Government" by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2 and Sch., Part II.

[⁴] For orders made under s. 56 (3), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

(Sec. 58.)

particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the [Board of Revenue][¹] either generally or for any particular local area or class of cases.

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

Penalties
and fine for
withholding
receipts and
statements
of account
and failing
to keep
counter-
parts.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

[²](3) If a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt or statement, or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

[²](4) The Collector may hold a summary inquiry under sub-section (3) either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

[²](5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false

[¹] These words were substituted for the words "Local Government" by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2 and Sch., Part II.

[²] Sub-sections (3) to (5) were substituted for the original sub-section (3) by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 14. The original sub-section ran thus:

"(3) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees."

(Secs. 59-60.)

or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

[1][6] An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (3) or awarding compensation under sub-section (5); and the order^[2] passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

[1][7] Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law^[3] for the time being in force for the recovery of a public demand.

[1][8] For the purpose of an inquiry under this section, the Collector shall have power to summon, and enforce the attendance of, witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under the Code of Civil Procedure.^[4]

14 of 1882.

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all subdivisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

Local Government to prepare forms of receipt and account.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

Ben. Act 7 of 1876.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876 as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

Effect of receipt by registered proprietor, manager or mortgagee.

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

[1] See footnote [2] on the preceding page.

[2] In Bengal Act 1 of 1907, s. 14, this word is printed as "orders".

[3] See the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), ss. 4 and 5.

[4] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof.

(Sec. 61.)

Deposit of rent.^[1]

Application
to deposit
rent in
Court.

61. (1) In any of the following cases, namely :—

- (a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;
- (b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;
- (c) 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; or
- (d) when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent;

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due ^[2][or which will become due at the end of the agricultural year in which the deposit is made.]

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered,

in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure^[3], by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule^[4], directs. 14 of 1882.

[1] The word "rent," in ss. 61 to 64, includes also money recoverable under any enactment for the time being in force as if it was rent—*see* s. 3 (5), *ante*, p. 14.

[2] The words within square brackets in s. 61(1) were added by the Bihar Tenancy (Amendment) Act, 1934, (B. & O. Act 8 of 1934), s. 13.

[3] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rule 15 in Order VI in Sch. I to that Code—*see* s. 158 thereof.

[4] For rules made under s. 61 (2), *see* the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

(Secs. 62-64.)

62. (1) If it appears to the Court to which an application is made under the last foregoing section that the applicant is 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.

Receipt granted by Court for rent deposited to be a valid acquittance.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, by the co-sharers to whom the rent is due; and

in case (d) of that section, by the person entitled to the rent

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

Notification of receipt of deposit.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (a) and (b) of section 61, 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 (c) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village office or in some conspicuous place in the village in which the holding is situate; and

in case (d) of that section, cause a like notice to be served, free of charge on every person who it has reason to believe claims or is entitled to the deposit.

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

Payment or refund of deposit. ✓

(Secs. 65-66.)

(2) The payment may, if the Local Government so direct, 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 Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

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

Arrears of rent.[¹]

Liability to sale for arrears in case of permanent tenure, holding at fixed rates or occupancy-holding.

65. Where a tenant is a permanent tenure-holder, a *raiyat* holding at fixed rates or an occupancy-*raiyat*, he shall not be liable to ejection for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Ejection for arrears in other cases.

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a *raiyat* holding at fixed rates or an occupancy-*raiyat*, at the end of the Bengali year[²] where that year prevails, or at the end of the month of *Jeth*[³] where the *Fasli* or *Amlī* year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejection for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the

[¹] The word "rent" in ss. 65 to 68 includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3(5), *ante*, p. 14.

[²] *i.e.*, the month of *Chaitra*, which corresponds to the last part of March and the first part of April.

[³] The month of *Jeth* corresponds to the last part of May and the first part of June.

(Secs. 67-69.)

interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of fifteen days mentioned in this section.

67. An arrear of rent shall bear simple interest at the rate of twelve ^{Interest on} [1][and-a-half] *per centum per annum* from the expiration of that ^{arrears.} quarter of the agricultural year in which the instalment falls due [2][to the date of payment or of the institution of the suit, whichever date is earlier.]

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

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

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

Produce rents.

69. (1) Where rent is taken by appraisement or division of the produce,— ^{Order for appraising or dividing produce.}

(a) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(b) if there is a dispute about the quantity, value or division of the produce,

[1] The words " and-a-half " in s. 67 were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 15(a).

[2] The words " to the date of payment or of the institution of the suit, whichever date is earlier " in s. 67 were substituted for the words " to the institution of the suit " by *ibid*, s. 15(b).

(Sec. 70.)

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Subdivisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected;^[1] [but an order made by the Collector under this sub-section shall not prevent the execution of any order passed by the Court for the distraint of the tenant's crops].

^[2][(4) Every officer appointed by the Collector under sub-section (1) to appraise or divide the produce shall, for the purposes of the Indian 45 of 1860. Penal Code, be deemed to be a public servant.]

Procedure
where
officer
appointed.

70. (1) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such inquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as

^[1] The words in square brackets were added to s. 69(3) by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 16(1).

^[2] Sub-section (4) was added to s. 69 by *ibid*, s. 16(2).

(Secs. 71-73.)

aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisalment, the appraisalment papers shall be filed in the Collector's office.

71. (1) Where rent is taken by appraisalment of the produce, the tenant shall be entitled to the exclusive possession of the produce. Rights and liabilities as to possession of crop.

(2) Where 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 landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisalment or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

[1] *Liability for rent on change of landlord or after transfer of tenure or holding.*

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant. Tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer

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

[2][73. (1) When an occupancy-holding has been transferred in whole or in part whether before or after the commencement of the Bihar Tenancy (Amendment) Act, 1934, by sale, exchange or gift or by sale in execution of a decree or of a certificate filed under the Bihar and Liability for arrears of rent on transfer of whole or part of holding.

[1] The word "rent" in ss. 72, 73, 74 and 75 includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3(5) ante, p. 14.

[2] This section was substituted for the original section 73 by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 14.

(Sec. 74.)

Orissa Public Demands Recovery Act, 1914, other than a decree or a certificate for arrears of rent due in respect of the holding—

B. & O.
Act 4 of
1914.

- (a) all arrears of rent due in respect of the holding before the date on which the landlord has given or is deemed to have given his consent to the transfer shall be a first charge on the holding,
- (b) the transferor shall be liable for all arrears due before the date of the transfer, and
- (c) the transferor and the transferee shall be jointly and severally liable for all arrears falling due after the date of the transfer and before the date on which the landlord has given or is deemed to have given his consent to the transfer.

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

- (a) in the case of a transfer by sale, exchange or gift, other than an oral gift made by a Muhammadan,—the date of the execution of the instrument of transfer, or, if the transfer was made before the date of the commencement of the Bihar Tenancy (Amendment) Act, 1934, and no instrument of transfer was executed,—the date on which the transaction was completed;
- (b) in the case of an oral gift made by a Muhammadan,—the date on which the gift was made;
- (c) in the case of a sale in execution of a decree or certificate filed under the Bihar and Orissa Public Demands Recovery Act, 1914,—the date of the sale.

B. & O.
Act 8 of
1934.

B. & O.
Act 4 of
1914.

(3) When an occupancy-holding or portion has been transferred by will, the transferee shall be liable for all arrears of rent due in respect of the holding or portion up to the date on which the landlord has given or is deemed to have given his consent to the transfer and such arrears shall be a charge on the holding.]

Illegal cesses, etc.

Abwab,
etc., illegal.

74. All impositions upon tenants under the denomination of *abwab*, *mathat* or other like appellations in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

(Secs. 75-76.)

75. Every tenant from whom, except under any special enactment, Penalty for exaction by landlord from tenant of sum in excess of the rent payable. for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent [1] [or interest] lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

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

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section :—

- (a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;
- (b) the preparation of land for irrigation;
- (c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or wasteland which is culturable;
- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;
- (e) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto; and

[1] The words "or interest," in s. 75, were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 17.

(Secs. 77-80.)

(f) the erection of a suitable dwelling-house for the *raiyat* and his family, together with all necessary out-offices.

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

Right to make improvements in case of holding at fixed rates and occupancy-holding.

77. (1) Where a *raiyat* holds at fixed rates or has an occupancy-right in his holding, neither the *raiyat* nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the *raiyat* and his landlord wish to make the same improvement, the *raiyat* shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

Collector to decide question as to right to make improvement, etc.

78. If a question arises between the *raiyat* and his landlord—

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

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

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

Right to make improvements in case of non-occupancy-holding.

79. (1) A non-occupancy *raiyat* shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy-*raiyat* who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

Registration of landlord's improvements.

80. (1) A landlord may, by application to such Revenue-officer as the [Board of Revenue][¹] may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

[¹] The words " Board of Revenue " were substituted for the words " Local Government " by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 2 of 1916), s. 2 and Sch., Part II.

(Secs. 81-82.)

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government, from time to time, by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

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

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

Application to record evidence as to improvement.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and tenant or any person claiming under them.

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

Compensation for *raiyats'* improvements.

(2) Whenever a Court makes a decree or order for the ejection of a *raiyat*, it shall determine the amount of compensation (if any) due under this section to the *raiyat* for improvements, and shall make the decree or order of ejection conditional on the payment of that amount to the *raiyat*.

(3) No compensation under this section for an improvement shall be claimable where the *raiyat* has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a *raiyat* between the second day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(Secs. 83-84.)

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

Principle on which compensation is to be estimated.

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

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

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

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose,

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorize the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his

(Secs. 85-86.)

interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

Sub-letting.

85. (1) If a *raiyat* sub-lets otherwise than by a registreed instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent. Restrictions on sub-letting.

(2) A sub-lease by a *raiyat* shall not be admitted to registration if it purports to create a term exceeding nine years.

(3) Where a *raiyat* has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

Surrender and abandonment.

86. (1) A *raiyat* not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding. Surrender.

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

(3) When a *raiyat* has surrendered his holding, the Court shall, in the following cases for the purposes of sub-section (2), presume, until the contrary is shown, that such notice was so given, namely:—

(a) if the *raiyat* takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(b) if the *raiyat* ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

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

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

(Secs. 91-93.)

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

Power for Court to order tenant to attend and point out boundaries.

91. (1) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

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

Standard of measurement.

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it may be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local inquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area; and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers.

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

[¹]**93.** When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

(a) inconvenience to the public, or

(b) injury to private rights,

the District Judge may, on the application in case (a) of the Collector, and in case (b) of anyone having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager :

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876. Ben. Act 7 of 1876.

[¹] For notes to s. 93, see the Bihar and Orissa Wards' Manual, 1927, pp. 328, 324.

(Secs. 94-98.)

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

Power to order them to appoint a manager, if cause is not shown.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

Power to appoint manager, if order is not obeyed.

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

(b) in any case appoint a manager.

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

Power to nominate person to act in all cases under clause (b) of last section.

Reg. Act 9 of 1879.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards' Act, 1879, as relates to the management of immovable property shall apply to the management.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge, from time to time, directs.

Provisions applicable to manager.

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

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

(Sec. 102.)

Explanation 1.—The term “settlement of land-revenue,” as used in clause (d), includes a settlement of rents in an estate or tenure which belongs to the Government.

Explanation 2.—A superior landlord may apply for an order under this section, notwithstanding that his estate or part thereof is temporarily leased to a tenure-holder.

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

(4) The survey shall be made and the record-of-rights prepared in accordance with rules made in this behalf by the Local Government.

Particulars
to be
recorded.

102. Where an order is made under section 101, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely :—

- (a) the name of each tenant or occupant ;
- (b) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, settled *raiyat*, occupancy-*raiyat*, non-occupancy-*raiyat* or under-*raiyat*, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure ;
- (c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier ;
- (d) the name of each tenant's landlord ;
- [¹][(dd) the name of each proprietor in the local area or estate ;]
- (e) the rent payable at the time the record-of-rights is being prepared ;
- (f) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise ;
- (g) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases ;
- [²][(gg) the rights and obligations of each tenant and landlord in respect of—

 - (i) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well or any other source of supply, and

[¹] Clause (dd) was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 20 (1).

[²] Clause (gg) was inserted by *ibid*, s. 20 (2), and is to be deemed to have been so inserted from the commencement of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act 3 of 1898).

(Secs. 102A-103.)

(ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land ;]

(h) the special conditions and incidents, if any, of the tenancy ;

[¹](i) any right of way or other easement attaching to the land for which a record-of-rights is being prepared ;]

[²](j) if the land is claimed to be held rent-free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority.

[³]**102A.** The Local Government may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water,

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

make an order directing that a survey be made, and a record-of-rights be prepared, by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

(a) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well, or any other source of supply ; and

(b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.]

103. On the application of one or more of the proprietors or tenure-holders, or of a large proportion of the *raiyats*, of an estate or tenure, and on the applicant or applicants depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with, rules made in this behalf by the Local Government, ascertain and record all or any of the particulars specified in section 102 with respect to the estate or tenure or any part thereof.

Power for Revenue-officer to record particulars on application of proprietor, tenure-holder or large proportion of *raiyats*.

[¹] Clause (i) was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 20(3).

[²] This clause was formerly lettered (i), and was re-lettered (j) by *ibid*, s. 20 (3).

[³] S. 102A was inserted by *ibid*, s. 21.

(Secs. 103A-103B.)

1976.
**Preliminary
 publication,
 amendment
 and final
 publication
 of record-
 of-rights.**

103A. (1) When a draft record-of-rights has been prepared, the Revenue-officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

(2) When such objections have been considered and disposed of according to such rules as the Local Government may prescribe, and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent-roll has been incorporated with the record under section 104F, sub-section (3), the Revenue-officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

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

**Presumption
 as to final
 publication
 and
 correctness
 of record-
 of-rights.**

[1]**103B.** (1) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied; and a certificate, signed by the Revenue-officer, or by the Collector of any district in which the local area, estate or tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published under this Chapter, shall be conclusive evidence of such publication.

(2) The Local Government may, by notification,[2] declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in such area, and such notification shall be conclusive evidence of such publication.

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

* [1] This section was substituted for the former s. 103B by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 22.

The former s. 103B ran thus:—

“ 103B. A certificate signed by the Revenue-officer, stating that a record-of-rights has been finally published under this Chapter, shall be conclusive evidence of such publication; and every entry in a record-of-rights so published shall be presumed to be correct until the contrary is proved.”

[2] For a list of notifications issued under s. 103B (2), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

(Secs. 104-104A.)

Part II.—Settlement of Rents, preparation of Settlement Rent-roll, and [1][disposal of objections], in cases where a settlement of land-revenue is being or is about to be made.

104. In every case in which a settlement of land-revenue is being or is about to be made, the Revenue-officer shall, after publication of the draft of the record-of-rights under section 103A, sub-section (1),—

(a) settle fair and equitable rents for tenants of every class,

(b) notwithstanding anything contained in section 192, settle a fair and equitable rent for any land in respect of which he has recorded, in pursuance of [2][clause (j)] of section 102, that the occupant is not entitled to hold it without payment of rent, and

(c) prepare a Settlement Rent-Roll :

[3][Provided that the Revenue-officer shall not settle the rents of tenants of every class in an estate or tenure belonging to the Government, if it does not appear to the Local Government to be expedient that he should do so.][4]

104A. (1) For the purposes of settling rents under this Part and preparing a Settlement Rent-roll, the Revenue-officer may proceed in any one or more of the following ways or partly in one of those ways and partly in another, that is to say,—

- (a) if in any case the landlord and tenant agree between themselves as to the amount of the rent fairly and equitably payable, the Revenue-officer shall satisfy himself that the rent so agreed upon is fair and equitable, and if he is so satisfied, but not otherwise, it may be settled and recorded as the fair and equitable rent ;
- (b) the Revenue-officer may himself propose what he deems to be the fair and equitable rent, and if the amount so proposed is accepted, either orally or in writing, by the tenant, and if the landlord, after notice to attend, raises no objection, the rent so proposed may be settled and recorded as the fair and equitable rent ;

[1] The words "*disposal of objections*" in this heading, were substituted for the words "*decision of disputes*" by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 23.

[2] The word, letter and brackets "*clause (j)*" were substituted for the word, letter and brackets "*clause (i)*" by *ibid.*, s. 24 (1).

[3] This proviso was added to s. 104 by *ibid.*, s. 24 (2).

[4] For an order made under the proviso to s. 104, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

(Sec. 106.)

- (d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy ;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging ;
- (f) whether the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land have not, or has not, been recorded or have, or has, been wrongly recorded ;

the Revenue-officer shall try and decide such issue and settle the rent under section 105 accordingly :

Provided that the Revenue-officer shall not try any issue under this section, which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue-officer in a suit instituted before him under section 106.]

Institution
of suit
before
a Revenue-
officer.

[¹]**(106.** In proceedings under this Part, a suit may be instituted before a Revenue-officer at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A of this Act, by presenting a plaint on stamped paper, for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from, the record,

whether such dispute be between landlord and tenant, or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter ;

and the Revenue-officer shall hear and decide the dispute :

Provided that the Revenue-officer may, subject to such rules as the Local Government may prescribe in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial :]

[²][Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under

[¹] It was substituted for the original s. 106 by the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act I of 1903), s. 4.

[²] This proviso was added to s. 106 by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 27.

(Secs. 107-108.)

whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A.]

107. (1) [1][In all proceedings under section 105, section 105A and section 106,] the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure^[2] for the trial of suits; and his decision in every such proceeding shall have the force and effect of a decree of a Civil Court in a suit between the parties, and, subject to the provisions of sections 108 and 109A, shall be final.

Procedure to be adopted by Revenue-officer.

[3][(2) A note of all rents settled under section 105 and of all decisions of issues or disputes under section 105A or section 106, and of all rents commuted under section 40 by a Revenue-officer appointed by the designation of Settlement Officer or Assistant Settlement Officer, shall be made in the record-of-rights finally published under sub-section (2) of section 103A, and such note shall be considered as part of the record.]

108. Any Revenue-officer especially [4] empowered by the Local Government in this behalf may, on application or of his own motion, within twelve months from the making of any order or decision under section 105, [5][section 105A], section 106 or section 107, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed or decree made under section 109A :

Revision by Revenue-officer.

Provided that no such order or decision shall be so revised if an appeal from it is pending under section 109A or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

[1] The words and figures in square brackets in s. 107 (1) were substituted for the words and figures " In all proceedings for the settlement of rents under this Part, and in all proceedings under section 106," by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 28 (a).

[2] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof.

[3] This sub-section (2) was substituted for the original sub-section (2) by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 28 (b). The original sub-section ran thus :—

" (2) A note of all rents settled and of all decisions of disputes by the Revenue-officer under section 105 or section 106 shall be made by him in the record-of-rights finally published under section 103A, sub-section (2), and such notes shall be considered as part of the record."

[4] *Sic. Read* specially.

[5] The words in square brackets in s. 108 were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 29.

(Secs. 104F-104H.)

(2) The Revenue-officer may, of his own motion or on the application of any party aggrieved, at any time before a Settlement Rent-roll is submitted to the confirming authority under section 104F, revise any rent entered therein :

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

Final revision of Settlement Rent-roll, and incorporation of the same in the record-of-rights.

104F. (1) When all objections have been disposed of under section 104E, the Revenue-officer shall submit the Settlement Rent-roll to the confirming authority, with a full statement of the grounds of his proposals and a summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the Settlement Rent-roll, with or without amendment, or may return it for revision :

Provided that no entry shall be amended, or omission supplied, until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After sanction by the confirming authority, the Revenue-officer shall finally frame the Settlement Rent-roll and shall incorporate it with the record-of-rights published in draft under section 103A.

Appeal to, and revision by, superior Revenue authorities.

104G. (1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue-officer prior to the final publication of the record-of-rights on any objection made under section 104B, sub-section (3), or section 104E; and such appeal shall lie to such superior Revenue authority as the Local Government may by rule prescribe.

(2) The Board of Revenue may, in any case under this Part, on application or of its own motion, direct the revision of any record-of-rights or any portion of a record-of-rights at any time within two years from the date of the certificate of final publication, but not so as to affect any order passed by a Civil Court under section 104H :

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

Jurisdiction of Civil Courts in matters relating to rent.

104H. (1) Any person aggrieved by an entry of a rent settled in a Settlement Rent-roll prepared under sections 104A to 104F and incorporated in a record-of-rights finally published under section 103A, or by an omission to settle a rent for entry in such Settlement Rent-roll, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

(Sec. 104H.)

(2) Such suit must be instituted within six months from the date of the certificate of final publication of the record-of-rights, or, if an appeal has been presented to a Revenue authority under section 104G, then within six months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds, and on no others, namely :—

- (a) that the land is not liable to the payment of rent;
- (b) that the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
- (c) that the relation of landlord and tenant does not exist;
- (d) that land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
- (e) that the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;
- (f) that the Revenue-officer has not postponed the operation of the settled rent under the provisions of section 110, clause (u), or has wrongly fixed the date from which it is to take effect under that clause;
- (g) that the special conditions and incidents of the tenancy, [1] [or any right of way or other easement attaching to the land which is the subject of the tenancy, have not or has not, been recorded, or have or has] been wrongly recorded.

The Secretary of State for India in Council shall not be made a defendant in any such suit unless the Government is landlord or tenant of the land to which the aforesaid entry relates or in respect of which the aforesaid omission was made.

(4) If it appears to the Court that the entry of rent settled is incorrect, it shall, in case (a) or case (c) mentioned in sub-section (3), declare that no rent is payable, and shall in any other case settle a fair rent;

and in any case referred to in clause (f) or clause (g) of the said sub-section (3), the Court may declare the date from which the rent settled is to take effect, or pass such order relating to the entry as it may think fit.

[1] These words in square brackets in clause (g) were substituted for the words "have not been recorded or have" by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 25.

(Secs. 104J-105.)

(5) When the Court has declared under sub-section (4) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled.

(6) In settling a fair rent under sub-section (4) the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the same Settlement Rent-roll, as settled under sections 104A to 104F.

(7) Any rent settled by the Court under sub-section (4) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent-roll.

(8) Save as provided in this section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under sections 104A to 104F.

(9) When a Civil Court has passed final orders or a decree under this section, it shall notify the same to the Collector of the district.

Presump-
tions as to
rents settled
under sec-
tions 104A
to 104G.

1765 (104J) Subject to the provisions of section 104H, all rents settled under sections 104A to 104F, and entered in a record-of-rights finally published under section 103A, or settled under section 104G, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Part III.—Settlement of rents and decision of disputes in cases where a settlement of land-revenue is not being or is not about to be made.

Settlement
of rents by
Revenue-
officer in
cases
where a
settlement
of land-
revenue
is not being
or is not
about to be
made.

105. (1) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, either the landlord or the tenant applies, within two months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent in respect of the land held by the tenant.

Explanation.—A superior landlord may apply for a settlement of rent notwithstanding that his estate or tenure or part thereof has been temporarily leased.

(2) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, the Revenue-officer has recorded, in pursuance of [1][clause (j)] of section 102, that the occupant of any land claimed to be held rent-free is not entitled to hold it without payment of rent, and either the landlord or the occupant

[1] The word, letter and brackets " clause (j) " were substituted for the word, letter and brackets " clause (i) " by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 24 (1).

(Sec. 105A.)

applies, within two months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent for the land.

7 of 1870. (3) Every application under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in the Court-fees Act, 1870,[¹] bear such stamp as the [Local Government][²], may, from time to time, prescribe by notification[³] in the [local official Gazette][⁴].

(4) In settling rents under this section, the Revenue-officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

(5) The Revenue-officer may in any case under this section propose to the parties such rents as he considers fair and equitable; and the rents so proposed, if accepted orally or in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

(6) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue-officer shall satisfy himself that the amount agreed upon is fair and equitable, and, if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (4) and (5).

[⁵][105A. Where, in any proceedings for the settlement of rents under this Part, any of the following issues arise :—

- Decision of questions arising during the course of settlement of rents under this Part.
- (a) whether the land is, or is not, liable to the payment of rent;
 - (b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
 - (c) whether the relation of landlord and tenant exists;

[1] Printed in General Acts, 1834-72, Ed. 1928 p, 286.

[2] These words were substituted for the words "Government of India" by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

[3] For a notification issued under s. 105 (3), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

[4] These words were substituted for the words "Gazette of India" by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

[5] S. 105A was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 26.

(Sec. 106.)

- (d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;
- (f) whether the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land have not, or has not, been recorded or have, or has, been wrongly recorded;

the Revenue-officer shall try and decide such issue and settle the rent under section 105 accordingly :

Provided that the Revenue-officer shall not try any issue under this section, which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue-officer in a suit instituted before him under section 106.]

Institution
of suit
before
a Revenue-
officer.

[¹⁹⁶⁵1] **106**. In proceedings under this Part, a suit may be instituted before a Revenue-officer at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A of this Act, by presenting a plaint on stamped paper, for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from, the record,

whether such dispute be between landlord and tenant, or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter;

and the Revenue-officer shall hear and decide the dispute :

Provided that the Revenue-officer may, subject to such rules as the Local Government may prescribe in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial :]

[¹⁹⁶⁵2] [Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under

[¹] It was substituted for the original s. 106 by the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act I of 1903), s. 4.

[²] This proviso was added to s. 106 by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 27.

(Secs. 107-108.)

whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A.]

14 of 1882. **107.** (1) [1][In all proceedings under section 105, section 105A and section 106,] the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure^[2] for the trial of suits; and his decision in every such proceeding shall have the force and effect of a decree of a Civil Court in a suit between the parties, and, subject to the provisions of sections 108 and 109A, shall be final.

Procedure to be adopted by Revenue-officer.

[3][(2) A note of all rents settled under section 105 and of all decisions of issues or disputes under section 105A or section 106, and of all rents, commuted under section 40 by a Revenue-officer appointed by the designation of Settlement Officer or Assistant Settlement Officer, shall be made in the record-of-rights finally published under sub-section (2) of section 103A, and such note shall be considered as part of the record.]

~~108~~ Any Revenue-officer especially [4] empowered by the Local Government in this behalf may, on application or of his own motion, within twelve months from the making of any order or decision under section 105, [5][section 105A], section 106 or section 107, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed or decree made under section 109A :

Revision by Revenue-officer.

Provided that no such order or decision shall be so revised if an appeal from it is pending under section 109A or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

[1] The words and figures in square brackets in s. 107 (1) were substituted for the words and figures " In all proceedings for the settlement of rents under this Part, and in all proceedings under section 106," by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 28 (a).

[2] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof.

[3] This sub-section (2) was substituted for the original sub-section (2) by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 28 (b). The original sub-section ran thus:—

" (2) A note of all rents settled and of all decisions of disputes by the Revenue-officer under section 105 or section 106 shall be made by him in the record-of-rights finally published under section 103A, sub-section (2), and such notes shall be considered as part of the record."

[4] *Sic. Read specially.*

[5] The words in square brackets in s. 108 were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 29.

(Secs. 108A-109A.)

Correction
by Revenue-
officer of
mistakes in
record-of-
rights.

[¹][108A. Any Revenue-officer especially empowered by the Local Government in this behalf, may, on application or of his own motion, within twelve months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bonâ fide* mistake :

Provided that no such correction shall be made if an appeal affecting such entry is pending under section 109A, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.]

Bar to
jurisdiction
of Civil
Courts.

1965 (109) Subject to the provisions of section 109A, a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made, [²][suit instituted or proceedings taken under sections 105 to 108 (both inclusive).]

Appeals
from deci-
sions of
Revenue-
officers.

1965 (109A) (1) The Local Government shall appoint [³] one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under sections 105 to 108 (both inclusive).

(2) An appeal shall lie to the Special Judge from the decisions of a Revenue-officer under sections 105 to 108A [⁴](both inclusive), and the provisions of the Code of Civil Procedure [⁵] relating to appeals 14 of 1882. shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, [⁶]an appeal shall lie to the High Court from the decision 14 of 1882. of a Special Judge in any case under this section (not being a decision settling a rent) as if he were a Court subordinate to the High Court within the meaning of the first section of that Chapter :

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with

[¹] S. 108A was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 30.

[²] The words, figures and brackets in square brackets in s. 109 were substituted for the words and figures " or suit instituted under section 105, section 106, section 107 or section 108 " by *ibid*, s. 31.

[³] For a list of orders issued under s. 109A (1), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

[⁴] The letter " A " was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 32.

[⁵] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to that Code—see s. 158 thereof.

[⁶] This reference should now be taken to be made to ss. 100 to 103 and 108 of, and Order XLII in Schedule I to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

(Secs. 109B-109C.)

reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 102 or settled under section 105 or section 108.

Part IV.—Supplemental Provisions.

[¹][109B. (1) In framing a record-of-rights, and in deciding disputes, under this Chapter, the Revenue-officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant,

Power of Revenue-officer to give effect to agreement or compromise.

but he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(2) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Revenue-officer shall,

in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 29 in the case of a contract,

record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(3) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue-officer shall not give effect to such agreement or compromise, unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-raiyat; this affects the rights of the tenants of B. The Revenue-officer must, under sub-section (3), inquire whether B is a tenure-holder or a raiyat, as defined in section 5. If he finds on the evidence that B is a raiyat, he may give effect to the agreement, but shall not do so if he finds that B is a tenure-holder.

[¹][109C. (1) Notwithstanding anything contained in section 109B, if, in any case, while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding,

Power to Revenue-officer to settle rents on agreement.

a Revenue-officer specially empowered in this behalf by the Local Government may, if he is satisfied that the rent agreed upon is fair

[¹] Sections 109B to 109D were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907) s. 33.

(Secs. 109D-110.)

and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act;

and the provisions of section 113 shall apply to a rent so settled.

(2) A landlord or tenant may appeal to the Special Judge appointed under section 109A on the ground that the rent settled by the Revenue-officer, under sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within one year from the date of the order, under sub-section (1), settling a rent as a fair and equitable rent, direct the revision of the rent so settled :

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

Note of
decisions
on record.

[¹][109D. A note of all rents settled and of all decisions of disputes, on revision or appeal under section 108, section 109A, or sub-section (2) or sub-section (3) of section 109C, shall be made in the record-of-rights finally published under sub-section (2) of section 103A, and such note shall be considered as part of the record.]

Date from
which
settled
rent takes
effect.

110. When a rent is settled by a Revenue-officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land-revenue is being or is about to be made) the date of final publication of the Settlement Rent-roll :

Provided as follows :—

- (a) if the land is comprised in an area, estate or tenure in respect of which a settlement of land-revenue is being or is about to be made, the rent settled shall, subject to the provisions of sections 191 and 192, take effect from the expiration of the period of the current settlement, or from such other date after the expiration of that period as may be fixed by the Revenue-officer;
- (b) if the land is not comprised in an area, estate or tenure as aforesaid, and if the existing rent has been fixed by a contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term, or from such other date after the expiration of that term as may be fixed by the Revenue-officer.

[¹] See footnote [1] on page 93 ante.

(Secs. 111-111B.)

111. When an order has been made under section 101, directing the preparation of a record-of-rights, then, subject to the provisions of section 104H, a Civil Court shall not,—
- (a) where a settlement of land-revenue is being or is about to be made—until after the final publication of the record-of-rights, and
- (b) where a settlement of land-revenue is not being made or is not about to be made—until three months after the final publication of the record-of-rights,

entertain [1][any application made under section 158, or] any suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the record-of-rights applies.

111A. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this Chapter or in respect of the framing, publication, signing or attestation of such a record or of any part of it, or, save as provided in section 104H, for the alteration of any entry in such a record of a rent settled under sections 104A to 104F :

Provided that any person who is dissatisfied with any entry in, or omission from, a record-of-rights framed in pursuance of an order made under section 101, sub-section (2), clause (d), which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1877.[2]

1 of 1877.

[3][111B] (1) Where a record-of-rights has been prepared and finally published in respect of the land in an area in which a settlement of land-revenue is not being made, or is not about to be made, no application or suit affecting such land or any tenant thereof shall, within three months from the date of the certificate of final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely :—

- (a) whether the land is or is not liable to the payment of rent ;
- (b) whether the relation of landlord and tenant exists ;
- (c) whether the land is part of a particular estate or tenancy ;
- OR

[1] The words and figures in square brackets, in s. 111, were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 34.

[2] Printed in General Acts, 1873-86, Ed. 1928, p. 81.

[3] Section 111B was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 35.

(Sec. 112.)

(d) whether there is any special condition or incident of the tenancy, or whether any right of way or other easement attaches to the land.

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not entertain any suit under section 106 involving the decision of the same issue.

(3) Where, in the course of settling fair rents under section 105, the Revenue-officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court before the final publication of the record-of-rights, or before a Revenue-officer under section 106, he is unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings, for the settlement of a fair rent, pending a final decision on the issue;

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

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

Power to authorize special settlement in special cases.

112. (1) The Local Government [* * *] [1] may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare,

[2][or that any landlord is demanding rents which have been illegally enhanced above those entered as payable in a record-of-rights prepared under this Chapter, invest a Revenue-officer]

with the following powers or either of them, namely :—

- (a) power to settle all rents;
- (b) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

[1] The words " with the previous sanction of the Governor General in Council," in sub-section (1) were repealed by the Devolution Act, 1920 (38 of 1920), section 2 and Sch. I.

[2] This clause was substituted for the words " invest a Revenue-officer acting under this Chapter " by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act. 1 of 1907), s. 36 (1).

(Secs. 113-114.)

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

[¹](2a) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive).]

[² [* * * * *]]

113. (1) When the rent of a tenure or holding is settled under this Chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding or the holding of an under-*raiyyat* having occupancy rights, for fifteen years, and, in the case of a non-occupancy holding or the holding of an under-*raiyyat* not having occupancy rights, for five years; and no such rent shall be reduced within the periods aforesaid save on the ground of alteration in the area of the holding or on the ground specified in section 38, clause (a). Period for which rents as settled are to remain unaltered.

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

114. (1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter, in any case except where a settlement of land-revenue is being or is about to be made, the expenses incurred [³] [* * * *] in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred [⁴][at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration] of boundary marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter), or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part in such proportions [⁵][and in such instalments (if any)] as the Local Government, having regard to all the circumstances, may determine. Expenses of proceedings under Chapter.

[¹] Sub-section (2a) was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 36 (2).

[²] Sub-section (3) of section 112 was repealed by the Devolution Act, 1920 (38 of 1920), section 2 and Sch. I, and is omitted.

[³] The words "by the Government," in section 114(1), which were repealed by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 37(1) (a), are omitted.

[⁴] These words in square brackets in section 114(1) were substituted for the words "from time to time in the maintenance," by *ibid.*, s. 37(1) (b).

[⁵] The words and brackets "and in such instalments (if any)" in s. 114(1), were inserted by *ibid.*, s. 37(1) (c).

(Secs. 115-115A.)

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

[²](3) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.[³]

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

Explanation.—The word "tenure" in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

115. When the particulars mentioned in section 102, clause (b), have been recorded under this Chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

Presumption as to fixity of rent not to apply where record-of-rights has been prepared.

Demarcation of village boundaries.

[⁵]**115A.** In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue-officer shall, so far as is possible, and subject to the provisions Ben. Act 5^a of the Bengal Survey Act, 1875, preserve, as the unit of survey of 1875, and record, the area contained within the exterior boundaries of the village maps of the revenue survey, if any;

and, where village maps prepared at a previous revenue survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such unit.]

[¹] Sub-section (2) was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 37 (2).

[²] The original sub-section (2) was renumbered (3) by *ibid*, s. 37 (3).

[³] For an alternative method of recovering expenses, see the Land Records Maintenance Act, 1895 (Ben. Act 3 of 1895), ss. 28 to 32 and 36 (c).

[⁴] Sub-section (4) was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 37 (4).

[⁵] This s. 115A was inserted by *ibid*, s. 38.

(Secs. 116-119.)

CHAPTER XI.

[¹][NON-ACCURAL OF OCCUPANCY AND NON-OCCUPANCY RIGHTS AND]
RECORD OF PROPRIETORS' PRIVATE LANDS.

116. Nothing in Chapter V shall confer a right of occupancy in and nothing in Chapter VI shall apply to,

Saving as to certain lands.

1 of 1894.

[²][lands acquired under the Land Acquisition Act, 1894[³] for the Government or for any Local Authority or for a Railway Company, or lands belonging to the Government within a Cantonment, while such lands remain the property of the Government, or of any Local Authority or Railway Company, or to]

a proprietor's private lands known [in Bengal as *khamar*, *nij* or *nijot*, and] in Bihar as *zirāat*, *nij*, *sir* or *khamat*, where any such land is held under a lease for a term of years or under a lease from year to year.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section.

Power for Government to order survey and record of proprietor's private lands.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Power for Revenue-officer to record private land on application of proprietor or tenant.

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of [⁴][sections 103A, 103B, 106, 107, 108, 109 and 109A] shall apply.

Procedure for recording private land.

[¹] These words in square brackets were prefixed to this heading by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 39.

[²] The words in square brackets in s. 116 were inserted by *ibid*, s. 40.

[³] Printed in the General Acts, 1887-97, Ed. 1928, p. 216.

[⁴] The words and figures in square brackets in s. 119 were substituted for the words and figures "sections 105 to 109, both inclusive," by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act 3 of 1898), s. 10.

(Secs. 120-121.)

Rules for determination of proprietor's private land.

120. (1) The Revenue-officer shall record as a proprietor's private land—

(a) land which is proved to have been cultivated as [*khamar,*] *ziraat, sir, nij,* [*nijot*] or *kamat* by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(b) cultivated land which is recognized by village usage as proprietor's [*khamar,*] *ziraat, sir, nij,* [*nijot*] or *kamat*.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was, before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

[¹](2a) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land as a proprietor's private land, unless it is proved to be such by satisfactory evidence of the nature described in sub-section (1) or sub-section (2).]

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

[²]CHAPTER XII.

DISTRAINT.

Cases in which an application for distraint may be made.

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

(a) any crops or other products of the earth standing or ungathered on the holding;

[¹] Sub-section (2a) was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 41.

[²] The word "rent" in Chapter XII includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3 (5), p. 14 ante.

(Sec. 122.)

- (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 within a homestead :

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

Ben. Act 7
1876.

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

122. (1) Every application under the last foregoing section shall specify— Form of application.

- (a) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;
- (b) the name of the tenant;
- (c) the period in respect of which the arrear is claimed;
- (d) the amount of the arrear, with the interest, if any, claimed thereon and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract or proceeding, as the case may be, under which that amount is payable;
- (e) the nature and approximate value of the produce to be distrained;
- (f) the place where it is to be found, or such other particulars as may suffice for its identification; and
- (g) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(Secs. 123-126.)

(2) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure^[1] for the signing and verification of plaints. ^{14 of 1882.}

Procedure on receipt of application.

123. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(2) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) Where a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

Execution of order for distraint.

124. If an application is admitted under the last foregoing section the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in this behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court :

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

Service of demand and account.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should be taken to be made to that Code—see s. 158 thereof.

(Secs. 126-129.)

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but, if a person on whom they are to be served absconds or conceals himself or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

126. (1) A distraint under this Chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation. Right to reap, etc., produce.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained, and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction: Sale proclamation to be issued unless demand is satisfied.

Provided that when the crops or products distrained from their nature admit of being stored, but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage. Place of sale.

129. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing. When produce may be sold standing.

(Secs. 130-136.)

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

Manner of sale.

130. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property the distraint shall be immediately withdrawn with respect to the remainder.

Postponement of sale.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorized to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Payment of purchase-money.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Certificate to be given to purchaser.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale how to be applied.

134. (1) From the proceeds of every sale of distrained property under this Chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules^[1] to be made, from time to time, by the Local Government in this behalf.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

Certain persons may not purchase.

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

Procedure where demand is paid before the sale.

136. (1) If at any time after a distraint has been made under this Chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property, where he is not the defaulter,

[1] For rules made under s. 134 (1), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

(Secs. 137-138.)

deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same, and the distraint shall forthwith be withdrawn.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter, shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

137. (1) When an inferior tenant, on his property being lawfully distrainted under this Chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Amount paid by under-tenant for his lessor may be deducted from rent.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

138. When land is sub-let, and any conflict arises under this Chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Conflict between rights of superior and inferior landlords.

(Secs. 139-142.)

Distrain of property which is under attachment. **139.** When any conflict arises between an order for distraint issued under this Chapter and an order issued by a Civil Court for the attachment or sale of the property, which is the subject of the distraint, the order for distraint shall prevail; but if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

Suit for compensation for wrongful distraint. **140.** No appeal shall lie from any order passed by a Civil Court under this Chapter; but any person whose property is distrained on an application made under section 121, in any case in which such an application is not permitted by that section, may institute a suit against the applicant for the recovery of compensation.

Power for Local Government to authorize distraint in certain cases. **141.** (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this Chapter to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this Chapter to the Civil Court :

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

Power for High Court to make rules. **142.** The High Court may, from time to time, make rules^[1], consistent with this Act, for regulating the procedure in all cases under this Chapter.

[1] For rules made under s. 142, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

(Secs. 143-146.)

[¹]CHAPTER XIII.

JUDICIAL PROCEDURE.

14 of 1882. **143.** (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules^[2] consistent with this Act, declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

14 of 1882. (2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure^[3] shall apply to all such suits.

14 of 1882. **144.** (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure^[3], be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

Jurisdiction in proceedings under Act.

(2) When under this Act a Civil Court is authorised to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

14 of 1882. **145.** Every *naib* or *gumashta* of a landlord empowered in this behalf by a written authority under the hand of the landlord, shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure.^[3] notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

Naibs or gumashtas to be recognized agents.

14 of 1882. **146.** The particulars referred to in [⁴] section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a

Special register of suits.

[1] As to the application of ss. 143 to 153, see s. 188A, p. 134, *post*.

[2] For rules made under s. 143, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

[3] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof.

[4] This reference should now be taken to be made to rule 2 in Order IV and rule 1 in Order VII in Schedule I to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

(Secs. 147-147A.)

special register to be kept by each Civil Court, in such form^[1] as the Local Government may, from time to time, prescribe in this behalf.

Successive
rent-suits.

147. Subject to the provisions of^[2] section 373 of the Code of Civil 14 of 1882. Procedure, where a landlord has instituted a suit against a *raiyat* for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

Compromise
of suits
between
landlord
and tenant.

^[3]**147A.** (1) The provisions of^[4] section 375 of the Code of Civil 14 of 1882. Procedure shall not apply to any suit between landlord and tenant as such.

(2) If any suit between landlord and tenant as such is adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfies the plaintiff in respect to the whole or any part of the matter of the suit, the Court shall pass a decree in accordance with such agreement, compromise or satisfaction, so far as it relates to the suit :

Provided that no decree shall be passed in accordance with any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(3) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Court shall

in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 29 in the case of a contract,

record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

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

[1] For an order made under s. 146, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

[2] This reference should now be taken to be made to rule 1 in Order XXIII in Schedule I to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

[3] Sections 147A and 147B were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 42.

[4] This reference should now be taken to be made to rule 3 in Order XXIII in Schedule I to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

(Secs. 147B-148.)

Illustration.—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-raiyat: this affects the rights of the tenants of B. The Court must under sub-section (4), inquire whether B is a tenure-holder or a raiyat as defined in section 5. If the Court finds on the evidence that B is a raiyat, it may pass a decree in accordance with the agreement, but shall not do so if it finds that B is a tenure-holder.

(5) A decree passed in accordance with any lawful agreement, compromise or satisfaction shall be final so far as it relates to so much of the subject-matter of the suit as is dealt with by such agreement, compromise or satisfaction.

[¹][147B. In all areas for which a record-of-rights has been prepared and finally published under sub-section (2) of section 103A, a Civil Court shall, in all suits between landlord and tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.]

148. The following rules shall apply to suits for the recovery of rent :—

(a) sections 121 to 127 (both inclusive), 129, 305 and 320 to 326 (both inclusive) of the Code of Civil Procedure^[2] shall not apply to any such suit :

(b) the plaint shall contain, in addition to the particulars specified in^[3] section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant: or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification :

[⁴][(b1) where the suit is for the rent of land situated within an area for which a record-of-rights has been prepared and finally published, the plaint shall further contain a list of the survey plots comprised in the tenancy and a statement

[¹] See footnote [³] on p. 108 ante.

[²] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to ss. 68, 70, 71, and 72 of, and to rules 1 to 13 in Order XI, rule 83 in Order XXI and rule 2 in Order XLVIII in Schedule I and to Schedule III, to that Code—see s. 158 thereof.

[³] This reference should now be taken to be made to rules 1 to 8 in Order VII in Schedule I to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

[⁴] This clause (b1) was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 48(1).

(Sec. 148.)

of the rental of the tenancy according to the record-of-rights, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such list or statement :]

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

[¹](b2) where an alteration has been made in the area of the tenancy since the record-of-rights was prepared and finally published, the plaint shall further contain a statement of the rental of the original tenancy according to the record-of-rights, together with a statement showing how the amount of rent claimed in the suit has been computed :]

(c) the summons 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 :

(d) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866 :]²

14 of 1866.

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served :

(e) a written statement shall not be filed without the leave of the Court :

(f) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure³ shall apply, 14 of 1882, whether an appeal is allowed or not :

[¹] Clause (b2) was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 43(1).

[²] Act 14 of 1866 has been repealed and re-enacted by the Indian Post Office Act, 1898 (6 of 1898), and this reference should now be construed as a reference to Chapter VI of the latter Act (in General Acts, 1898-09, Ed. 1928, p. 20)—see the General Clauses Act, 1897 (10 of 1897), s. 8 (in *ibid.*, 1887-97, Ed. 1928, p. 344).

[³] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rule 13 in Order XVIII in Schedule I to that Code—see s. 158 thereof.

(Sec. 148A.)

[¹](*ff*) when any account books, rent-rolls, collection-papers, measurement-papers or maps have been produced by the landlord before any Court, and have been admitted in evidence in a suit pending therein,

copies of, or extracts from, such documents, certified by a duly authorized officer of such Court to be true copies or extracts, may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to the landlord;

and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals :]

(*g*) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejection for arrears :

(*h*) notwithstanding anything contained in section 232 of the Code of Civil Procedure,^[2] an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

14 of 1882.

[³]**148A.** Where a co-sharer landlord who has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords defendant to the suit, to furnish him with correct information on these points, or on either of them,

Suits for arrears of rent by co-sharer landlords.

such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent;

and a decree obtained by him in a suit so framed shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body or landlords in a suit brought for the rent due to all the co-sharers.]

[¹] This clause (*ff*) was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 43(2).

[²] Act 14 of 1882 has been repealed and reenacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rule 16 in Order XXI in Schedule I to that Code—see s. 158 thereof.

[³] Section 148A was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 44.

(Secs. 149-153.)

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

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

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

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

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

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

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall ^[1] [* * * *] refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Provision as to payment of portion of money.

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Court to grant receipt.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

Appeals in rent suits.

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

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

[1] The words "except for special reasons to be recorded in writing," in s. 149(1) and s. 150, which were repealed by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 45, are omitted.

(Sec. 153A.)

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

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit.

[¹][*Explanation.*—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto.]

14 of 1882.

[²][**153A.** Every application for an order under section 108 of the Code of Civil Procedure^[3] to set aside a decree passed *ex parte*, or for a review of judgment, under section 623 of the said Code,^[4] in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment; and no such application shall be admitted—

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

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

[¹] This explanation was added to s. 153 by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 46.

[²] S. 153A was inserted by *ibid.*, s. 47.

[³] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rule 13 in Order IX in Sch. I to that Code—*see* s. 158 thereof.

[⁴] This reference should now be taken to be made to rule 1 in Order XLVII in Sch. I to the Code of Civil Procedure, 1908 (5 of 1908)—*see* s. 158 thereof.

(Secs. 179-180.)

Provided as follows :—

- (i) nothing in this section shall affect the terms or conditions of a lease granted *bona fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V. be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;
- (ii) when a landlord has reclaimed waste-land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a *raiyat*, nothing in this Act shall affect the terms of any contract whereby a *raiyat* is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a *raiyat*;
- (iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of [1][horticultural or] orchard land with agricultural crops.

[2][*Explanation*.—The expression "horticultural land," as used in proviso (iii) means garden land, in the occupation of a proprietor or permanent tenure-holder, which is used *bona fide* for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale.]

Permanent
mukarrari
leases.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant.

Utbandi,
chur and
diara land.

180. (1) Notwithstanding anything in this Act, a *raiyat*—

- (a) who, in any part of the country where the custom of *utbandi* prevails, holds land ordinarily let under that custom and for the time being let under that custom, or
- (b) who holds land of the kind known as *chur* or *diara*, shall not acquire a right of occupancy —
- in case (a), in land ordinarily held under the custom of *utbandi* and for the time being held under that custom,
or
- in case (b), in the *chur* or *diara* land,

[1] These words in square brackets in proviso (iii) were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 56(1).

[2] This *Explanation* was added to proviso (iii) by *ibid*, s. 56(2).

(Sec. 153A.)

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

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit.

[1][*Explanation.*—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto.]

14 of 1882.

[2][153A. Every application for an order under section 108 of the Code of Civil Procedure^[3] to set aside a decree passed *ex parte*, or for a review of judgment, under section 623 of the said Code,^[4] in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment; and no such application shall be admitted—

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

(a) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct; or

(b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.]

[1] This *explanation* was added to s. 153 by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 46.

[2] S. 153A was inserted by *ibid*, s. 47.

[3] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rule 18 in Order IX in Sch. I to that Code—*see* s. 158 thereof.

[4] This reference should now be taken to be made to rule 1 in Order XLVII in Sch. I to the Code of Civil Procedure, 1908 (5 of 1908)—*see* s. 158 thereof.

(Secs. 154-156.)

Date from which decree for enhancement takes effect.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, [1] shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

Relief against forfeitures.

155. (1) A suit for the ejection of a tenant, on the ground—

- (a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or
- (b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejection,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

Rights of ejected raiyats in respect of crops and land prepared for sowing.

156. The following rules shall apply in the case of every *raiayat* ejected from a holding:—

- (a) when the *raiayat* has, before the date of his ejection, sown or planted crops in any land comprised in the holding, he

[1] For definition of "agricultural year," see s. 3 (11), p. 15 ante.

(Secs. 157-158.)

shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

- (b) when the *raiyat* has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;
- (c) but a *raiyat* shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage; and
- (d) if the landlord elects under this section to allow a *raiyat* to retain possession of the land, the *raiyat* shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

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

Power for Court to fix fair rent as alternative to ejectment.

158. (1)[1][Subject to the provisions of section 111,] the Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, namely:—

Application to determine incidents of tenancy.

- (a) the situation, quantity and boundaries of the land;
- (b) the name and description of the tenant thereof (if any);
- (c) the class to which he belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, *occupancy-raiyat*, non-*occupancy-raiyat*, or *under-raiyat*, and, if he is a tenure-holder, whether he is a permanent tenure-holder

[1] The words in square brackets in s. 158 (1) were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 48.

(Sec. 158A.)

or not, and whether his rent is liable to enhancement during the continuance of his tenure; and

(d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil 14 of 1882. Procedure^[1] by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392^[2] of the said Code.

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

[3]CHAPTER XIII A.

SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, 1914.

Recovery of arrears by the certificate procedure in certain areas.

158A. (1) Any landlord (other than the Government) whose land is situate in an area for which a record-of-rights has been prepared and finally published, [* * * * *]^[4]

may apply to the Local Government, through the Collector of the district in which his land is situate, for the application of the procedure prescribed by the Bihar and Orissa Public Demands Recovery Act, 1914, to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area.

B. & O.
Act 4 of
1914.

^[5][(2)(a) The Local Government, if satisfied that the landlord's rent-roll is kept up-to-date, that his accounts and collection papers are properly maintained and that proper rent receipts and counter-foils are regularly given and kept by him as required by sections 56 and 57, may, if it thinks fit, allow the application;

(b) when any such application is disallowed, the authority disallowing the application shall record its reasons for so doing.]

[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to s. 78 of, and Order XXVI in Sch. I to, that Code—see s. 158 thereof.

[2] This reference should now be taken to be made to rule 9 in Order XXVI in Sch. I to the Code of Civil Procedure, 1908 (5 of 1908),—see s. 158 thereof.

[3] Chapter XIII A (s. 158A) was substituted for the original Chapter XIII A by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 69, and Sch. III.

[4] The words "and in which such record is maintained" were repealed by the Bihar Tenancy (Amendment) Act, 1934 (B. and O. Act 8 of 1934), s. 16.

[5] This sub-section was substituted for the original sub-section by *ibid.*

(Sec. 158A.)

(3) When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed, to such Revenue-officer as the Local Government may appoint, for the purpose of this section, to perform the functions of a Certificate Officer under the Bihar and Orissa Public Demands Recovery Act, 1914, for the recovery of any arrears of rent which he alleges are due to him from any tenant.

(4) Every such requisition shall be signed and verified by the landlord making it in the manner prescribed by rule I in Schedule II to the said Act, as amended for the time being by rules made under [1][section 48] thereof, and shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870,[2] in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

(5) On receipt of any such requisition, the said Revenue-officer may, in accordance with such rules as the Local Government may prescribe in this behalf, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form, stating that the arrear is due; and shall include in the certificate the fee paid under sub-section (4), and shall cause the certificate to be filed in his office :

Provided that—

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

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

(6) The person in whose favour any certificate is signed under sub-section (5) shall be deemed to be the certificate-holder for the amount

[1] The word and figures " section 48 " were substituted for the word and figures " section 39 " by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 16.

[2] Printed in General Acts, 1834-72, Ed. 1928, p. 286. The Act has been amended in its application to Bihar and Orissa by the B. & O. Court-fees (Amendment) Act, 1922 (B. and O. Act 2 of 1922).

(Sec. 158A.)

mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate debtor for the said amount; and all the proceedings taken by the certificate officer for the recovery of such amount shall be taken at the instance of the first mentioned person, and at his cost and responsibility and not otherwise.

(7) The Bihar and Orissa Public Demands Recovery Act, 1914, B. & O. Act with such restrictions and modifications (if any) as may be prescribed, ^{4 of 1914.} shall apply to the execution and to all proceedings arising out of the execution, of certificates filed under sub-section (5).

(8) No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Civil Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (3);

and, subject to the provisions of section 43 of the Bihar and Orissa B. & O. Act Public Demands Recovery Act, 1914, no tenant shall, after the signing of any certificate against him under sub-section (5) of this section, institute a suit in, or apply to, a Civil Court for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent for which such certificate was signed have accrued. ^{4 of 1914.}

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

[¹](10) The Local Government may delegate any of its powers under this section to the Board of Revenue or to the Commissioner of the Division. All orders passed by the Commissioner in pursuance of such delegation shall be subject to the revision of the Board of Revenue, and the Commissioner shall, in the exercise of any powers so delegated to him, be subject to the control of the Board of Revenue.]

[¹] Sub-section (10) was added by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 16.

(Secs. 158B-159.)

[¹]CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

158B. [²](1) Where a tenure or holding is sold in execution of—
 (a) a decree for arrears of rent due in respect thereof; or (b) a decree for damages under section 186A; or (c) a certificate for arrears of rent signed under the Bihar and Orissa Public Demands Recovery Act, 1914, the tenure or holding shall, subject to the provisions of section 28, pass to the purchaser, if such decree was obtained by—

Passing of tenure or holding sold in execution of decree.

B. & O. Act 4 of 1914.

(i) a sole landlord; or

(ii) the entire body of landlords; or

(iii) one or more co-sharer landlords who has or have sued for the rent due to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit; or

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

[³](2) When one or more co-sharer landlords, having obtained a decree in a suit framed under sub-section (1) or under section 148A, applies, or apply, for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application for execution to the other co-sharers.]

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this Chapter as "protected interests," but with power to annul the interests defined in this Chapter as "incumbrances":

General powers of purchaser as to avoidance of incumbrances.

Provided as follows:—

(a) a registered and notified incumbrance within the meaning of this Chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(b) the power to annul shall be exercisable only in manner by this Chapter directed.

[¹] The word "rent" in Chapter XIV, includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3(5), p. 14 *ante*. As to the extended application of Chapter XIV, see s. 158A (5), p. 117 *ante* and s. 188A, *post*, p. 134.

[²] Sub-section (1) was substituted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914), s. 69 and Sch. III, Part I.

[³] Sub-section (2) was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 50.

(Secs. 160-161.)

Protected
interests.

160. The following shall be deemed to be protected interests within the meaning of this Chapter :—

- (a) any under-tenure existing from the time of the Permanent Settlement ;
- (b) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement ;
- (c) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made ;
- (d) any right of occupancy ;
- (e) the right of a non-occupancy-*raiyat* to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer ;
- (f) any right conferred on an occupancy-*raiyat* to hold at a rent which was a fair and reasonable rent at the time the right was conferred ; and
- (g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Meaning of
"incum-
brance"
and

161. For the purposes of this Chapter :—

- (a) the term "incumbrance," used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section ;
- (b) the term "registered and notified incumbrance," used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument, of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided ;

"registered
and notified
incum-
brance."

(Secs. 162-163.)

[¹](c) the terms "arrears" and "arrear of rent" shall be deemed to include interest decreed under section 67 ^{or} damages awarded in lieu of interest under sub-section (1) of section 68]

14 of 1882. **162.** When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure^[2] for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the *pargana*, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree. Application for sale of tenure or holding.

14 of 1882. **163.** (1) Notwithstanding anything contained in the Code of Civil Procedure,^[3] when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code^[4] it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.^[5] Order of attachment and proclamation of sale to be issued simultaneously.

14 of 1882. (2) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code^[5], announce—

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

(b) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

[1] Clause (c) was added to s. 161 by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 51.

[2] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rule 11 (2) in Order XXI in Sch. I to that Code—see s. 158 thereof.

[3] This reference should now be taken to be made to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

[4] This reference should now be taken to be made to rule 17 in Order XXI in Sch. I to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

[5] This reference should now be taken to be made to ss. 129 and 131 of, and rules 66 and 70 in Order XXI in Sch. I to, the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

(Secs. 164-165.)

(3) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code^[1], be published by fixing up 14 of 1882. a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the [Board of Revenue]^[2] may, from time to time, direct^[3] in this behalf.

(4) Notwithstanding anything contained in section 290 of the said Code,^[4] the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

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

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

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure,^[1] announcing that the tenure or 14 of 1882. holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen

677
order 219
1908.

[1] This reference should now be taken to be made to rule 67 in Order XXI of Sch. I to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

[2] These words were substituted for the words "Local Government" by the Bihar and Orissa Decentralization Act, 1916 (B. and O. Act 3 of 1916), s. 2 and Sch. Part II.

[3] For an order made under s. 163 (3), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

[4] This reference should now be taken to be made to rule 68 in Order XXI in Sch. I to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

(Secs. 166-167.)

or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

166. (1) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

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

167. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections [or under the Bihar and Orissa Public Demands Recovery Act, 1914][¹] and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

B. & O. Act
4 of 1914.

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

Procedure for annulling incumbrances under the foregoing sections.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree [or a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914][¹] for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c), the purchaser may, if he has power under this Chapter [or that Act][²], to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

B. & O. Act
4 of 1914.

[¹] The words in square brackets were inserted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 69 and Sch. III (Part I).

[²] These words were inserted by *ibid.*

(Secs. 168-169.)

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

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

168. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of [1][a decree for an arrear of rent] due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

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

Rules for disposal of the sale-proceeds.

169. (1) In disposing of the proceeds of a sale under this Chapter, the following rules, instead of those prescribed by (section 295) of the Code of Civil Procedure[2], shall be observed, that is to say :—

14 of 1882.

- (a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;
- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of [3][the confirmation of] the sale;
- (d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application :

[4][Provided that, where a tenure or holding has been sold in execution of a decree obtained by one or more co-sharer landlords in a suit framed under section 148A or sub-section (1) of section 158B,—

[1] The words in square brackets in s. 168 (1) were substituted for the words "decrees for rent", by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 52.

[2] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to s. 73 of that Code—see s. 158 thereof.

[3] The words in square brackets in s. 169 (c) were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 53 (1).

[4] This proviso was added to s. 169 (1), by *ibid*, s. 53 (2).

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(Sec. 170.)

- (i) payment of the amount due under such decree shall, notwithstanding anything contained in clause (b), be made to the decree-holder and to the other co-sharer landlords in proportion to the amount found to be due to each, and,
- (ii) if there remains a balance, payment of any rent which may have fallen due in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale shall, notwithstanding anything contained in clause (c), but subject to the determination, in the manner and with the effect mentioned in sub-section (2), of any dispute as to their respective rights to receive such rent, be made to the said decree-holder and the other co-sharer landlords in proportion to their respective shares in the tenure or holding.]

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

rules 58 to 63 & 89 of Order XXI

14 of 1882. 170. (1) (Sections 278 to 283 (both inclusive) [and 310A][¹] of the Code of Civil Procedure[²] shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

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

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

(3) The judgment-debtor, [³] [or any person whose interests are affected by the sale, other than a transferee of a holding from whom the landlord is entitled to receive the landlord's fee and who has neither paid the landlord's (transfer) fee to the landlord nor deposited the same with the Collector], may pay money into Court under this section.

Repetition
Repetition

[¹] The figures and letter in square brackets in s. 170 (1) were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 54.

[²] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and these references should now be taken to be made to rules 58 to 63 and 89 in Order XXI in Sch. I to that Code—see s. 158 thereof.

[³] These words in square brackets in section 170 (3) were substituted for the words "or any person having in the tenure or holding any interest voidable on the sale" by the Bihar Tenancy (Amendment) Act, 1934 (B. and O. Act 8 of 1934), s. 17.

(Secs. 171-172.)

[1][4] The withdrawal by a decree-holder landlord of the amount paid into Court, under sub-section (2), shall not affect the rights conferred on the landlord by sections 26B, 26D, 26E, 26H, 26K, 26M and 26O.]

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

171. (1) When any person having, in a tenure or holding advertised for sale under this Chapter, [or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914] [2] an interest which would be avoidable upon the sale, pays into Court the amount requisite to prevent the sale—

B. & O. Act 4 of 1914.

- (a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve *per centum per annum* and secured by a mortgage of the tenure or holding to him;
- (b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and
- (c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

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

Inferior tenant paying into Court may deduct from rent.

172. [When a tenure or holding is advertised for sale—

- (a) under this Chapter, in execution of a decree against a superior tenant defaulting, or
- (b) in execution of a certificate, signed under the Bihar and Orissa Public Demands Recovery Act, 1914, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting,][3]

B. & O. Act 4 of 1914.

and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may, in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

[1] This sub-section was added by the Bihar Tenancy (Amendment) Act, 1934 (B. and O. Act 8 of 1934), s. 17(b).

[2] Inserted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 69 and Sch. III (Part I).

[3] Substituted for the original by *ibid.*

(Secs. 173-174.)

14 of 1882. **173.** (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure^[1], the holder of a decree in execution of which a tenure or holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

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

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

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

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor^[2] [or any person whose interests are affected by the sale, other than a transferee of a holding from whom the landlord is entitled to receive the landlord's transfer fee and who has neither paid the landlord's transfer fee to the landlord nor deposited the same with the Collector] may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree with costs, and, for payment to the purchaser, a sum equal to five *per centum* of the purchase-money.

Application by judgment-debtor to set aside sale.

[3][*(1a)* The withdrawal by a decree-holder of the amount deposited by a transferee of a holding under sub-section (1) shall not affect the rights conferred on the landlord by sections 26B, 26D, 26E, 26H, 26K, 26M and 26O.]

14 of 1882. (2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure^[4] shall apply in the case of a sale so set aside :

14 of 1882. Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure^[5] to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section;

[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rule 72 in Order XXI in Sch. I to that Code—see s. 158 thereof.

[2] These words in square brackets in s. 174(1) were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. and O. Act 8 of 1934), s. 18.

[3] Sub-section (1a) was inserted by *ibid.*

[4] This reference should now be taken to be made to rule 93 in Order XXI in Sch. I to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

[5] This reference should now be taken to be made to rule 90 in Order XXI in Sch. I to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

(Secs. 175-178.)

[¹][and if he applies under this section, he shall not be entitled to make an application under section 311 of the Code of Civil Procedure^[2].] 14 of 1882.

(3) Section 313 of the Code of Civil Procedure^[3] shall not apply 14 of 1882. to any sale under this Chapter.

Registration of certain instruments creating incumbrances.

175. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877,^[4] an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act^[5] to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

Notification of incumbrances to landlord.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Power to create incumbrances not extended.

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

CHAPTER XV.

CONTRACT AND CUSTOM.

Restrictions on exclusion of Act by agreement.

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

(a) shall bar in perpetuity the acquisition of an occupancy-right in land, or

[1] These words in square brackets were added to s. 174 (2), proviso, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 55.

[2] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rule 90 in Order XXI in Sch. I to that Code—see s. 158 thereof.

[3] This reference should now be taken to be made to rule 91 in Order XXI in Sch. I to the Code of Civil Procedure, 1908 (5 of 1908)—see s. 158 thereof.

[4] Act 3 of 1887 has been repealed and re-enacted by the Indian Registration Act, 1908 (16 of 1908), and this reference should now be construed as a reference to Part IV of the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 354.

[5] This reference should now be construed as a reference to s. 17 of the Indian Registration Act, 1908 (16 of 1908)—see *ibid* 1898-1908, Ed. 1928, p. 431.

(Sec. 178.)

- (b) shall take away an occupancy-right in existence at the date of the contract, or
- (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- (d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act, shall prevent a *raiyat* from acquiring, in accordance with this Act, an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

- (a) prevent a *raiyat* from acquiring, in accordance with this Act, an occupancy-right in land;
- (b) take away or limit the right of an occupancy-*raiyat* to use land as provided by section 23;
- [¹](bb) take away or limit any right conferred on an occupancy-*raiyat* by section 23A ;]
- (c) take away the right of a *raiyat* to surrender his holding in accordance with section 86 ;
- (d) take away the right of a *raiyat* to transfer or bequeath his holding in accordance with [²][the provisions of this Act] ;
- (e) take away the right of an occupancy-*raiyat* to sub-let subject to, and in accordance with, the provisions of this Act ;
- (f) take away the right of a *raiyat* to apply for a reduction of rent under section 38 or section 52 ;
- (g) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40 ; or
- (h) affect the provisions of section 67 relating to interest payable on arrears of rent :

[¹] Clause (bb) was inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 19.

[²] The words " the provisions of this Act " were substituted for the words " local usage " by *ibid.*

(Secs. 179-180.)

Provided as follows :—

- (i) nothing in this section shall affect the terms or conditions of a lease granted *bona fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V. be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right ;
- (ii) when a landlord has reclaimed waste-land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a *raiyat*, nothing in this Act shall affect the terms of any contract whereby a *raiyat* is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a *raiyat* ;
- (iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of [1][horticultural or] orchard land with agricultural crops.

[2][*Explanation*.—The expression “ horticultural land,” as used in proviso (iii) means garden land, in the occupation of a proprietor or permanent tenure-holder, which is used *bona fide* for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale.]

Permanent
mukarrari
leases.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant.

Utbandi,
chur and
diara land.

180. (1) Notwithstanding anything in this Act, a *raiyat*—

- (a) who, in any part of the country where the custom of *utbandi* prevails, holds land ordinarily let under that custom and for the time being let under that custom, or
- (b) who holds land of the kind known as *chur* or *diara*, shall not acquire a right of occupancy —

in case (a), in land ordinarily held under the custom of *utbandi* and for the time being held under that custom, or

in case (b), in the *chur* or *diara* land,

[1] These words in square brackets in proviso (iii) were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 56(1).

[2] This *Explanation* was added to proviso (iii) by *ibid*, s. 56(2).

(Secs. 181-184.)

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to *raiya*t holding land under the custom of *utbandi* in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be *chur* or *diara* land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

1956 (181.) Nothing in this Act shall affect any incident of a *ghatwali*[¹] or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed. Saving as to service-tenures.

182. When a *raiya*t holds his homestead otherwise than as part of his holding as a *raiya*t, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a *raiya*t. Home-steads.

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

Illustrations.

(1) A usage under which a *raiya*t is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2) The custom or usage that an under-*raiya*t should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

CHAPTER XVI.

LIMITATION.

184. (1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that Schedule for them respectively; and every such suit

[¹] As to *ghatwali* tenures, see the Bengal Ghatwali Lands Regulation, 1814 (29 of 1814), and the Bengal Ghatwali Lands Act, 1859 (5 of 1859). Limitation in suits, appeals and applications in Schedule III.

(Secs. 185-186.)

or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

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

Portions of the Indian Limitation Act not applicable to such suits, etc.

185. (1) Sections 7, 8 and 9 of the Indian Limitation Act, 1877^[1], 15 of 1877, shall not apply to the suits and applications mentioned in the last foregoing section.

(2) Subject to the provisions of this Chapter, the provisions of the Indian Limitation Act, 1877^[2], shall apply to all suits, appeals 15 of 1877, and applications mentioned in the last foregoing section.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

Penalties for illegal interference with produce.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

- (a) distrains or attempts to distrain the produce of a tenant's holding, or,
- (b) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or,
- (c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

45 of 1860.

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

45 of 1860.

[1] Act 15 of 1877 has been repealed and re-enacted by the Indian Limitation Act, 1908 (9 of 1908), and this reference should now be construed as a reference to ss. 6, 7, 8 and 9 of the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1926, p. 354.

[2] This reference should now be construed as a reference to the Indian Limitation Act, 1908 (9 of 1908)—See *ibid.*

(Secs. 186A-188.)

[¹] Damages for denial of landlord's title.

[¹]**186A.** (1) When, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

Damages for denial of landlord's title.

(2) The amount of damages decreed under sub-section (1), together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money, or, subject to the provisions of section 158B, in any of the modes in which a decree for rent may be executed.

Agents and representatives of landlords.

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

Power for landlord to act through agent.

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

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

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Joint-landlords to act collectively or by common agent.

[¹][Provided that one or more co-sharer landlords may file an application under sub-section (3) of section 26B or under sub-section (1) of section 26H or under sub-section (3) of section 26M or under sub-section (4) of section 26O, making all the remaining co-sharer landlords parties defendant to the proceeding.]

[¹] This proviso was added by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 20.

(Secs. 188A-189.)

Procedure
in suits by
Joint-land-
lords.

[¹][188A. Notwithstanding anything contained in this Act, every suit between landlord and tenant as such instituted by—

- (a) a sole landlord,
- (b) the entire body of landlords, or
- (c) one or more co-sharer landlords,

shall be subject to the provisions of sections 143 to 153 (both inclusive);

and to every decree passed in a suit framed under sub-section (1) or sub-section (2) of section 158B, the provisions of Chapter XIV[²] shall, so far as may be practicable, be applicable.]

Rules under Act.

Power to
make rules
regarding
procedure,
powers of
officers and
services of
notices.

1456 (189.) The Local Government may, from time to time, by notification in the official Gazette, make rules,^[3] consistent with this Act,—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

- (a) any power exercised by a Civil Court in the trial of suits;
- (b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, ^{Ben. Act} 8 of 1875; and
- (c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

[⁴](2) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is prescribed by this or any other Act;

[¹] This section was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 58.

[²] S. 158B forms part of Chapter XIV—see p. 119, *ante*.

[³] For rules made under s. 189, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part IV.

[⁴] These sub-sections (2) to (4) were substituted for the original sub-section (2) by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 59. The original sub-section ran thus:—

“(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.”

(Sec. 189.)

[¹](3) to prescribe the manner in which landlord's fees^[²][or landlord's transfer fees] shall be transmitted to the landlord;

[²](4) to prescribe the authority by whom the fees deposited under sections 12, 13, 15, 17 and 18, clause (a), may be declared to be forfeited, and the mode in which such fees, when so forfeited, shall be dealt with]; and

[³](5) to provide for all or any of the following matters, namely:—

- (a) the form of the notice referred to in sub-section (2) of section 26B and the particulars to be entered therein;
- (b) the form of the statement referred to in clause (c) of sub-section (1) of section 26E, the particulars to be entered therein, and the amount of the process fee referred to in the said clause;
- (c) the manner of notifying the authorisation of a person to receive landlord's transfer fee, under sub-section (1) of section 26E;
- (d) the form of the receipt referred to in sub-section (2) of section 26F;
- (e) the form of the notice referred to in sub-section (1) of section 26G and the manner of serving the said notice;
- (f) the form of the lists referred to in sub-section (2) of section 26G;
- (g) the form of the application referred to in sub-section (2) of section 26H and the amount of the stamp referred to in the said sub-section;
- (h) the manner of dealing with applications and disposing of undelivered sums referred to in section 26K;
- (i) the form of the notice referred to in sub-section (1) of section 26M;
- (j) the form of the receipt referred to in sub-section (2) of section 26O.]

[¹] See footnote [⁴] on p. 134 *ante*.

[²] The words "or landlord's transfer fees" were inserted by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act 8 of 1934), s. 21(a).

[³] This sub-section was added by *ibid*, s. 21(b).

(Secs. 189A-190.)

Transfer of Proceedings.

[¹][189A. (1) It shall be competent to the Board of Revenue to transfer, and with the previous sanction of the Local Government to make rules authorizing revenue-officers to transfer, any suit or other proceeding, original or otherwise, under any provision of this Act, from the file of any subordinate officer to the file of any other subordinate officer who is duly authorized to entertain or decide suits or other proceedings under such provision.

Validation of certain transfers made prior to the commencement of this Act.

(2) No decision or order made by any revenue-officer under any provision of this Act shall if such officer was duly authorized to act under such provision, be deemed to be invalid by reason only that the suit or other proceeding in which it was made came to his file prior to the commencement of the Bihar Tenancy (Amending and Validating) Act, 1920, without a due order of transfer.] B. & O. Act 9 of 1920.

Procedure for making publication and confirmation of rules.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may, in its opinion, be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner :

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

[¹] This section was inserted by the Bihar Tenancy (Amending and Validating) Act, 1920 (B. & O. Act 9 of 1920), s. 2.

(Secs. 191-195.)

Provisions as to temporarily-settled districts.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue authority empowered by the Government to make definitively or confirm settlements.

Saving as to land held in a district not permanently settled.

192. When a landlord grants a lease or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

Power to alter rent in case of new assessment of revenue.

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

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant,^[1] [or of his own motion shall,] fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Rights of pasturage, etc.

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

Rights of pasturage, forest-rights, etc.

Saving for conditions binding on landlords.

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

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

Savings for special enactments.

195. Nothing in this Act shall affect—

(a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

Savings for special enactments.

[1] These words in square brackets in section 192 were inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 60.

(Sec. 196. Schedule I.)

- (b) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue authorities ;
- (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue ;
- (d) any enactment relating to the partition of revenue-paying estates ;
- (e) any enactment relating to *patni* tenures, in so far as it relates to those tenures ; or
- (f) any other special or local law not repealed either expressly or by necessary implication by this Act.

Construction of Act.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.[1]

Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.

SCHEDULE 1.

(See section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	SUBJECT OF REGULATIONS.	Extent of repeal.
[2] 8 of 1793 ..	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the public revenue payable from the lands of the <i>zamindars</i> , independent <i>talukdars</i> and other actual proprietors of land in Bengal, Bihar and Orissa, passed for those Provinces, respectively, on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
[3] 12 of 1805 ..	A Regulation for the settlement and collection of the public revenue in the <i>zila</i> of Cuttack, including the <i>parganas</i> of Pataapur, Kamardachor, and Bhograí at present included in the <i>zila</i> of Midnapur.	Section 7.

[1] See now the Government of India Act, 1919 (9 and 10 Geo. v. ch. 101), s. 80A.

[2] The Bengal Decennial Settlement Regulation, 1793.

[3] The Cuttack Land-revenue Regulation, 1805. This section has since been repealed everywhere by the Amending Act, 1903 (I of 1903).

(Schedule 1.)

Regulations of the Bengal Code—concl'd.

Number and year.	SUBJECT OF REGULATIONS.	Extent of repeal.
[1] 5 of 1812 ..	A Regulation for amending some of the rules at present in force for the collection of the land-revenue.	Sections 2, 3, 4, 26 and 27.
[2] 18 of 1812 ..	A Regulation for explaining section 2, Regulation 5, 1812, and rescinding sections 3 and 4, Regulation 44, 1793, and sections 3 and 4, Regulation 50, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
[3] 11 of 1825 ..	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "Nee if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	SUBJECT OF ACT.	Extent of repeal.
[4] 6 of 1862 ..	An Act to amend Act 10 of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
[5] 4 of 1867 ..	An Act to explain and amend Act 6 of 1862 passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
[6] 8 of 1869 ..	An Act to amend the Procedure in suits between landlords and tenants.	The whole Act.
[7] 8 of 1879 ..	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Act of the Governor-General in Council.

[8] 10 of 1859 ..	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.
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- [1] The Bengal Land-revenue Sales Regulation, 1812.
 [2] The Bengal Leases and Land-revenue Regulation, 1812.
 [3] The Bengal Alluvion and Diluvion Regulation, 1825
 [4] The Bengal Rent Act, 1862.
 [5] The Bengal Rent (Appeals) Act, 1867.
 [6] The Landlord and Tenant Procedure Act, 1869.
 [7] The Bengal Rent Settlement Act, 1879.
 [8] The Bengal Rent Act, 1859.

(Schedule II.)

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(See sections 56 and 57.)

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (TENANT'S PORTION).

1. Serial number of Receipt
2. Estate ; Village , Thana
3. Tenant's name , son of
4. Particulars of the holding—
 - Nukdi, Bighas ; rent Rs.
 - Bhaoli, Bighas ; Maunds or Rs.
 - { Jalkar, Rs.
 - { Bankar, Rs.
 - { Phalkar, Rs.
 - Government Cesses { Road Cess, Rs.
 - { Public Works Cess, Rs.
5. Signature of the Landlord or his Authorised Agent.

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

1. Serial number of Receipt
2. Estate ; Village , Thana
3. Tenant's name , son of
4. Particulars of the holding—
 - Nukdi, Bighas ; rent Rs.
 - Bhaoli, Bighas ; Maunds or Rs.
 - { Jalkar, Rs.
 - { Bankar, Rs.
 - { Phalkar, Rs.
 - Government Cesses { Road Cess, Rs.
 - { Public Works Cess, Rs.
5. Signature of the Landlord or his Authorised Agent.

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

- (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.
- (2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

(Schedule III.)

[1] SCHEDULE III.

LIMITATION.

(See section 184.)

PART I.—Suits.

Description of suits.	Period of limitation.	Time from which period begins to run.
1. To eject any tenure-holder or <i>raiyat</i> on account of any breach of a condition in respect of which there is a contract expressly providing that ejection shall be the penalty of such breach.	One year ..	The date of the breach.
[2][1 (a) To eject a non-occupancy- <i>raiyat</i> on the ground of the expiration of the term of his lease.	Six months ..	The expiration of the term.]
2. For the recovery of an arrear of rent [3] (in a suit brought by— (i) a sole landlord, (ii) the entire body of landlords, or (iii) one or more co-sharer landlords]— (a) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding ;	Six months ..	The date of the service of notice of the deposit.
[4] [(b) in other cases—		
(i) where the rent is paid in money	Three years ..	The last day of the agricultural year in which the arrear fell due.
(ii) where the rent is paid in any of the ways specified in subsection (1) of section 40.	One year ..	Ditto.]
3. To recover possession of land claimed by the plaintiff as [5] [a <i>raiyat</i> or an under- <i>raiyat</i>].	Two years ..	The date of dispossession.

[1] The word "rent", in Sch. III, includes also money recoverable under any enactment for the time being in force as if it was rent—see s. 3(5), *ante*, p. 14.

[2] Article 1 (a) was inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 61 (1).

[3] The words in square brackets in Article 2 were inserted by *ibid*, s. 61 (2)(a).

[4] Clause (b) was substituted for the former clause by the Bihar Tenancy (Amendment) Act, 1934 (B. & O. Act. 8 of 1934), s. 22.

[5] The words in square brackets in Article 3 were substituted for the words "an occupancy *raiyat*" by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 61(3).

(Schedule III.)

PART II.—*Appeals.*

Description of appeal.	Period of limitation.	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days	The date of the decree or order appealed against.
5. From any order of a Collector under this Act, to the Commissioner.	Thirty days	The date of the order appealed against.

PART III.—*Applications.*

Description of application.	Period of limitation.	Time from which period begins to run.
6. For the execution of a decree or order made [1] [in a suit between landlord and tenant to whom the provisions of this Act are applicable,] and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.[2].	Three years	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

5 of 1877.

[1] The words in square brackets in Article 6 were substituted for the words "under this Act, or any Act repealed by this Act", by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act 1 of 1907), s. 61 (4).

[2] Act 15 of 1877 has been repealed and re-enacted by the Indian Limitation Act, 1908 (9 of 1908), and this reference should now be construed as a reference to the latter Act, see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 354.