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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 9th October 1872, and was referred to a Select Committee with instructions to report thereon in three months:—

Bill No. 26 of 1872.

THE OUDH LAND REVENUE BILL, 1872.

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A Bill to consolidate and define the law relating to the settlement and collection of Land-revenue in Oudh.

Whereas the Government of India is by law entitled to a proportion of the produce of the land of Oudh to be, from time to time, fixed by itself, and whereas it is expedient to consolidate and define the law relating to the settlement and collection of such proportion, and to the duties of Revenue Officers in Oudh; It is hereby enacted as follows:—

PRELIMINARY.

- Short title. 1. This Act may be called "The Oudh Land Revenue Act, 1872":
- It extends to the territories for the time being under the administration of the Chief Commissioner of Oudh;
- Local extent. And it shall come into force on the passing thereof.
- Commencement.
- Interpretation-clause. In this Act—
- "Chief Commissioner" defined. "Chief Commissioner" means the Chief Commissioner of Oudh, and
- "Estate" means a village or other local area, of which a separate settlement is made.
- "Estate" defined.

CHAPTER I.

REVENUE OFFICERS.

2. There shall be in Oudh the following grades of Revenue Officers:—
- (1) The Chief Commissioner, who shall be the chief controlling revenue authority in Oudh.
- (2) Commissioners, each of whom shall, subject to the control of the Chief Commissioner, be the chief controlling revenue authority within a division.
- (3) Deputy Commissioners, each of whom shall, subject to the control of the Commissioner, be the chief executive revenue authority in a district.
- (4) Assistant Commissioners and Extra Assistant Commissioners, each of whom shall, subject to the control of the Deputy Commissioner, exercise such powers as the Chief Commissioner may, from time to time, direct.
- (5) Tahsildárs, each of whom shall, subject to the control of the Deputy Commissioner, be the chief executive revenue authority in a tahsil or sub-district.

3. The Commissioners, Deputy Commissioners and Assistant Commissioners shall be appointed by the Governor General in Council and may be removed by the Chief Commissioner with the previous sanction of the Governor General in Council.

4. Extra Assistant Commissioners and Tahsildárs shall be appointed and may be removed by the Chief Commissioner.

5. The Chief Commissioner may invest any Assistant Commissioner, Assistant Commissioner or Extra Assistant Commissioner with all or any of the powers hereinafter conferred upon Deputy Commissioners.

The Deputy Commissioner may distribute amongst the Assistant Commissioners, Extra Assistant Commissioners, and other subordinate officers of his district, as he thinks proper, such revenue duties as, under this or any other Act in force for the time being, they are authorized to perform.

6. The Chief Commissioner shall make rules as to the appointment, duties, payment, and removal of Lambardars or Village Headmen, Patwaris or Village Accountants, Kanungos or Superintendents of Village Accountants, such regard as the Chief Commissioner thinks fit being had to custom or descent.

Where by any such rule the appointment of Patwaris is directed to be made by the landowners of a village, or the landowners are made primarily responsible for enforcing the due submission of such returns as may be prescribed to be kept by Patwaris, the neglect or refusal of such landowners to make such appointment or to enforce the submission of such returns shall be punishable with such fine as the Chief Commissioner directs; and such fine shall be recoverable as an arrear of land-revenue.

CHAPTER II.

OF SETTLEMENTS.

7. Whenever the amount of revenue to be paid in a district or other local area is being assessed or re-assessed, a settlement in progress is said to be in progress;

A district or other local area in which a settlement is in progress is said to be under settlement.

8. Whenever any persons are permitted to engage with the Government directly or through a representative for the payment of revenue due in respect of any land, they are said to be settled with, or a settlement is said to be made with them, in respect of that land.

9. The Chief Commissioner shall, with the previous sanction of the Governor General in Council, give written instructions to the officer in charge of a settlement, stating the principle on which the revenue in such settlement is to be assessed.

No Court of Justice shall be entitled, under any circumstances, to require the production, or shall permit evidence to be given of the contents, of such instructions.

10. Settlements may be of the following kinds:—

(1) a summary settlement, that is to say, a provisional settlement, made pending a first regular settlement: the declaration of the Local Government that a settlement was summary shall be conclusive proof that it was so;

(2) a first regular settlement, that is to say a settlement in which the revenue is assessed and a settlement-record is for the first time formed;

(3) a re-settlement, that is to say, a settlement subsequent to a first regular settlement, in which the revenue is re-assessed.

11. Whenever a district or other local area is to be put under settlement, the Chief Commissioner shall, with the previous sanction of the Governor General in Council, issue a notification of settlement.

Such notification shall—

(1) define the local area which is to be put under settlement;

(2) mention such of the officers by whom it is to be made as to the Chief Commissioner seems fit;

(3) declare whether surveys and plans are to be made, and whether the boundaries of villages and estates are to be adjusted.

The officers mentioned in such notification shall be called Settlement Officers, and the principal officer so mentioned shall be the officer in charge of the settlement.

12. The Chief Commissioner may, with the previous sanction of the Governor General in Council, from time to time,

amend the settlement notification, prescribe the order in which the Settlement Officers shall discharge their duties, or alter the duties to be discharged by them.

13. The Chief Commissioner may remove any of the Settlement Officers mentioned in the notification and appoint others to succeed them, or to act for them during their temporary absence.

14. Settlement-records hereafter to be made shall consist of the following documents:—

(1) Maps and measurement papers, showing the boundaries of the village, or place in respect of which the settlement is to be made, and the fields into which it is divided.

(2) A statement of the occupiers and owners of the fields specified in the said maps, and of the lands occupied or owned by them.

(3) A tender on behalf of the person or persons settled with to engage for the payment of the revenue during the term for which the settlement is made.

(4) A statement of the shares or holdings of the different persons settled with, and of the amount of revenue for which, as between each other, they are to be responsible; and a statement of persons holding lands free of revenue and of lands so held.

(5) A statement of the shares or holdings of the different subordinate holders, if any, and of the amount of rent for which, as between each other, they are to be responsible.

Statement of subordinate holdings.

(6) An abstract of the proceedings at the settlement, which shall contain a statement of all judicial decisions passed by the Settlement Officers in the course of the settlement, should such officers be invested with the special jurisdiction described in section twenty-six of the Oudh Civil Courts Act, 1871.

15. The Chief Commissioner shall, from time to time, describe the form, language, and contents of documents mentioned in the last preceding section, and the manner in which each shall be prepared, signed, and attested ;

Form, language, and contents of documents.

and may direct, either generally or in any particular case, other documents besides those so mentioned to be contained in the settlement-record.

16. Entries in the settlement record made or authenticated at a regular settlement in the manner prescribed by the Chief Commissioner shall be presumed to be true.

Authenticated entries in settlement record to be presumed true.

17. A settlement notified under section eleven shall be deemed to be in progress until sanctioned by the Chief Commissioner.

Sanction of settlement.

Such sanction may be either—

- (1) of the settlement-record, or
- (2) of the assessment, or
- (3) of the settlement-record and of the assessment.

The Chief Commissioner, on the report of the Commissioner that the operations of the settlement are complete, may, previous to the sanction of the assessment, direct that the settlement record be handed over to the Deputy Commissioner of the District.

18. The assessment or settlement-record may be revised, if the Chief Commissioner so directs, at any time before they are sanctioned respectively.

Revision of settlement-record.

19. When a settlement-record made in any district or other local area at the regular settlement has been sanctioned, it shall not be revised otherwise than as provided in Chapter IV. of this Act, until such district or local area is again put under settlement.

Time and manner of revision.

Nor shall it at such subsequent settlement be revised otherwise than by making new maps, surveys, or measurement, when the Chief Commissioner so directs, and by amending such of the documents of the settlement-record as depend thereon so as to accord with such new maps, surveys, or measurement; but not so as to alter any statement as to the share or holding or status of any person, except in the manner provided in Chapter IV.

20. Whoever considers that he is aggrieved as to any right of which he is in possession, by any entry not based on a judicial decision made in a settlement record, may, after such settlement-record has been sanctioned, but subject to such rule in regard to suits of this nature as may be prescribed by any law of limitation in force for the time being, bring a suit in a Civil Court for a declaration that such entry is incorrect, and that a different entry ought to have been made.

Suit for declaration that an entry is incorrect.

Every person interested in such entry shall be made a defendant in such suit.

A decree obtained in such suit shall be of the same effect as if the entry which it declares to be correct had been made originally in the settlement record.

21. Any Revenue Officer, and, in a district under settlement, any Settlement Officer, may by a notice in writing, require the person liable for the revenue of any village, estate, or field to erect or repair boundary-marks sufficient for defining the limits of such village, estate, or field;

Erection and repair of boundary-marks.

and if such boundary-marks are not so constructed or repaired within a period to be specified in the notice, such Revenue or Settlement Officer may cause boundary-marks to be so erected or repaired ;

and the cost of such erection or repair shall be recoverable from the persons liable for the revenue of such village, estate, or field, as if it were an arrear of land-revenue due in respect of such village, estate, or field.

The provisions contained in the former part of this section are also applicable to such villages or local areas as are or may be held revenue free.

22. Settlement Officers may issue commissions to take evidence, or for local investigations according to the provisions of the Code of Civil Procedure, and may, if empowered by the Local Government, refer any matter in dispute to arbitrators whether with or without the consent of parties.

Power to issue commissions to take evidence, or for local investigation, and to refer to arbitration.

The arbitrators to be appointed under this section shall exercise such powers, proceed in such manner, and their finding shall be liable to such appeal as the Local Government directs.

23. Settlement Officers shall have the same power to compel the attendance of all persons whom they believe to be able to give them information as to the matters into which they are empowered to inquire under sections eleven and fourteen, as the Judges of Civil Courts have to procure the attendance of witnesses under the Code of Civil Procedure ;

Power to compel attendance of witnesses.

and all persons who appear before such officers are bound to state the truth upon all such matters, and to produce such documents and other things as may be required of them.

24. Settlement Officers and the servants and workmen employed by them shall have the powers specified in the Land

Power to enter lands, to make surveys, &c.

Acquisition Act (X. of 1870), section four, for the purpose of making such plans and surveys as are directed by the notification prescribed by section eleven, and of collecting such information as to the quality and produce of the land as may be necessary to enable them to assess the revenue to be paid thereon.

25. Unless it is otherwise expressly provided in the settlement-record, What to be deemed to belong to owners of estates, all forests, unclaimed, unoccupied, deserted, or waste lands, quarries, spontaneous produce and other accessory interests in land shall be deemed to belong to the owners of the estate within the boundaries of which they are at such settlement included.

26. Mines of metal or coal and gold-washings shall, until the contrary is proved, be deemed to be the property of the Government. But if the Government works, or causes to be worked, any such mine, and thereby damages the surface of the soil, compensation for such damage shall be made to the owner of such surface in cases where the Government is not itself such owner.

Such compensation may be claimed, and shall be ascertained and awarded, as if the surface were acquired in accordance with the provisions of the Land Acquisition Act, 1870.

CHAPTER III.

ENGAGEMENTS FOR PAYMENT OF LAND-REVENUE.

27. When the land in respect of which a settlement is to be made is owned by one person, the settlement shall be offered to that person.

When such land is owned by several persons, the settlement shall be offered to such persons through their representatives.

When there are two classes of owners, superior and inferior, the settlement must be first offered to the superior; if he refuses the offer of the settlement, it shall be offered to the inferior.

28. When the officer in charge of the settlement has satisfied himself as to the amount at which an estate or a number of estates within a certain specified area should be assessed, he shall submit to the Commissioner a report of such amount and of the grounds on which it is computed and the Commissioner shall forward such report, together with his own opinion thereon, to the Chief Commissioner.

29. The Chief Commissioner shall give such instructions as he thinks fit to the officer in charge of the settlement, as to the terms on which the person with whom the settlement is to be made shall be permitted to offer to engage for the revenue,

and such officer shall inform such persons that they may make an offer on such terms, subject to the final sanction of the Governor General in Council,

30. If the persons with whom the settlement is to be made agree to make such offer, they shall become liable, from such date as may be fixed in the agreement, to the payment of the amount of revenue mentioned in the said offer, subject to the final sanction of the Governor General in Council.

31. If all the Village Headmen in a village community agree to make such offer, the community shall be bound by such agreement.

32. All the owners of land in an estate shall be jointly and severally liable for the payment of the whole amount of revenue assessed upon it, and to all the processes hereinafter prescribed for the collection of arrears of revenue.

33. If the persons, with whom the settlement is to be made, neglect or refuse to make such offer as is mentioned in section thirty, the officer in charge of the settlement may exclude such persons from their estate, and may make a settlement of such estate with any other persons, or may take the estate under direct management.

The period of such exclusion shall, in no case exceed the term of the settlement,

All persons so excluded shall be entitled to an allowance from Government, the amount of which shall be fixed by the Chief Commissioner but which shall not be less than five per cent., nor more than ten per cent., on the nett amount realized by Government from the land from which such persons are excluded.

34. If the term for which any settlement has been made expires before a new settlement is made, all persons who continue to occupy the land after the expiration of such term shall hold it upon the conditions of the expired settlement until a new one is made.

CHAPTER IV.

MAINTENANCE OF THE SETTLEMENT-RECORD.

35. When a settlement-record has been handed over to the Deputy Commissioner under the provisions of section seventeen, he shall, from time to time, record, or cause to be recorded, all facts affecting any matter stated in the settlement-record, which occur subsequent to the handing over to him of the settlement-record.

36. The Chief Commissioner shall make rules as to the facts to be so recorded, the manner in which, the person by whom, and the occasions on which, such facts are to be recorded, and as to the fees which are to be paid in respect of recording them.

37. The Chief Commissioner shall, from time to time, make rules as to the procedure to be followed in making or modifying settlements of

lands of which the revenue has been assigned and is resumed by Government,

lands affected by alluvion, diluvion, or other river action,

and other isolated portions of land.

Such rules may provide for any matters which may be provided for in a notification of settlement under section eleven, and the officers empowered by such rules to act as Settlement Officers shall have all the powers hereinbefore given to Settlement Officers.

CHAPTER V.

COLLECTION OF LAND-REVENUE.

38. The Chief Commissioner may, from time to time, make rules as to the instalments by which, and the places and times at which, the revenue payable in respect of any land shall be paid, and as to the mode in which notice as to such instalments, places, and times shall be given to the persons concerned :

until the Chief Commissioner otherwise directs, the practice as to these matters now observed shall continue.

Every person who has engaged to pay any portion of land-revenue shall pay the same at the place, and before sunset on the day, appointed by the Local Government in that behalf.

Any sum not so paid becomes thereupon an arrear of land-revenue, and the person who owes such arrear becomes a defaulter.

39. When an arrear of land-revenue has accrued, the Deputy Commissioner may issue a warrant ordering the defaulter to pay the amount within a time therein stated, and empowering an officer named in the warrant, in default of the arrear being so paid, to bring the defaulter to the tahsil at a date to be named in the warrant.

If the arrear be not paid, and if, on the day named in the warrant, the defaulter does not show satisfactory cause for extending the time for payment of the arrear, the Deputy Commissioner may direct him to be conveyed to his head quarters and there kept under personal restraint for ten days.

The Deputy Commissioner may empower any Tahsildár of his district to exercise the powers conferred by the first and second clauses of this section.

If the arrear be not paid within ten days, and no good reason for the non-payment is shown, the Deputy Commissioner may issue an order to the jailor of the civil jail of the district, directing him to confine the defaulter therein as a civil prisoner until the arrear is paid, or until the expiration of such period, not exceeding one year from the date of the order, as the Deputy Commissioner thinks fit; and such person shall be confined according to the terms of such order ;

and the Deputy Commissioner may order the attachment and sale of the moveable property of any such person, with the exception (in the case of an agriculturalist) of standing crops, instruments of husbandry, cattle actually employed in the cultivation of his land, or (in the case of an artisan) of his tools ;

or he may order either of the above processes to be enforced.

Every attachment and sale ordered under this section shall be conducted according to the law in force for the time being for the attachment and sale of moveable property under the decree of a Civil Court.

Wherever any of the processes provided in sections forty-two, forty-three, forty-eight, or fifty-two, has been enforced in respect of an arrear, the defaulter on account of whose arrear such process has been enforced shall, if he has been imprisoned under this section, be forthwith discharged.

40. No proceeding had, or process enforced, under section thirty-nine, shall be liable to be contested in any civil-court, unless the person aggrieved thereby denies that the amount of revenue claimed was due, and tenders security for any arrear in respect of which the process was issued, or which is due, or is likely to become due, before the termination of the suit, and for any costs arising out of the proceedings in the civil court.

In such case the court shall issue a precept to the Deputy Commissioner to discharge the prisoner from custody, but the court shall in no case interfere with any such attachment and sale of moveable property as aforesaid.

41. If any such process as is mentioned in section thirty-nine is taken against any person, he may pay the amount claimed under protest, and, upon such payment, the process shall be withdrawn, and the party against whom it was issued may sue the Government in any civil court for the amount so paid.

42. When an arrear of land-revenue has accrued, the Deputy Commissioner may, in addition to, or instead of, the processes hereinbefore specified, cause the land in respect of which the arrear has become due to be attached and taken under the direct management of any agent whom he appoints for that purpose.

The agent so appointed shall stand for all purposes in the position of the person on account of whose default the land was attached, and shall be bound by all the liabilities of such person to any subordinate proprietors or tenants with rights of occupancy,

and shall be entitled to manage the land attached, and to receive all rents and profits accruing on such land, to the exclusion of the person on account of whose default the land was attached,

until the arrears of land-revenue due therefrom have been satisfied, or until the Deputy Commissioner directs him to restore the person, whose interest has been attached, to the management thereof.

All surplus profits of the land attached, after defraying thereout the cost of such attachment and direct management, shall be applied on discharging the arrear, and any instalment of land-revenue that may become due during such management.

And no such management shall continue after the arrear of revenue on account of which it was ordered, together with any such instalment, has been discharged.

Termination of management.

43. If an arrear of land-revenue has accrued in respect of the share of any member of a village community, such community or any member thereof may tender payment of such arrear, or may offer to pay such arrear by instalments.

Transfer of share of defaulter to solvent co-sharers.

If such tender be made, or if the Deputy Commissioner considers such offer satisfactory, the Deputy Commissioner may transfer the share of the defaulting member to such community or member, on such terms as he considers equitable, either permanently or until such arrear is paid.

If more such members than one make such tender or offer, the one who is most nearly related to the defaulter, or who, in case of sale, would have a right of pre-emption, shall be preferred.

44. If such share is so transferred until the arrear is repaid, and if the arrear is not repaid, within twelve years, the community or member to whom the share has been so transferred may apply to the Deputy Commissioner to publish a notification that, if the arrear is not paid within one year from the date thereof, such transfer will become absolute.

The Deputy Commissioner may publish such notification accordingly, and if the arrear is not paid before the expiration of one year from the date of the notification, the transfer to such community or member shall become absolute.

45. The provisions contained in the two preceding sections in favour of members of a village community shall extend to mortgagees and other persons having incumbrances on the land on which the arrear is due, in case neither the community nor any member thereof take action under the said provisions.

46. The procedure prescribed in the three preceding sections shall not affect the joint and several liability of the members of the community in whose village it is enforced.

47. When any arrear of land-revenue remains unpaid for more than one month, the Deputy Commissioner, in addition to or instead of any of the processes hereinbefore provided, may, with the previous consent of the Chief Commissioner, cause to be published upon the

estate in respect of which such arrear is due, a notification that, unless the arrear is paid within fifteen days from the date thereof, the settlement made in respect of such estate or in respect of any portion thereof, and all liens, beneficial leases or other incumbrances, whether protected by a decree of a civil court or not, made by the defaulter or any person through whom he claims, affecting such estate or portion will be liable to be cancelled.

A copy of such notification shall be posted at the tahsil, and be served on the defaulter and each of the Village Headmen of the estate in respect of which the arrear has accrued.

48. If such arrear of land-revenue is not paid within fifteen days from the date of the notification, the said settlement shall, and all liens, beneficial leases or other incumbrances as aforesaid made by the defaulter or any person through whom he claims affecting the land in such estate or portion of an estate may, as hereinafter provided, be cancelled;

and the Deputy Commissioner, with previous consent of the Commissioner, may either appoint an agent to manage the land, or may let it for such period not exceeding fifteen years, from the date of the letting, and on such conditions as to security and otherwise, as the Deputy Commissioner thinks fit;

and the lessee may, during such period, either occupy the land himself or sub-let the same to such persons on such terms as he may think proper:

Provided that, in every case in which the provisions of this section are enforced, no lease of any of the lands in the cultivating occupancy of the defaulter shall be made to any other person, till the said lands have been first offered to such defaulter at the rent, which would be payable thereon by a tenant with a right of occupancy; and such defaulter shall, if he accept the offer of the lease, be deemed, in the absence of express agreement to the contrary, to hold as tenant with right of occupancy.

A cancellation under this section shall not affect any person, other than the defaulter or his representatives, having in such estate, an interest which existed on the thirteenth day of February 1856.

49. All liens, beneficial leases, or other incumbrances made by the defaulter or any person through whom he claims shall be cancelled if the incumbrancer declines to pay a rent equal to the Government revenue due on the land subject to such lien or lease, plus twenty-five per cent, or (where there are more incumbrances than one) a proportionate share of such rent and percentage:

Provided that when the estate is restored to its owner, all liens, beneficial leases, or other incumbrances as aforesaid shall be revived.

50. If the share of any member of a village community is let under the provisions hereinbefore contained, to any person other than a member of the village community,

Farmer of share in village community when not liable for revenue of other shares.

such person shall not, during the term of his lease be liable for the land-revenue due in respect of the other shares in the village community; and if such person is a member of the village community, he may, if the Chief Commissioner so direct, be freed from joint liability in respect of such share.

51. When an arrear of revenue cannot be recovered by any of the Attachment of interest of defaulter in other land. processes hereinbefore described, the Deputy Commissioner may, with the previous sanction of the Chief Commissioner, order the attachment, under section forty-two, of any beneficial interest to which the defaulter is entitled in any other land, and may apply the provisions of that section to such land, until the arrear is satisfied.

52. If the Deputy Commissioner is of opinion that an arrear of land-revenue cannot be recovered by any of the means hereinbefore mentioned, he may, with the previous sanction of the Commissioner, sell by auction—

any land in respect of which such arrear has accrued, or any portion or share of such land; or the interest in any land other than that in respect of which such arrear has accrued, or in houses to which the defaulter is entitled.

When house or land may not be sold. But no land or house shall be liable to be sold under this section,

(a) if the land on which the arrear has accrued is subject to the Court of Wards, or held under the provisions of the Oudh Taluqdars' Relief Act, or is so circumstanced that the Court of Wards might exercise jurisdiction over it; or

(b) if the land is under attachment under this Act, and the arrear has accrued during such attachment; or

(c) if the land is held in farm under this Act by a person who is not a member of the village community within whose estate such land is situated, and the arrear has accrued during the term for which it is so held in farm,

53. Land in respect of which the arrear has accrued sold under the last preceding section shall be sold free of all incumbrances, and all contracts made by any person in respect of such land shall become void as against the purchaser:

Provided that in every case of a sale of land or an interest in land under this Act, the owner of such land shall be deemed to be a tenant with a right of occupancy under the provisions of Act No. XIX, of 1868 (The Oudh Rent Act), in respect of the lands in his cultivating occupancy at the time of such sale.

54. In all sales under section fifty-two, the procedure to be followed in sale. procedure provided by sections two hundred and forty-nine, and two hundred and fifty-three to two hundred and sixty, inclusive, of the Code of Civil Procedure, shall be followed, except in the following particulars:—

(1) The defaulter may pay the arrear in respect of which the land is to be sold at any time before the day fixed for the sale, and upon such payment the sale shall be stayed.

(2) The proclamation of intended sale provided in the said section two hundred and forty-nine shall, in respect of land on which the arrear has accrued, declare that the land is to be sold free of every incumbrance, except the land-revenue and other legal charges to which it may be, from time to time, assessed.

(3) The appeal provided in section two hundred and fifty-seven of the said Code shall lie to the Commissioner of the Division.

(4) The certificate provided in section two hundred and fifty-nine of the said Code shall, in respect of land, on which the arrear has accrued, state that the purchaser has purchased the land, to which the certificate refers, free of every incumbrance, except the land-revenue and other legal charges to which it may be, from time to time, assessed.

55. A suit may be brought in a civil court to set aside any such sale on any ground on which a sale under the Code of Civil Procedure might be set aside; but not in any of the following grounds:—

(1) that a tender of the arrear of land-revenue, on account of which such sale took place, was made on or after the day named for the sale in the proclamation of intended sale;

(2) that the defaulter had any claim against the Government;

(3) that the revenue due from the defaulter had been remitted, unless the Chief Commissioner admits the remission;

(4) that money belonging to the defaulter, and sufficient to satisfy the whole or any part of the arrear, was in any Government-treasury, unless the defaulter had an exclusive and undisputed property therein, and unless, after the application by the defaulter within the time specified in the notification of intended sale that such money should be applied to the satisfaction of the arrear, the Deputy Commissioner neglected or refused upon insufficient grounds so to apply it; or

where land is sold for an arrear of revenue due in respect thereof,

(5) that the land sold does not belong to the defaulter.

56. The proceeds of any sale under section fifty-two shall be applied as follows:—

(1) to the payment of the arrear due;

(2) to the payment of any other arrear of land-revenue due by the same person;

and the surplus shall be paid to the person whose land has been sold; or, if the land sold were held in shares, then to the co-sharers collectively, or according to the amount of their respective interests, at the discretion of the Deputy Commissioner.

57. Such surplus shall not be payable to any creditor of the person whose land has been sold on demand of such creditor, nor shall it be retained in the land-revenue

treasury, except under order of a civil court and in satisfaction of a decree of such court; and whenever such surplus has been paid to the creditors of the owner of any land under an order of such court and the sale of such land is afterwards annulled, such owner shall not be restored to possession, until the amount so paid is returned by him with such interest as the Deputy Commissioner directs.

58. The person named in the certificate of title as purchaser shall be liable for all instalments of land-revenue, which may fall due subsequently to the date of the certificate.

59. The provisions of this chapter shall apply to all arrears of land-revenue due at the passing of this Act.

CHAPTER VI.

MISCELLANEOUS.

60. Deputy Commissioners may exercise all or any of the powers herebefore provided for the recovery of land-revenue, for the recovery of any other revenue due from any person to the Government.

Limitation of jurisdiction of civil courts.

61. No civil court shall take cognizance of any of the following matters,—

- (1) claims against Government brought by any person in respect of any matter connected with the offices mentioned in section six;
- (2) the formation of the settlement-record, the preparation, signing and attestation of the documents contained therein, or the notification of an intended settlement;
- (3) the right of any person or persons to be settled with, or the validity of any engagement with Government for the payment of land-revenue;
- (4) claims arising out of or connected with the collection of land-revenue, or any process enforced on account of neglect or refusal to engage, or on account of an arrear of land-revenue, except where it is otherwise expressly provided in this Act.

In all the above cases an appeal shall lie to the Deputy Commissioner from all orders and decisions of any officer subordinate to him; and to the Commissioner from all orders and decisions, original or appellatè, of the Deputy Commissioner; and to the Chief Commissioner from all orders and decisions of the Commissioner.

The Chief Commissioner shall have power to call for the record of any proceeding had under this section by any Revenue or Settlement Officer, and to pass such order thereon as he thinks fit.

Such proceedings shall be conducted according to the rules prescribed by the Local Government.

62. The Chief Commissioner may from time to time with the previous sanction of the Governor General in Council, make

and issue rules consistent with this Act, and relating to the following matters:—

- (1) the proceedings of any officer or other person who, under any provision of this Act, is required or empowered to take action in any matter;
- (2) the cases in which, the officers to whom, and the conditions subject to which, orders and decisions given under this Act, and not expressly provided for as regards appeal, shall be appealable;
- (3) the person by whom, the time, place, and manner at or in which, anything for the doing of which provision is made in this Act shall be done;
- (4) the amount of any fine to be imposed or charge to be made under the provisions of this Act;
- (5) the form and contents of reports to be furnished by officers required or empowered to take action in any matter, and the period within which such reports shall be so furnished;
- (6) and generally to carry out the provisions of this Act.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

63. All rules having the force of law made under this Act shall, with the previous sanction of the Governor General in Council, be re-published once at least every year, and, upon such re-publication, shall be arranged in the order of their subject-matter; and all such alterations or amendments as may have been made in the course of the preceding year, or may have become necessary or advisable, shall be embodied therewith; and upon such re-publication all previous rules made under this Act, shall be repealed.

All rules heretofore prescribed by competent authority, in respect of any of the matters for which rules may be made under this Act, shall remain in force for six months after this Act comes into force, unless any rules on the same subject are previously issued by the Chief Commissioner.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to consolidate and define the law regulating the settlement and collection of land-revenue in Oudh, which in most respects, have hitherto been conducted in conformity with the system followed in the Panjáb.

The Bill (which has been prepared by the Officiating Chief Commissioner) follows, for the most part, the Panjáb Revenue Act XXXIII. of 1871; but, besides making several desirable amendments in drafting, it has been found necessary to deviate substantially from that Act in certain respects. These are mentioned in the following extract from the letter covering the draft Bill:—

“A clause has been added to section two of the Panjáb Act to include those grades of revenue officers whose appointment and duties are mentioned in the immediately following sections; and

the wording of section four of the Panjáb Act has been altered so as to bring it into accord with section six, Act XXXII. of 1871 (the Oudh Civil Courts Act).

"The second clause of section six of the Panjáb Act (section six of the Oudh Bill) is not sufficient in Oudh. In the Panjáb the Patwári, once appointed, is responsible to the Deputy Commissioner for the performance of his duty. In Oudh Patwáris are the private servants of the land owners, and it is necessary to hold the landowners primarily responsible for the punctual submission of such returns as the Government requires.

"In section seven of the Bill occurs one of the main alterations of the Panjáb Land Revenue Act. These I may here shortly describe. They are (1) the substitution throughout the Bill of the expression 'settlement-record' for 'record of rights'; (2) the restriction of revision of settlements to cases in which there is a revision of assessment; (3) the dispensing, in future revisions, of settlement with the statement of village customs; and (4) a modification of the sections which contain the provisions relating to sequestration of profits.

"As regards the substitution of the term 'settlement record' for 'record of rights, which first occurs in section ten of the Bill now submitted, I am to explain that, in ordinary official language, the term record of rights has heretofore been almost entirely confined to the administration paper. It has on some occasions been applied to the document known as Statement No. III.—a statement defining the extent of the right and interest of the several shareholders of an estate. But it has never been used in the enlarged sense given to it in the Panjáb Revenue Act, where it stands for the settlement, misl. or record. Section fourteen of the Panjáb Revenue Act details the documents of which 'records of rights' are to consist. Amongst these are the village field map, the village field book, and the tender of engagement on behalf of the persons settled with. The Officiating Chief Commissioner submits that not one of these documents can, without straining the ordinary meaning of the words, be termed a record of rights. They all necessarily form a part of the settlement, scheme, or record, and it appears, therefore, to Sir George Couper that the term 'settlement-record' more appropriately describes the documents referred to, than the expression 'record of rights.'

"Passing to the second main modification, I am to observe that section ten of the Panjáb Act defining the several kinds of settlement, declares that a re-settlement is a settlement subsequent to a first regular settlement, in which either the revenue is re-assessed, or the record of rights is revised, or in which both these processes are conducted. The Officiating Chief Commissioner would submit that there should be no revision of records unaccompanied by a revision of assessment. The law provides for the preparation of a very detailed record of all rights and customs connected with the land. Provision is also made for the maintenance of these records in accord with existing facts (Chapter IV.); and Sir George Couper would deprecate any provision in the Bill which might be held to contemplate the neglect of a portion of the law and the possible necessity of employing an especial staff of officers to do what the law declares shall be done as occasion arises. The Government of India is well aware that the

evils attendant on a general revision of records are very great. Hopes are aroused or revived that long dormant claims will be listened to, that a new policy will be introduced, and that rights barred by limitation will, in some way or another, be resuscitated. Animosités are fostered, a sense of uncertainty and disquiet generally prevails, and the result is an amount of disappointment and heart-burning, prejudicial to the satisfactory administration of the province.

"In fact, the Officiating Chief Commissioner would deprecate a revision of records at any time subsequent to their preparation other than in the manner contemplated in Chapter IV., viz., the mutations required from time to time to render the records accurate registers of existing facts; and he is of opinion that any such course, even when the assessments are being revised, extending beyond what is absolutely necessary for a revision of the assessment, had better be avoided. The modifications made in Chapter II. will be found to be based on this principle.

"I am to add that, should it at any time be necessary or desirable to give settlement officers judicial powers, the Chief Commissioner has authority to invest them with these under section twenty-six, Act XXXII. of 1871.

"In the notification mentioned in section eleven, it is unnecessary, in Oudh, to specify whether a future settlement is a summary settlement, a first regular settlement, or a re-settlement in the words of the Panjáb Act. The summary settlement of the entire province was completed in 1858-59; the first regular settlement is also now very nearly finished. Clause 3 of section eleven, Panjáb Act, and the part of clause four, and in the case of a first regular settlement, have, therefore, been omitted from the draft.

"The third alteration of importance is in section fourteen, where it is proposed that in future settlements no administration paper shall be prepared. The Officiating Chief Commissioner appeals with confidence to the experience of all officers engaged in the administration of the country in confirmation of his opinion, that these documents seldom accurately describe the prevailing customs. If customs really prevail, the fact of their existence can be substantiated whenever occasion may require. If any doubt exists as to the prevalence of a custom, the record of its existence in a document of this kind may do more harm than good. It would be far preferable in Sir George Couper's opinion to employ a staff to look through the judicial decisions of a particular district, and ascertain the customs judicially determined to exist, than to throw away money on the preparation of documents which are notoriously inaccurate, and which carry with them no judicial sanction.

"In lieu of this clause, one has been entered requiring statement of the responsibilities of subordinate holders, where these exist. In the present settlement this record has been prepared throughout the province, and is as necessary in Oudh as the general statement of shares of the different persons directly settled with. The last part of clause two of this section has been omitted, as the khusrah, the record to which the clause refers does not give information as to the terms on which the fields are occupied, nor is it intended that it should do so.

"In section sixteen the first sentence of the Panjáb Act has been omitted. Provision to that effect has been made by section twenty-six of the Oudh Civil Courts Act, which also covers the omission in section seventeen made in the present Act.

"In section nineteen provision has been made for the continuous maintenance of the settlement record, so far as it is a record of rights, and for limiting a settlement to the proper duty of the resurvey and re-assessment of the land.

"In section twenty it has not been considered necessary to make Government a party to every suit brought by a person aggrieved by an entry in the settlement-record. If the Government is properly the defendant, the plaintiff will make it defendant. The proviso to this section does not apply in Oudh. Nor does section twenty-one of the Panjáb Act.

"In section twenty-one of the Oudh Bill, which corresponds to section twenty-two of the Panjáb Act, it has been considered advisable to add a clause, extending to revenue-free villages the provisions as to erection and repair of boundary marks, which, under the original section, are apparently applicable in revenue-paying villages only.

"Sections twenty-seven and twenty-eight of the Panjáb Act have been omitted. The separation and disposal of the Oudh forests and wastes has been completed.

"In section thirty of the Panjáb Act, it is directed that settlement may be made at the option of the Financial Commissioner, either with the superior or the inferior holder, when a double tenure exists. According to the rules in force in Oudh, this option is not given, and the section has been amended in the draft accordingly. (Section twenty-seven.)

"In section thirty-one of the Panjáb Act, as adopted in the draft, a clause has been inserted to permit of the proposed assessments being reported for an entire pargana at a time.

"The last clause of section thirty-two of the Panjáb Act has been amended in the draft, the sanction of the Supreme Government being required to the settlements in Oudh.

"The last clause of section thirty-three and the whole of section thirty-four of the Panjáb Act have been omitted from the draft. The preliminary instructions of the Chief Commissioner, and the proviso requiring the sanction of the Government of India appear to the Officiating Chief Commissioner to be checks on the propriety of the offer of engagement, which are amply sufficient. With the assistance given by section thirty-seven of the Act, section thirty-four seems superfluous. The reference to section thirty-three (in section thirty-seven of the Panjáb Act) is omitted in the corresponding section of the draft sections thirty-five and thirty-six of the Panjáb Act, numbered as sections thirty-two and thirty-one of the Oudh Bill, respectively, have been transposed, the order proposed in the Oudh Bill appearing the more natural.

"In section thirty-nine of the Bill, the words of section forty-three of the Panjáb Act have been departed from only to include standing crops in the property excepted from attachment. This has been done on the advice of one of the most experienced officers of the Commission. The attachment of standing crops is a constant source of disputes, which are difficult of decision by an authority at a distance; and in the delay and doubt the value of the measure, as an incentive to the prompt payment of revenue, is, to a large extent, lost.

"With reference to the sections dealing with the process commonly known as sequestration of profits (sections fifty-one to fifty-three of the Panjáb Act both inclusive), the Officiating Chief Commissioner submits that the wording of these sections as they stand in the Panjáb Act is somewhat vague. The word 'estate' bears a certain definition under the Act, but the word 'land' has not been particularly defined. Yet the two words are so intermingled in these three sections, that their purport is rendered vague and indefinite. The Officiating Chief Commissioner has endeavoured to modify the wording of these sections so as to render them more precise, and, at the same time, to suit their provisions to the requirements of this province. In lieu of the word 'contracts' it is proposed to insert the words 'lines, beneficial leases, or other incumbrances,'—an expression imported from the Oudh Rent Act. It is proposed that such liens shall be liable to cancellation, whether protected by a decree of Court or not. The fact is, that, in the eastern districts of Oudh, a peculiar kind of mortgage is very prevalent, under which the mortgagor, on receipt of a consideration, makes over to his mortgagee certain lands at a quit-rent, such rent being, in many instances, less than the amount of revenue due to Government on account of the said lands. These mortgagees have frequently protected themselves by decree of Court; but it is manifest that the Government is not bound to recognize any transaction which imperils its revenue. The Officiating Chief Commissioner has, therefore, endeavoured to word these sections so as to protect the Government revenues, and at the same time secure the mortgagees in the enjoyment of such rights as do not militate against the State's interests.

"In section fifty-two of the Panjáb Act (section forty-eight of the Bill) a clause has been inserted in accordance with the old regulation, directing that no farm under the section shall be made for a longer period than fifteen years. The proviso to this section has been materially altered. Its phraseology has been slightly changed to render the meaning clearer. But, further, the proviso, as it stands in the Act, does not state at what rate of rent the lease of the lands in his cultivating occupancy shall be offered to the defaulter, and it closes with a declaration that he is in respect of these lands a mere tenant-at-will. The result of this is, that, unless carefully protected by the terms of the lease granted to him by the Deputy Commissioner, the defaulting owner may, after one year's occupation, be wholly ejected by the farmer to whom the estate may have been let under the first clause of the section. This seems to the Officiating Chief Commissioner a terrible punishment for the imprudence which

ordinarily leads to default, even of the more serious sort; and he has proposed an amendment, which is in accordance with the present practice, and which not only leaves the defaulter a right of occupancy in the lands of his home farm, but gives him it at a rent slightly easier than that of a tenant-at-will. In a case of determined contumacy (and such cases must be very rare when affairs have arrived at the point of a cancelment of settlement), the Deputy Commissioner has still the power, under the amended section, of arranging that the defaulter shall be for the future a tenant-at-will. In the last clause the date of the annexation has been entered in room of the vague date given in the Panjáb Act.

"In section fifty of the Bill, the words 'and several,' which occur in the last line of section fifty-four of the Panjáb Act, have been struck out. It has been pointed out that we relieve the farmer only from his joint responsibility, not from responsibility for the individual share which he holds.

"As no arrears of land-revenue accrue to Government in Oudh from houses, the Officiating Chief Commissioner thinks section fifty-six of the Panjáb Act may be more correctly expressed in the form in which it appears in the draft.

"As regards section fifty-seven of the Panjáb Act, the Officiating Chief Commissioner is not of opinion that any property, except that in respect of which the arrear has accrued, should pass in sale free of all incumbrances, and has so far amended the section in his draft; and he has added a proviso securing to the proprietor, whose lands have been sold, the privilege which has been given by the

Bill in cases of cancelment of settlement, that of holding the lands of his home farm on the terms of a tenant with a right of occupancy.

"Section two hundred and fifty-seven of the Civil Procedure Code declares final the decision in appeal on an objection to the regularity of a sale by order of Court, and there seems no reason for giving a special appeal under this Act. Section fifty-eight of the Panjáb Act has been amended accordingly in the corresponding Section (fifty-four) of the present Bill.

"The Partition Act, XIX. of 1863, debars from the cognizance of the Civil Courts suits connected with partition, and clause two, section sixty-five of the Panjáb Act, has been omitted from the Oudh Bill. Further, the fees provided for in the last sentence of that section, are provided for, when necessary, by the Court Fees Act, that sentence has also been omitted."

It is hoped that this Bill may become law simultaneously with a Bill to declare what laws are in force in Oudh. The written laws of that Province, which are now in a state of great obscurity and confusion, will then have been simplified as much as can reasonably be desired.

(Signed) J. STRACHEY.

SIMLA;

The 25th September 1872.

WHITLEY STOKES,

Secretary to the Government of India.