




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## PART IV.

### ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd July 1868, and is hereby promulgated for general information:—

**Act No. XIX. of 1868.**

#### THE OUDH RENT ACT.

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*An Act to consolidate and amend the Law relating to Rent in Oudh.*

WHEREAS it is expedient to consolidate and amend the law relating to rent in Oudh and to other matters connected therewith; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

Short title and extent of Act. 1. This Act may be cited as "The Oudh Rent Act," and shall extend only to Oudh,

2. All laws, orders having the force of law and rules in force in Oudh, inconsistent with any of the provisions of this Act, are repealed.

Interpretation clause.

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

"Oudh" means the territories under the administration of the Chief Commissioner of Oudh at the time of the passing of this Act.

"Oudh."

"Court."

"Court" means any judicial officer presiding in a Court of revenue for the disposal of matters under this Act:

"Suit."

"Suit" means a suit under this Act.

"Assistant Commissioner."

"Assistant Commissioner" includes an Extra Assistant Commissioner.

"Land" applies only to land assessed to the revenue, and includes land whereof the revenue has been assigned by Government: it also includes the ungathered produce of land, whether spontaneous or otherwise, and whether growing in earth or water.

"Land."

"Revenue."

"Revenue" means the money payable to the Government on account of land.

"Rent."

"Rent" means the money or the portion of the produce of land, payable on account of the use or occupation of land, or on account of the use of water for irrigation:

"Proprietor" does not include an under-proprietor. Where there are two private rights of property, one superior and the other subordinate, in the same land, "proprietor" means the holder of the superior right only:

"Proprietor."

"Proprietary right" means a proprietor's right in land:

"Under-proprietor" means any person possessing a heritable and transferable right of property in land for which he is liable to pay rent:

"Under-proprietor."

"Under-proprietary right" means an under-proprietor's right in land:

"Tenant" means any person, not being an under-proprietor, who is liable to pay rent:

"Tenant."

"Landlord" means any person to whom an under-proprietor or tenant is liable to pay rent:

"Landlord."

"Representative" means any other person taking by operation of law or by will a beneficial interest in the property of a deceased person. It includes the guardian of a minor and the legal curator of a lunatic or idiot: and

"Representative."

"Lumberdár" means any person who has executed an engagement for the payment of the revenue to Government, or for the payment to a landlord of the rent due from under-proprietors holding a sub-settlement.

"Lumberdár."

4. Nothing in sections 19, 20, 21, 22, 23, 24, 25, and 28 shall affect the terms of any agreement in writing heretofore or hereafter entered into respecting the subject-matter of the said sections respectively.

Nothing in the Index to this Act shall be deemed to have the force of law.

## CHAPTER II.

### OF CERTAIN RIGHTS AND LIABILITIES OF LANDLORDS, UNDER-PROPRIETORS, AND TENANTS.

#### *Right of Occupancy.*

5. Tenants who have lost all proprietary right, whether superior or subordinate, in the lands which they hold or cultivate, shall, so long as they pay the rent payable for the same according to the provisions of this Act, have a right of occupancy under the following rule:—

#### *Rule.*

Every such tenant, who, within thirty years next before the thirteenth day of February 1856, has been, either by himself, or by himself and some other person from whom he has inherited, in possession as proprietor in a village or estate, shall be deemed to possess a heritable but not a transferable right of occupancy in the land which he cultivated or held in such village or estate on the twenty-fourth day of August 1866: Provided that such land has not come into his occupation, or the occupation of the person from whom he has inherited, for the first time since the said thirteenth day of February 1856: Provided also that no such tenant shall have a right of occupancy in any village or estate in which he or any co-sharer with him possesses any under-proprietary right.

Nothing contained in the former part of this section shall affect the terms of any agreement in writing hereafter entered into between a landlord and tenant.

6. If a tenant having a right of occupancy be ejected, in accordance with the provisions of section 41, from the land in which he possesses such right, he shall thereupon lose his right of occupancy in such land.

#### *Tenants' Right to Leases.*

7. Every tenant is entitled to receive from his landlord a lease executed by him, and containing the following particulars:—

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

The term for which the lease is granted:

The amount of rent payable:

The instalments in which and the times at which the same is to be paid:

Any special conditions of the lease:

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

8. Tenants having a right of occupancy are entitled to receive leases at rates of rent determined in accordance with the provisions contained in sections 32, 33, and 34.

9. Tenants not having a right of occupancy are entitled to leases only on such terms as may be agreed on between them and the landlord.

Lease to which tenant not having right of occupancy is entitled.

#### *Landlords' Right to Counterparts.*

10. Every landlord who grants a lease is entitled to receive from the tenant a counterpart executed by him.

Landlord entitled to counterparts.

#### *Cancelment of Leases.*

11. When any landlord or any tenant not having a right of occupancy fails to perform or observe any of the stipulations contained in the lease, such lease shall be liable to be cancelled by a decree.

If after such decree, the ejection of the tenant is postponed in accordance with the provisions of section 38, he shall be liable, so long as he remains in occupation of the land comprised in the lease, to pay the rent reserved thereby.

#### *Arrears of Revenue or Rent.*

12. Any instalment of revenue or rent which is not paid on or before the day when the same becomes due, whether under a written agreement or according to law or local usage, shall be deemed to be for the purposes of this Act an arrear of revenue or rent as the case may be.

Provided that, unless the proprietor and under-proprietor shall have otherwise agreed in writing, the rent payable to the former by the latter shall be held to become due one month before the date fixed for the payment of the revenue on account of the village in which the land in respect of which such rent is payable is situate, and to be payable in the same number of instalments as the said revenue; and the amount of each instalment of such rent shall bear the same proportion to the whole of such rent payable for the year as the amount of each instalment of such revenue bears to the whole of such revenue payable for the year.

#### *Receipts.*

13. Receipts for rent and acknowledgments of the tender of rent shall specify the year or years on account of which it has been paid or tendered; and any refusal to make such specification shall be held to be a withholding of a receipt or acknowledgment.

If such receipt or acknowledgment is withheld from any under-proprietor or tenant without sufficient cause, he may recover compensation from the landlord not exceeding the amount so paid or tendered.

#### *Deposit of Revenue or Rent in Court without Suit.*

14. If any co-sharer, under-proprietor, or tenant having a right of occupancy, or holding under an unexpired lease or under an agreement or decree shall, at the place where the revenue or rent of the land held or cultivated by him is usually payable, tender to the person authorized to receive the same payment of the full amount of such revenue or rent due in respect of such land, and if such amount is not accepted, and a receipt in full forthwith granted, it shall be lawful for the co-sharer,

Power to pay into Court, without suit brought, amount of revenue or rent due.

under-proprietor, or tenant, without any suit having been instituted against him, to deposit such amount in Court to the credit of the person authorized to receive it.

Such deposit shall, so far as regards the co-sharer, under-proprietor, or tenant, and all persons claiming through or under him, operate as a payment then made to the lumberdár or landlord of the amount so deposited.

15. The Court shall receive such deposit on the written application of the co-sharer, under-proprietor, or tenant, or his recognized agent: the application shall bear a stamp of eight annas; and on such co-sharer, under-proprietor, tenant, or agent, making a declaration in the form set forth in Schedule A hereto annexed, or as near thereto as circumstances will admit, the Court shall give him a receipt for the deposit.

Such declaration shall be verified in the manner prescribed for the verification of plaints in the Code of Civil Procedure, and the provisions of section 24 of the said Code shall apply to the person making the verification.

Upon receiving the money so deposited, the Court shall issue to the person to whose credit it has been deposited a notice in the form set forth in Schedule B hereto annexed.

Such notice shall be served by the proper officer without the payment of any fee, upon the person to whom it is addressed or upon his recognized agent.

In the absence of any such agent, it may be served by putting up a copy of the same at the Court-house, and another copy at the ordinary place of residence within the jurisdiction of the Court of such person, or if there be no such place, at the place where the revenue or rent is usually paid to the lumberdár or landlord, as the case may be, for the land in respect of which the money has been deposited.

If the person on whom such notice is served or his recognized agent appears and applies that the money in deposit be paid to him, it shall immediately be paid accordingly.

16. Whenever a deposit has been made under the provisions of this Act, no suit shall be brought against the depositor or his representative on account of any revenue or rent which accrued due in respect of the land last hereinbefore mentioned prior to the date of the deposit, unless such suit is instituted within six months from the date of the service of the notice mentioned in section 15.

17. If, at the time of passing the decision in any such suit, the Court is satisfied that the full amount of revenue or rent due at the time of the deposit was tendered to, and was not accepted by, the lumberdár or landlord or his recognized agent, as the case may be, or that a receipt or acknowledgment was withheld for such amount without sufficient cause, the Court may award to such depositor compensation from the lumberdár or landlord, not exceeding the amount so paid or tendered.

If the Court be satisfied that the amount of the deposit was less than the amount of revenue or rent due, the Court shall pay the amount of the deposit to the lumberdár or landlord, and shall make a decree for the balance due by the depositor.

#### *Illegal Enforcement of Payment of Rent.*

18. If payment of rent or of any sum in excess of the rent legally claimable is illegally enforced, and any under-proprietor or tenant institutes a suit to recover compensation for such enforcement, the Court may award to him compensation not exceeding the sum of Rupees two hundred, in addition to any amount for which it makes a decree in respect of such payment.

An award of compensation under the former part of this section shall not bar any prosecution to which the person enforcing such payment may be liable under any law for the time being in force.

#### *Abatement of Rent.*

19. No suit for an abatement of rent shall be brought by any under-proprietor or tenant, except on the ground that the area of the land has been diminished by diluvion, or on some ground specified in any lease, agreement, or decree under which he holds:

Provided that, if the under-proprietor hold a sub-settlement in a revenue-paying estate, no such abatement shall be allowed to the under-proprietor unless a remission of revenue has been allowed on the same ground, and by competent authority, in the same estate.

#### *Remission of Rent.*

20. Notwithstanding anything contained in sections 19, 35, and 36, the Court, in making a decree for an arrear of rent may allow such remission from the rent payable by any under-proprietor or tenant as appears equitable, if the area of the land in his occupation has been diminished by diluvion or otherwise, or if the produce of such land has been diminished by drought or hail, or other calamity beyond his control, to such an extent that the full amount of rent payable by him cannot, in the opinion of the Court, be equitably decreed:

Provided that, if the under-proprietor hold a sub-settlement, or if the tenant hold a lease for a term of not less than five years or have a right of occupancy in a revenue-paying estate, no such remission shall be allowed to him unless a remission of revenue shall have been allowed on the same ground, and by competent authority, in the same estate.

#### *Relinquishment of Land.*

21. Every tenant shall continue liable for the rent of the land in his holding, unless on or before the fifteenth day of May in any year he gives notice to the landlord or his recognized agent of his desire to relinquish such land, and relinquishes it accordingly, or unless it has been let to any other person by such landlord or agent:

If the landlord or his recognized agent refuse to receive such notice, the tenant may apply to the tahsildar or proper officer, and written notice of such desire shall thereupon be served on such landlord or agent, and the tenant shall pay the costs of service.

The notice shall, if practicable, be served personally on the landlord or agent. But if he cannot be found, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the land is situate, at the *chaupál* or other conspicuous place in the village wherein the land is situate.

#### Compensation for Tenants' Improvements.

22. If any tenant, or the person from whom he has inherited, make any such improvements on the land in his occupation as are hereinafter mentioned, the rent payable by him or his representative shall not be enhanced, nor shall he or his representative be ejected from the same land unless and until he or his representative, as the case may be, has received compensation for the outlay, in money or labour, or both, expended in making such improvements, by him, or the person from whom he has inherited, or whom he represents, within thirty years next before the date of such enhancement or ejection.

23. The word "improvements," as used in section 22, means works by which the annual letting value of the land has been, and, at the time of demanding compensation continues to be, increased, and comprises—

1st.—The construction of works for the storage of water, for the supply of water for agricultural purposes, for drainage, and for protection against floods; the construction of wells; the reclaiming and clearing of waste lands and jungles; and other works of a like nature;

2nd.—The renewal or reconstruction of any of the foregoing works, or such alterations therein or additions thereto, as are not required for maintaining the same, and which increase durably their value.

24. Such compensation may, at the option of the landlord or his representative, be made—

(1.)—By payment in money;

(2.)—By the grant of a beneficial lease of the land by the landlord or his representative to the tenant or his representative; or

(3.)—Partly by payment in money and partly by the grant of such lease as aforesaid.

25. In case of difference as to the amount or value of the compensation tendered, either party may present on application to the Court, on a paper bearing a stamp of eight annas, stating the matter in dispute, and requesting a determination thereof.

On receiving such application the Court shall cause notice thereof to be served on the other party, and, after taking such evidence as the parties or either of them may adduce, and after such further inquiry (if any) as it may deem necessary, determine (as the case may be) the amount of the payment or the terms of the lease, or both.

In determining such amount the Court shall take into account any assistance given by the landlord, either directly in money, material, or labour at the time of making such improvements, or indirectly by subsequently allowing the tenant to hold at a rate of rent more favourable than the rate at which he otherwise would have held.

The proceedings on any such application shall be deemed to be a suit for the purposes of chapter six (as to reference to arbitration) of the Code of Civil Procedure, and of section nine of Act No. XXIII. of 1861, (to amend Act VIII. of 1859.)

26. If in any case a landlord tenders to a tenant a lease of the land in his occupation, for a term of not less than twenty years from the date of the tender, at the annual rent then paid by the tenant, or at such other annual rent as may be agreed upon, such tender, if accepted by the tenant, shall bar any claim by him or his representative in respect of improvements previously made on such land by the tenant or the person from whom he has inherited.

#### Survey and Measurement.

27. Every landlord, his agents and surveyors, may at all reasonable times enter upon any land comprised in his estate for the purpose of surveying and measuring the same.

Landlord's right to enter and measure lands.

### CHAPTER III.

#### COMMUTATION AND PAYMENT OF RENT IN KIND.

28. In any district in which a settlement of revenue is in progress, it shall be in the discretion of any officer employed in making or revising such settlement, in any case in which the rent of a tenant having a right of occupancy is paid in kind, or by the estimated value of a portion of the crop, to commute, on the application either of the landlord or the tenant, such rent into a rent in money.

The amount of rent thus fixed shall be binding upon the parties concerned.

All decisions already passed by any such officer, commuting rents in kind or by valuation to rents in money, shall, subject to the same appeal as is given by this Act in respect of decisions passed in suits, be binding on the parties concerned.

29. The Chief Commissioner of Oudh may extend the provisions of section 28 to any district or portion of a district in which a settlement of revenue is not in progress; and may declare what officers are empowered to hear and decide cases under this section;

and may, with the previous sanction of the Governor General of India in Council, make rules for the guidance of officers acting under this section and section 28, and from time to time, with the like sanction, alter and add to the rules so made:

Provided that such rules, alterations, and additions are consistent with this Act.

30. Wherever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop or

Division or appraisement of produce taken for rent.

other procedure of a similar nature requiring the presence both of the tenant and landlord either personally or by a recognized agent, if either party neglect to be present at the proper period, or if a dispute arise between the parties regarding such division, estimate, or appraisal, either party may present an application to the Court on a paper bearing a stamp of eight annas; requesting that a proper officer be deputed to make the division, estimate, or appraisal.

31. On receiving such application, the Court shall issue a written notice to the other party to attend on the date and at the place specified in the notice, and shall depute an officer before whom the division, estimate, or appraisal shall be made.

The award of such officer in respect of such division, estimate, or appraisal shall be final, unless within one month from the date thereof, either party institutes a suit to set it aside.

CHAPTER IV.

ENHANCEMENT AND FIXING RATES OF RENT.

A.—Tenants with Right of Occupancy.

32. No tenant having a right of occupancy in any land shall, in case of dispute as to the rent to be paid in respect of such land, be liable to an enhancement of the rent except in pursuance of a decree made under this Act on some one of the following grounds (that is say):—

1st Ground.—That the rate of rent paid by him is below the rate of rent usually paid by the same class of tenants having a right of occupancy for land of a similar description, and with similar advantages, situate in the same village.

Rule.—In this case the Court shall enhance his rent to such amount as the plaintiff demands, not exceeding such rate.

2nd Ground.—That rate of rent paid by him is more than 12½ per cent. below the rate of rent usually paid by tenants of the same class not having a right of occupancy for land of a similar description, and with similar advantages, situate in the same village.

Rule.—In this case the Court shall enhance his rent to such amount as the plaintiff demands, not exceeding such rate less 12½ per cent.

3rd Ground.—That the quantity of land held by him exceeds the quantity for which he has previously paid rent.

Rule.—In this case the Court shall decree rent for the land in excess at rates to be fixed by the first or the second of the Rules contained in this section, as the case may be.

Nothing contained in the previous part of this section shall affect the terms of any agreement in writing hereafter entered into between a landlord and tenant.

33. After a decision has been passed in accordance with section 32, no suit shall lie for re-enhancement of such rent until the expiration of five years from the date of such decision, except on the said third ground, or, in the case referred to in section

34, until by re-assessment, within the said term of five years, the revenue of such land has been increased.

34. On such re-assessment, if the rent of such enhancement on re-assessment of revenue. tenant cannot be enhanced under section 32, by reason of the absence of the grounds therein mentioned, the landlord may institute a suit to enhance the rent to a sum not exceeding double the average amount of the revenue imposed at such re-assessment upon land of a similar description, and with similar advantages, held by tenants of the same class in the same village.

B.—Tenants not having Right of Occupancy.

35. The Court shall in no case inquire into the propriety of the rate of rent payable by a tenant not having a right of occupancy. The rent payable by such tenant for any land in his occupation shall be such amount as may be agreed upon between him and the landlord; or, if no such agreement has been made, such amount as was payable for the land in the last preceding year.

36. If in any suit between a landlord and a tenant not having a right of occupancy, the amount of rent payable by such tenant shall be disputed, he shall not be held liable to pay rent other than that payable by him for the last preceding year, unless the Court is satisfied by evidence in writing that the parties have agreed that the rent so payable shall be altered.

CHAPTER V.

EJECTMENT.

General Provisions.

37. A tenant may contest his liability to be ejected from the land on which he holds or any of the following grounds:—

First.—That he holds a lease or an agreement, or a decree of Court, under the terms of which he is not liable to such ejection:

Second.—That he has a right of occupancy in the land:

Third.—And if he be a tenant not having a right of occupancy, that notice of ejection has not been served upon him in manner provided by section 43.

38. No tenant, except a sub-lessor, shall in any case, whether in execution of a decree or otherwise, be ejected from the land in his occupancy, except between the first day of April and the fifteenth day of June in any year after the passing of this Act; unless while his rent is in arrear, he has failed to cultivate the land in his possession in accordance with the terms on which he holds it.

39. A sub-lessor liable to be ejected under the provisions of this Act may be ejected at any time during his tenancy.

40. Any tenant, other than a sub-lessor, from whom an arrear of rent remains due on the fifteenth day of May in any year

after the passing of this Act, and any sub-lessor from whom an arrear of rent remains due at any time during his tenancy may, subject to the provisions of sections 38, 39, and 41, be ejected from the land in respect of which the arrear is due.

#### *Tenant with Right of Occupancy.*

41. No tenant having a right of occupancy, or holding under an unexpired lease, or special agreement, or decree of Court, shall be ejected otherwise than in execution of a decree for ejectment.

Provided that if the tenant have a right of occupancy in the land from which the landlord desires to eject him the decree shall not be made unless at the date of the decree, a decree against such tenant for an arrear of rent in respect of such land has remained unsatisfied for fifteen days or upwards.

#### *Tenant without Right of Occupancy.*

42. A tenant not having a right of occupancy and not holding under an unexpired lease, or an agreement, or a decree of court, may be ejected in accordance with the provisions of this Act; first in execution of a decree for arrears of rent or for ejectment; or second, by notice given by his landlord in the manner described in section 43.

#### *Notice.*

43. The notice mentioned in section 42 shall be written in Hindi and in Urdu: it shall specify the land from which the tenant is to be ejected; and it shall inform him that if he means to dispute the ejectment, he must institute a suit for that purpose on or before the fifteenth day of May next after the service of the notice, or vacate the land on or before that date.

#### *Service of Notice.*

On the application of the landlord to the Tahsildár, or officer authorized to serve such notices, the notice shall be served by such officer on or before the fifteenth day of April in each year, and the landlord shall pay the costs of service.

The notice shall, if practicable, be served personally on the tenant. But if he cannot be found, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the land is situate, at the village *chaurpál* or other conspicuous place in the village wherein the land is situate.

#### *Cessation of Tenancy.*

44. If the tenant on whom such notice of ejectment has been served, fails to institute a suit to contest his liability to be ejected on or before the fifteenth day of May next after the service, his tenancy of the land in respect of which the notice has been served shall be held to cease on that date, unless, after the service, the landlord has expressly authorized him to continue to occupy the land.

#### *Assistance to eject.*

45. If no such suit be brought, and the landlord require the assistance of the Court to eject any person whose tenancy is

alleged to have ceased under the provisions of section 44, he may apply for such assistance, and if the Court is satisfied that notice of ejectment was duly served on such person, it shall give such assistance accordingly.

Provided that nothing done by the Court under the previous part of this section shall affect the right of any tenant to institute a suit against his landlord on account of illegal ejectment, and to recover compensation for the same.

#### *Growing Crops.*

46. Any tenant ejected in accordance with the provisions of this Act, shall be entitled to receive from the landlord the value of any growing crops or other ungathered products of the earth belonging to such tenant, and being on the land at the time of his ejectment:

Provided that if the land shall have been sown or planted by the tenant after the service on him of the notice mentioned in section 42, he shall not be so entitled, unless, after such service, the landlord has expressly authorized him to continue to occupy the land.

## CHAPTER VI.

### DISTRESS FOR ARREARS OF RENT.

47. When an arrear of rent is due from any tenant, the landlord may distrain the produce of the land in respect of which the arrear is due, subject to the rules contained in the following sections.

Provided that when a tenant has given security for the payment of his rent, the produce of the land in respect of which such rent is payable shall not be liable to distress so long as the security is in force.

48. Distress shall not be made for any arrear which has been due for a longer period than one year, nor for the recovery of any sum in excess of the rent payable in the last preceding year for the land in respect of which the arrear is due, unless the tenant has agreed in writing to pay such excess, or unless he has been declared to be liable for the same by a decree of Court.

49. The power of distress, vested by section 47 in landlords, may be exercised by managers under the Court of Wards, managing agents, and tahsildárs of estates held under kham management, and other persons lawfully entrusted with the charge of land, and also by the agents employed by landlords, or any such persons as aforesaid in the collection of rent if expressly authorized by power of attorney to distrain.

Provided that, if any such agent, purporting to act in the exercise of the said power, commits an act, which, under the provisions of this chapter, is illegal, the person employing such agent shall be liable, as well as the agent, to be sued for compensation for any injury caused by such act.



50. Any person empowered to distrain property under section 47 or 49, may employ a servant or other person to make the distress; but in every such case he shall give to such servant or person a written authority for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

51. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with powers of distress under this Act.

But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same agreement as the land in respect of which the arrear is due, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distress under this Act.

52. Before or at the time when any distress is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

The demand and account shall, if practicable, be served personally on the defaulter, but if he cannot be found, they shall be affixed at his usual place of residence, and shall thereupon be deemed to be duly served upon him.

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

54. Standing crops and other ungathered products of the earth may, notwithstanding the distress, be reaped or gathered by the tenant, and may be stored in such granaries or other places as are commonly used by him for the purpose.

If the tenant neglect to do so, the distrainer may cause the said crops or products to be reaped or gathered, and, in such case, shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

In either case, the distrained property shall be placed in the charge of some proper person appointed by the distrainer for the purpose.

If the crops or products do not, from their nature admit of being stored, the distress shall be made (if it all) at least twenty days before the time when the crops or products or any part thereof would ordinarily be fit for cutting or gathering.

55. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Court, and the Court, may, if it think necessary, depute an officer to assist the distrainer in making the distress.

56. If at any time after property has been distrained as aforesaid, and before the sale thereof as hereinafter provided, the owner tenders payment of the arrear demanded and of the costs of the distress, the distrainer shall receive the same, and give a receipt therefor, and shall forthwith withdraw the distress.

57. Within five days from the time of storing any distrained crops or products, or if such crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same to the proper officer authorized to sell property in satisfaction of decrees of the Court within whose jurisdiction the distrained property is situate.

58. The application shall be in writing; it shall contain a list or description of the property distrained, and it shall state the name of the defaulter, his place of residence, the amount due, and the place in which the distrained property is deposited.

Together with the application, the distrainer shall deliver to the proper officer the sum payable for the service of a notice upon the defaulter as hereinafter provided.

59. Immediately on receipt of the application the proper officer shall send a copy of it to the Court, and shall serve a notice in the form contained in Schedule C hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or within fifteen days from the receipt of the notice, to institute a suit to contest the demand.

The officer shall at the same time send to the Court, for the purpose of being put at the Court-house, a proclamation fixing a day for the sale of the distrained property, not less than twenty days from the date of the proclamation; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain a description of the property, and shall specify the demand for which it is sold, and the place where the sale is to be held.

60. If suit is instituted in pursuance of the aforesaid notice, the Court shall send to the proper officer, or if so requested by the owner of the distrained property, shall deliver to him a certificate of the institution of the suit.

On such certificate being received by, or presented to, the proper officer, he shall suspend proceedings in regard to the sale.

Provided that if, in his opinion the property distrained is such that delay will cause damage thereto, he may direct its immediate sale.

61. Any person whose property has been distrained as aforesaid, may institute a suit to contest the distrainer's demand at any time before the expiration of the fifteen days mentioned in section 59.

When such suit is instituted, the Court shall proceed in the manner prescribed in section 60.

If application for the sale of the property is afterwards made to the proper officer, he shall send a copy of the application to the Court, and suspend further proceedings pending the decision of the case.

62. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with one or more surety or sureties for an amount not less than double the value of the property so distrained, binding himself to pay whatever sum may be adjudged to be due from him, with costs of suit.

When such bond is executed, the Court shall give to the owner of the property a certificate to that effect, or, if he so requests, shall serve the distrainer with notice of the same.

Upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Court, the property shall be released from distress.

63. On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainer has not been certified to the proper officer in the manner hereinbefore provided, he shall, unless the said demand with such costs of the distress as are allowed by him be discharged in full, proceed, with the sanction of the Court, to sell the property, or such part thereof as may be necessary.

64. The sale shall be held at the place where the distrained property is deposited, or at the nearest ganj, bazar, or other place of public resort, if the proper officer thinks that it is likely to sell there to better advantage.

The property shall be sold by public auction in one or more lots as the officer holding the sale thinks advisable; and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

65. If on the property being put up for sale, a price which the officer holding the sale shall think fair be not offered, and if the owner of the property or his recognized agent apply to have the sale postponed until the next day, or (if a market be held at the place of sale) until the next market-day, the sale shall be postponed until such day, and shall be then completed at whatever price may be offered.

66. The price of every lot shall be paid in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks fit; and in default of such payment, the property shall be put up again and resold.

When the purchase-money has been paid in full the officer holding the sale shall give the purchaser a certificate stating the property purchased by him, and the price paid therefor.

67. The officer holding the sale shall deduct from the proceeds one anna for every rupee and fraction of a rupee, on account of the expenses attending the sale.

He shall then pay to the distrainer the expenses incurred by him on account of the distress and of the issue of the notice and proclamation of sale prescribed in section 59, to such amount as, after examination of the statement of expenses furnished by the distrainer, the officer thinks proper to allow.

The remainder shall be applied to the discharge of the arrear for which the distress was made, and the surplus (if any) shall be delivered to the person whose property has been sold.

68. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are forbidden to purchase, either directly or indirectly, property sold by such officers.

69. The officer mentioned in section 57 shall bring to the notice of the Court any illegal act which shall come to his knowledge as having been committed by any person in making a distress under this Act.

If in any case, on proceeding to hold a sale under this Act, such officer finds that the owner has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Court, and the Court shall direct the issue of another notice and proclamation of sale under section 59, or make such other order as it thinks proper.

70. When such officer has gone to any place for the purpose of holding a sale, and no sale takes place, either for the reason stated in section 69, or because the distrainer's demand has been previously satisfied, the said charge on account of expenses attending the sale shall be leviable by the officer, and shall be calculated on the value of the distrained property, as estimated by him, unless the distrainer's demand has been satisfied before the day fixed for the sale, and notice of such satisfaction has been given by him to the officer.

If the distrainer's demand be not satisfied until the day fixed for the sale, the charge shall be paid by the owner of the property, and may be recovered by sale of such portion thereof as may be necessary.

In every other case the charge shall be paid by the distrainer, and may be recovered under the warrant of the Court by attachment and sale of his property:

Provided that in no case shall an amount exceeding ten rupees be recoverable under this section.

71. When a suit has been instituted to contest a distrainer's demand, and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Court shall issue an order to the proper officer authorizing the sale of the property.

On the application of the distrainer (which shall be made within five days from the receipt of such order by such officer), such officer shall publish a second proclamation in the manner prescribed in section 59, fixing another day for the sale of the distrained property, not less than five nor more than ten days from the date of the proclamation; and, unless the amount adjudged to be due, with costs of distress, be paid immediately, shall proceed to sell the property in the manner hereinbefore provided.

72. In all suits instituted to contest a distrainer's demand the defendant must prove the arrear in the same manner as if he had himself brought a suit for the amount under the foregoing provisions of this Act.

If the demand or any part thereof is found to be due, the Court shall make a decree for the amount in favour of the distrainer.

Such amount may be recovered by sale of the distrained property as provided in section 71, and if the distress has not been withdrawn, and if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter, or if the distrained property have been released on security, by execution of the decree against the person and property of the defaulter, and, if his surety has been made a party to the suit, against the person and property of such surety.

73. If the distress is adjudged to be vexatious or groundless, the Court, besides directing the release of the distrained property, may award such compensation to the plaintiff as it thinks fit, not exceeding twice the value of the property distrained.

74. If any person claims, as his own, property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person to try the right to the property, in the same manner and under the same rules as to the time of instituting the suit, and as to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him, may institute a suit to contest the demand.

75. When any such suit is instituted, the property may be released upon security for its value being given to the satisfaction of the Court.

If the claim is dismissed, the Court shall make an order in favour of the distrainer for the sale of the property or the recovery of its value, as the case may be.

If the claim is upheld, the Court shall order the release of the distrained property, and may award such compensation as it thinks fit, not exceeding twice the value of the property distrained.

76. No claim to any produce of land liable to distress under this Act, and found at the time of the distress in the possession of a defaulting tenant, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the landlord's prior claim, nor shall any attachment in execution of a decree of any civil Court prevail against such claim.

77. Whenever property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, and the right to distrain for such arrear is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the questions of the actual receipt and enjoyment of the rent by him before and up to the commencement of the suit, shall be inquired into, and the suit shall be decided according to the result of such inquiry:

Provided that the decision of the Court shall not affect the right of any person having a title to the rent of the land, to establish such title in a Court of competent jurisdiction, by suit instituted within one year from the date of the decision.

78. Any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, and who is prevented by any sufficient cause from bringing a suit to contest the demand, or try the right to the property as the case may be, within the period allowed by sections 59 and 74, and whose property is in consequence brought to sale, may institute a suit to recover compensation for any injury which he has sustained from the distress or sale.

79. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, distrains or sells any property for the recovery of an arrear of rent alleged to be due otherwise than according to the provisions of this Act,

or if any distrained property is lost, damaged, or destroyed, by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof,

or if the distress is not immediately withdrawn when any provision of this Act requires such withdrawal,

the owner of the property may institute a suit to recover compensation for any injury which he has thereby sustained.

80. If any person not empowered by this Act to distrain or sell, nor duly authorized for that purpose by a person so empowered, purports to

Compensation for distress of stranger's property.

Landlord's prior claim to distrainable produce in possession of defaulting tenant.

Stranger claiming to be landlord and to have right of distress to be made a party.

Suit for illegal distress.

Suit for illegal act of distrainer.

Suit for distress or sale falsely purporting to be under this Act.

Second proclamation of sale when arrears are adjudged to be due.

Distrainer to prove the arrear in suits to contest his demand.

Compensation for vexatious distress.

Suit by third party claiming property distrained.

Release on giving security.

Order if claim dismissed.

distrain or sell any property under this Act, the owner of such property may institute a suit to recover compensation from the person so distraining or selling, for any injury which the plaintiff has sustained from the distress or sale.

Such suit shall not affect the defendant's liability to be prosecuted under any law for the time being in force.

81. If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Court, upon complaint being made within ten days from the date of such resistance or removal, shall cause the person accused to be arrested and brought before the Court with all convenient speed, and the Court shall proceed forthwith to try the case.

If the case cannot be at once heard and determined, the Court may, if it think fit, require the party arrested to give security for his person, whenever the same may be required, and, in default of such security, may commit him to the civil jail until the case is tried.

82. If such resistance or removal of property be proved, the Court may order the offender to pay a fine not exceeding one hundred rupees, together with all costs and expenses incurred in the case or in making the distress, and, in default of payment, may order him to be imprisoned in the civil jail until payment is made: Provided that no such imprisonment shall continue for more than six months.

## CHAPTER VII.

### JURISDICTION OF THE COURTS.

#### *Suits cognizable.*

83. The Courts of Revenue in Oudh shall take cognizance of the following descriptions of suits, and such suits shall be heard and determined in the said Courts in the manner provided in this Act, and not otherwise:—

#### *A.—Suits by a Landlord.*

(1).—For the delivery by a tenant of the counterpart of a lease under section 9;

(2).—For arrears of rent;

(3).—For the enhancement of the rent of a tenant having a right of occupancy;

(4).—For the ejectment of a tenant or for cancelling any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of such lease;

(5).—Suits by landlords against patwáris or agents employed by landlords in the management of land or the collection of revenue or rent, or against the sureties of such patwáris or agents for money received or accounts kept by such patwáris or agents in the course of such employment, or for papers in their possession, or for the rendering and settlement of accounts.

#### *B.—Suits by an Under-proprietor or a Tenant.*

(6).—For establishing a right of occupancy;

(7).—For the delivery by a landlord of a lease;

(8).—For contesting a notice of ejectment;

(9).—For compensation—

on account of illegal enforcement of payment of rent, or of any sum in excess of rent due,

or on account of the refusal of receipts or acknowledgments for rent paid or tendered, or on account of illegal ejectment, or on account of the value of standing crops under section 46;

(10).—For the recovery of the occupancy of any land from which an under-proprietor or tenant has been illegally ejected by the landlord;

(11).—For contesting the exercise of the power of distraint conferred on landlords and others by this Act, or any acts purporting to be done in exercise of the said power, or for compensation for illegal distraint;

(12).—For abatement of rent in accordance with the provisions of section 19;

(13).—For the recovery of compensation for improvements in accordance with the provisions of section 22.

#### *C.—Suits regarding the Division or Appraisal of Produce.*

(14).—Suits under section 31, regarding the division, estimate, or appraisal of the produce of land.

#### *D.—Suits by, and against, Lumberdárs, Co-sharers, and Muáfídar.*

(15).—Suits by a sharer against a lumberdár or co-sharer for share of the profits of an estate, or any part thereof, or for the rendering and settlement of accounts in respect of such profits;

(16).—Suits by a lumberdár or patfidár who is entitled to collect the rents of the patfi, for arrears of revenue or rent payable through him by the co-sharers whom he represents, and by a lumberdár for village-expenses and other dues for which the co-sharers may be responsible to him, or against a joint lumberdár for compensation for revenue or rent paid by such lumberdár on account of such joint lumberdár;

(17).—Suits by co-sharers against lumberdárs, or by proprietors or lessees against muáfídar or assignees of revenue, for compensation on account of exaction in excess of revenue or rent, or on account of the refusal of receipts or acknowledgments for revenue or rent paid or tendered;

(18).—Suits by muáfídar or assignees of revenue for arrears of revenue.

#### *Grades of Courts.*

84. For the purposes of this Act, the Courts of Revenue shall consist of six grades of Courts, namely—

(1).—The Court of the Assistant Collector of the second class;

(2).—The Court of the Assistant Collector of the first class;

(3).—The Court of the Deputy Collector;

(4).—The Court of the Collector;

(5).—The Court of the Commissioner;

(6).—The Court of the Financial Commissioner.

85. Subject to any orders that may from time to time be issued by the Governor General in Council, the Chief Commissioner of Oudh shall have power to declare to which of the first three grades any Assistant Commissioner shall belong, and to invest any Tahsildár with the powers of any of the same grades.

Chief Commissioner may declare grade of Tahsildár or Assistant Commissioner.

86. The Deputy Commissioner shall exercise the powers of a Collector under this Act.

Deputy Commissioner to have Collector's powers.

87. Subject to any orders in this behalf that may from time to time be made by the Governor General of India in Council, the Chief Commissioner of Oudh may invest any officer employed in making or revising settlements of revenue with all or any of the powers of a Collector, or Deputy Collector, or Assistant Collector, under this Act.

88. The Court of the Assistant Collector of the second class shall have power to try and determine suits of the descriptions mentioned in clauses 1, 2, 7, 12, 15, 16, 17, and 18 of section 83, of which the subject-matter does not exceed one hundred Rupees in value or amount.

89. The Court of the Assistant Collector of the first class shall have power to try and determine suits of the descriptions referred to in the last preceding section of which the subject-matter does not exceed five hundred rupees in value or amount.

90. The Court of the Deputy Collector shall have power to try and determine suits of every description of which the subject-matter does not exceed five thousand rupees in value or amount.

91. The Court of the Collector shall have power to try and determine suits of every description and of any amount, and to hear appeals from the decisions in suits, and (where an appeal is allowed by the Code of Civil Procedure as applied by this Act) from the orders of the Assistant Collectors, and, in suits under clauses 2, 5, 9, 11, 14, 15, 16, 17, and 18 of section 83, from such decisions and orders of the Deputy Collectors.

Whenever the state of the public business requires it, the Chief Commissioner may invest any Deputy Collector with the powers of a Collector for the trial and determination of suits and appeals under this Act, other than appeals from the decisions of such Deputy Collector, and may, with the sanction of the Governor General of India in Council, invest any Collector with all or any of the powers of a Commissioner under this Act.

92. The Court of the Commissioner shall have power to hear and determine appeals from decisions in suits, and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Collectors and Deputy Collectors, except as otherwise provided in sections 91, 95, and 102.

93. The Court of the Financial Commissioner shall have power to hear and determine appeals from the decisions in suits, and (where an appeal is allowed by the Code of Civil Procedure) from the orders, of the Commissioners, and also special appeals, as provided in the said Code, from the decisions passed in regular appeal by the Collectors and by the Commissioners.

94. The memorandum of appeal prepared in the form and containing the particulars mentioned in the Code of Civil Procedure, shall be presented to the Court empowered to hear the appeal within the period hereinafter specified, unless the appellant shall show sufficient cause, to the satisfaction of such Court, for not having presented the memorandum within such period; that is to say, thirty days if the appeal lie to the Collector, six weeks if the appeal lie to the Commissioner, and ninety days if the appeal lie to the Financial Commissioner.

*Appeals.*

94. The memorandum of appeal prepared in the form and containing the particulars mentioned in the Code of Civil Procedure, shall be presented to the Court empowered to hear the appeal within the period hereinafter specified, unless the appellant shall show sufficient cause, to the satisfaction of such Court, for not having presented the memorandum within such period; that is to say, thirty days if the appeal lie to the Collector, six weeks if the appeal lie to the Commissioner, and ninety days if the appeal lie to the Financial Commissioner.

The period shall be reckoned from and exclusive of the day on which the decision or order appealed against was passed, and also exclusive of such time as may be requisite for obtaining a copy of the decree or order from which the appeal is made.

Applications for the admission of special appeals shall be presented in the Court of the Financial Commissioner within the period hereinbefore fixed for the presentation of a memorandum of appeal.

95. In suits under clauses 2, 5, 9, 11, 14, 15, 16, 17, and 18 of section 83, and in appeals from decisions in such suits tried and decided by a Commissioner or Collector, if the amount sued for does not exceed one hundred rupees, the judgment shall be final, except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a tenant, or any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment.

In such case the judgment shall be open to appeal in the manner provided in this Act.

*Distribution of Business.*

96. The Deputy Commissioner may direct the business in the Courts subordinate to him whether or not they hold their sittings in the same place, to be distributed among such Courts in such way as he shall think fit.

*Transfer of Suits and Appeals.*

97. The Commissioner or the Deputy Commissioner may withdraw any suit instituted in any Court subordinate to him, and try such suit himself, or refer it for trial to any other such Court competent to try the same.

The Commissioner may also withdraw any appeal instituted in the Court of any Collector subordinate to him, and try the appeal himself, or refer it for trial to the Court of any other Collector in his division.

98. The Financial Commissioner may order that any suit or appeal which shall be instituted in or presented to any Court subordinate to him, shall be transferred to any other such Court competent to try or hear the subject-matter of the same.

Financial Commissioner may transfer suits and appeals from one subordinate Court to another.

*Miscellaneous.*

99. In the performance of their duties under this Act, the Collectors be subject to the direction and control of the Commissioner and of the Deputy Collectors and Assistant Collectors shall be subject to the direction and control of the Deputy Commissioners to whom they are respectively subordinate:

Provided that nothing in this section shall empower the Financial Commissioner or any Commissioner or Deputy Commissioner to interfere in any way not authorized by this Act with any decision or order in a suit.

100. All suits, which, under the provisions of this Act, may be brought by or against landlords, may be brought by or against managing agents or tahsildars of estates held under kham management, whether such estates are the property of Government or not.

101. No sharer in a joint estate, under-proprietary or other tenure in which a division of land has not been made among the sharers, shall exercise any of the powers conferred by this Act in regard to the recovery of arrears of rent, enhancement of rent, ejectment of tenants or distress, otherwise than through a manager authorized to collect the rents on behalf of all the sharers.

In pattidari estates or tenures such powers shall be exercised only through a lumberdar or through the pattidar who is entitled to collect the rents of the pattid.

102. If any landlord, under-proprietor, or tenant has, without his consent, been dispossessed of any land otherwise than by due course of law, such

landlord, under-proprietor, or tenant, or any person claiming through him, shall be entitled to recover possession thereof, notwithstanding any other title has been set up, provided that he makes application to the Court to recover possession of the land within three months from the time of the dispossession.

But nothing in this section shall bar the person from whom possession has been so recovered, or any other person, from instituting a suit to establish his title to such land and to recover possession thereof.

The application mentioned in the first clause of this section shall be heard by the Collector or Deputy Collector only, and no appeal shall lie from any order passed thereon, nor shall any review of such order be allowed.

103. The Courts may sit for the hearing and determining suits and appeals, and for disposing of other business under this Act, in any place within the local limits of their respective jurisdictions:

Provided that every hearing and decision shall be in open Court, and that the parties to the suit or their authorized agents shall have had due notice to attend at such place,

## CHAPTER VIII.

## LIMITATION OF SUITS.

104. Except as herein otherwise provided, and subject to the provisions as to legal disability contained in any law for the limitation of suits for the time being in force in Oudh, all suits under this Act shall be instituted within one year from the date of the accruing of the cause of action.

105. Suits for the delivery of leases or counterparts of leases may be instituted at any time during the tenancy.

106. Suits for the recovery of arrears of rent or revenue, or of a share of profits, shall, except in the case mentioned in section 16, be instituted within three years from the date on which the arrear or share of profit claimed shall have become due.

107. Suits for the recovery of money in the hands of an agent or for the settlement of accounts or delivery of papers by an agent may be brought at any time during the continuance of the agency, or within one year after its determination, or, in the case of claims legally cognizable at the date of the passing of this Act, within one year after such date.

108. Suits regarding distress under section 74, 78, 79, or 80, and suits regarding the division, estimate, or appraisal of the produce of land, shall be commenced within three months from the date of the accruing of the cause of action.

## CHAPTER IX.

## PROCEDURE.

109. Subject to the exceptions and provisos under which the Code of Civil Procedure was extended to Oudh as contained in the Notification

republished in Schedule D hereto annexed, the provisions of the said Code shall, so far as they are not inconsistent with the provisions herein contained, apply to all suits, appeals, and proceedings under this Act:

Provided that the said Notification shall be read as if the words "Financial Commissioner" were substituted for the words "Judicial Commissioner", and that section 244 of the said Code shall be read as if for the word "Court," the word "Commissioner" were substituted:

Provided also that the words "ancestral property" in the said Notification shall be held to include the property in land of persons admitted to engagement for the land-revenue at the summary settlement of 1858-59.

110. In addition to the particulars required by section 26 of the said Code to be specified in the plaint, the plaint shall contain the following particulars:—

1st.—The name of the village or estate, and of the pargana, in which the land to which the suit relates is situate;

2nd.—If the suit be for the recovery of an arrear of rent, or for the enhancement or abatement of rent, or for the ejectment of a tenant, or for contesting a notice of enhancement of rent, or for contesting a notice for the ejectment of a tenant, or for the recovery of the occupancy or possession of any land, the plaint shall specify the extent, situation and designation, of the land to which the suit relates, and where fields have been marked in a Government survey, the number (if it be possible to give it) of each field;

3rd.—If the suit be for the recovery of an arrear of rent or revenue, the plaint shall specify the yearly rent or revenue of the land, the amount (if any) received on account of the year or years for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due;

4th.—If the suit be for the delivery of a lease or the counterpart of a lease, the plaint shall specify all the particulars mentioned in section 7.

111. When in any suit between a landlord and an under proprietor or tenant the right to receive the rent of the land is claimed by a third person, on the ground that he or a person through whom he claims, has actually and in good faith received and enjoyed such rent up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him or the person through whom he claims shall be enquired into and the suit shall be decided according to the result of such inquiry.

Provided always that the decision of the Court shall not affect the right of any party having a legal right to the rent of such land to establish his title thereto in Court of competent jurisdiction.

112. In all suits under this Act, the summons to the defendant shall be for the final disposal of the suit.

113. In a suit to recover an arrear of rent no set-off shall be allowed against the claim, except such amount as may be due to the defendant on an unexecuted decree under this Act against the plaintiff.

114. In any suit under this Act involving a claim to money, the defendant may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the plaintiff's claim, together with the costs incurred by the plaintiff up to the time of such deposit.

Notice of the deposit shall be given to the plaintiff, and the amount deposited shall be paid to him on his application.

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

115. In any case in which the defendant deposits less than the amount claimed by the plaintiff, nothing in section 114 shall bar the plaintiff

Procedure for balance where defendant pays less than amount claimed.

from proceeding in the suit for the recovery of the balance.

116. If a tenant not having a right of occupancy institute a suit against a landlord for the delivery of a lease, or a landlord institute a suit against a tenant not having a right of occupancy for the delivery of the counterpart of a lease, and the parties do not agree in respect of the particulars which such lease or counterpart is to contain, the Court shall dismiss the suit, unless evidence in writing is produced which shall satisfy the Court that an agreement has been entered into between the parties in accordance with which such lease or counterpart ought to be delivered.

117. The local inquiry described in section 180 of the Code of Civil Procedure may also, if he think fit, be made by the Collector in person or other Officer presiding in the Court, and the provisions of the said Code regarding local inquiries shall apply to such inquiries made by such Collector or other Officer.

In such cases the Collector or other officer as aforesaid, after completing the inquiry, shall record on the proceedings such observations as he thinks fit, and the observations so recorded shall be received as evidence in the suit.

#### As to Decrees.

118. No process of execution shall be issued on a decree under this Act after the lapse of three years from the date of such decree.

119. When a decree for money is made in any suit under this Act, the Court may, on the oral application of the party in whose favour the decree is passed, direct immediate execution thereof in the manner described in section 13 of Act No. XXIII. of 1861 (to amend Act VIII. of 1859.)

120. When a decree in favour of the plaintiff is made in a suit for an enhancement of rent, the Court shall declare the date from which such enhancement shall take effect.

121. If the decree be for the delivery of papers or accounts, it may be enforced by the imprisonment in the civil jail of the party against whom it is made, or by the attachment of his property, or by both imprisonment and attachment.

The imprisonment and attachment may be continued until he complies with the terms of the decree.

Provided that no person shall be imprisoned under this section for a longer period than six months.

122. A decree for the delivery of a lease or of the counterpart of a lease shall specify all the particulars mentioned in section 7, and such other particulars as to the Court seem fit.

Decrees for lease or counterpart to specify particulars.

123. If the decree be for the delivery of a lease or the counterpart of a lease, and the party ordered to deliver such lease or counterpart neglects or refuses so to do, the Court may grant a lease or counterpart in conformity with the terms of the decree, and such lease or counterpart shall have the same effect as if delivered by the party against whom the decree was passed.

124. If the decree be for money, no process in execution shall issue against the immovable property of the judgment-debtor, other than attachment of such property, unless satisfaction of the decree cannot be obtained against his moveable property.

125. If the decree be for an arrear of rent due in respect of an under-proprietary right, the interest of the judgment-debtor in such right may, subject to the provisions of this Act, be sold in execution of the decree.

Provided that no such sale shall be allowed unless it appears to the Deputy Commissioner that satisfaction of the decree cannot be made in the manner referred to in sections 243 and 244 of the Code of Civil Procedure.

If it appear to the Court that such satisfaction can be made, the Court may exercise the powers given to it by the said section 243, although no application has been made by the judgment-debtor.

The Deputy Commissioner may be appointed manager under the same section. When he has been so appointed, he may exercise for the satisfaction of the decree against the judgment-debtor, all the powers which, under any law in force in Oudh, he might have exercised for the recovery of any arrear of revenue due by such judgment-debtor to the Government.

126. No beneficial lease or other incumbrance hereafter created on his tenure by any under-proprietor shall be valid, in the event of the sale of his rights and interests in execution of a decree for arrears of rent, unless such incumbrance has been registered under any rules or law for the time being in force in Oudh, within four months after the creation thereof, and not less than thirty days before the date of attachment of such rights and interests.

127. When an under-proprietor creates any such incumbrance, and fails to pay to the proprietor all or any part of the rent subsequently accruing in respect of the land subject to the incumbrance, the incumbrancer shall be liable to pay to the proprietor the whole or such part as aforesaid of the said rent, unless the proprietor has agreed in writing to waive any claim which he might otherwise have made on the incumbrancer under this section.

128. When land is sold in execution of a decree under this Act, and the land or any lot thereof has been knocked down

to a stranger, any co-sharer, other than the judgment-debtor, may, before sunset on the day of sale, claim to take the land or lot, as the case may be, at the sum at which it was so knocked down.

If the land be an under-proprietary tenure, a like claim may also be made by the proprietor.

Any claim made under this section shall be allowed: Provided that if a claim to the same land or lot be made by a proprietor as well as by a co-sharer, the claim of the co-sharer shall be preferred: Provided also that no claim shall be allowed unless the claimant fulfil all the conditions of the sale binding on a purchaser.

SCHEDULE A.\*

(See Section 15.)

I, A. B., of &c., solemnly declare that I did personally [or by my agent (C. D.)] on the day of tender payment

to E. F. at (the place where the { revenue } rent ) of the lands at , held or cultivated by me under [or from or jointly with] the said E. F., are usually payable] of the sum of rupees

as and for the whole amount due from me in respect of the { revenue } rent } of the said lands from

the month of to the month of both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered [or to give me a receipt in full, forthwith, for the sum so tendered]. And I declare that, to the best of my belief, the sum of rupees so tendered, and which I now desire to pay into Court, is the full amount which I owe the said E. F. on account

of the { revenue } rent } of the said lands from the month of to the month of

both inclusive, and that I owe the said E. F. no further sum on account of the { revenue } rent } of the said lands.

I the person named in the above declaration, do declare that what is stated therein true is to the best of my information and belief.

SCHEDULE B.+

(See Section 15.)

Court of the of Dated the day of 18 To E. F., of &c.

With reference to the within declaration, you are hereby informed that the sum of rupees therein mentioned, is now in deposit in this Court, and that the above sum will be paid to you or your duly authorized agent on application. And take notice if you have any further claim or demand whatsoever to make against the said A. B. in respect of the rent of the said lands, you must institute a suit in Court for the establishment of such claim or demand within six calendar months from this date, otherwise your claim will be forever barred.

\* If this declaration is made by an agent, it must be altered accordingly.

† This is to be by endorsement on a copy of the declaration under Schedule A, made by the person paying the money into Court.



## SCHEDULE C.

(See Section 59.)

Office of  
property. officer appointed to sell distrained

## A. B.—Distrainger.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 186

## SCHEDULE D.

(See Section 109.)

Under the provisions of section 385 of Act No. VIII. of 1859, and section 3 of Act No. IV. of 1860, His Excellency the Governor General in Council is pleased to notify that, from 1st January 1862, Act VIII. of 1859 is extended to the Province of Oudh subject to the following exceptions and provisos:—

1. Section 3 shall be subject to the following proviso:—

Provided that the Judicial Commissioner or any other Court exercising any appellate jurisdiction within the Province of Oudh, may, at any time within one year from the time of the passing or execution of any judgment or order by any Court subordinate to the said Appellate Court, call for such judgment or proceedings without any regular appeal or application for review having been preferred against the same, and may, if he or it shall see sufficient grounds, revise and alter, or reverse or confirm the same. But that in such case, before revising, altering, or reversing any one judgment or order, the said Judicial Commissioner, or it, shall cause the same notice to be given to the party in whose favour the said judgment or order was pronounced, and the same opportunity to such party to be heard in support thereof, and the same proceedings to be taken as if a memorandum of appeal had been filed by the party aggrieved thereby.

2. Section 17 is excepted, and the term recognized agent is defined as follows, *viz.* a permanent servant, partner, relation, or friend, whom the Court may admit as a fit person to represent a party, and especially persons holding powers of attorney from absent parties, persons carrying on business on behalf of bankers and traders, managing agents of landholders, nearest male relations of women, and persons *ex-officio* authorized to act for Government, or for any Prince or Chief.

3. Section 111 shall be subject to the following limitation:—It shall not be obligatory on the Court to decide *ex-parte* in the absence of defendant, but the Court may proceed to compel his attendance under the following rule, being the rule now in force in Oudh:—

*Rule.*—If the defendant does not appear, it shall be at the discretion of the Court to issue a warrant to arrest him and detain him till another day appointed for the hearing of the case, and to attach his property.

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4. Section 172.—So much of this section as requires that the whole of the evidence shall be taken down in writing in the language in ordinary use is excepted, and the record made by the hand of the Judge, under the following rule, being the rule now in force in Oudh, shall be taken as a record of the evidence:

*Rule.*—An intelligible note of the essential points of the evidence of each witness is to be taken at the time and in the course of oral examination by the officer who tries the case, in his own language. The notes must be legible, complete, and properly arranged, must attest the presence of the witness at the time, and mark every postponement and change of time and scene, so that their *bonâ fide* character may be apparent. Every essential point must be noted, but mere surplusage may be omitted. These notes shall be filed, and shall form part of the record of the case: Provided that in cases tried by a European officer, who has not passed the examination in the native languages prescribed for Assistant Commissioners exercising special powers, the evidence of witnesses shall also be recorded at length in their own language.

Section 205.—So much of this section as renders land liable to sale in execution of a decree will be subject to the restrictions on the sale of land prescribed by the following rule, being the local rule now in force in Oudh:—

*Rule.*—No ancestral property in land shall be sold in satisfaction of a decree, without the sanction of the Judicial Commissioner; and before acquired property in land shall be so sold, the permission of the Divisional Commissioner shall be obtained.

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The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th July 1868, and is hereby promulgated for general information:—

**Act No. XVIII. of 1868.**

*An Act for investing the Commissioner and Assistant Commissioner of the Neilgherry Hills with the powers of a Court of Small Causes.*

WHEREAS it is expedient that the Commissioner and the Assistant Commissioner of the Neilgherry Hills, appointed under the provisions of Madras Act No. I. of 1868 (for the appointment of a Commissioner for the administration of Civil and Criminal justice and for the superintendence and collection of the revenues on the Neilgherry Hills) should be invested with the powers of a Court of Small Causes constituted under the provisions of Act No. XI. of 1865 (to consolidate and amend the law relating to Courts of Small Causes beyond the limits of the ordinary original Civil jurisdiction of the High Courts of Judicature); it is hereby enacted as follows:—

1. The Governor of Fort St. George in Council may, by notification in the local official Gazette, authorize the said Commissioner and Assistant Commissioner to exercise jointly or separately within the territorial limits of the jurisdiction of the said Commissioner the powers of a Judge of a Court of Small Causes constituted under the provisions of the said Act No.

XI. of 1865; but subject to the rules hereinafter referred to.

2. The said Governor in Council may frame rules providing for the distribution of business between the said Commissioner and Assistant Commissioner in their capacity of Judges of a Court of Small Causes, and generally for defining their duties and relative positions when acting in such capacity, and may also from time to time alter and add to the rules so made: Provided that such rules, alterations, and additions are consistent with the provisions of this Act.

3. Whenever there is a difference of opinion between the said Commissioner and Assistant Commissioner sitting together as aforesaid upon any question of fact, law or practice, or upon any usage having the force of law, the opinion of the Commissioner shall prevail.

4. Suits and proceedings pending before the Civil Judge at Ootacamund, in his capacity of a Judge of a Court of Small Causes, when this Act comes into operation, shall be heard and determined by the said Commissioner or Assistant Commissioner in accordance with the rules to be made under section 2.

5. This Act shall come into operation on such day as the said Governor in Council shall notify in the said Gazette.

WHITLEY STOKES,  
Asst. Secy. to the Govt. of India,  
Home Department (Legislative).